

## **The Waimarino Purchase Report**

**The investigation, purchase and creation of reserves in the  
Waimarino block, and associated issues**

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**A report commissioned by the Waitangi Tribunal**

**2004**

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## **Preface**

Tena Koutou. My name is Cathy Marr. I have a degree in history and political science from Victoria University, Wellington. I trained as an archivist at Archives New Zealand, becoming head of appraisal services, before leaving in 1988. I also tutored in New Zealand history at Victoria University. More recently, I have completed papers in environmental planning and conservation management as part of the Masters of Environmental Studies programme at Victoria University.

Since 1988, I have worked mostly on contract in archival and historical research for a variety of organisations; including private businesses, museums, government agencies and local authorities. This has included a number of research contracts for the Waitangi Tribunal, Crown Forestry Rental Trust and Office of Treaty Settlements. These have included reports on the Aotea or King Country Rohe Potae, the Urewera Rohe Potae, including a report on the Urewera District Native Reserve Act 1896 and amendments, a number of reports on public works takings of Maori land, and environmental reports for the Te Tau Ihu, Wairarapa and the Wai 262 flora and fauna claim. In the Whanganui inquiry district, I have also prepared an overview report on Crown impacts on customary Whanganui authority over coastal and inland waterways (excluding the Whanganui River) and associated mahinga kai.

## Introduction

This report was commissioned by the Waitangi Tribunal on 24 October 2003 for the Wai 903 inquiry to prepare a report on the Waimarino block purchase.<sup>1</sup> The terms of the commission require:

- An examination of the background context to the creation of the Rohe Potae as it relates to the Waimarino block, and the Crown's subsequent efforts to open up the Rohe Potae and build the North Island Main Trunk railway through the Waimarino block. This will include an examination of assurances made by the crown and its agents to Whanganui Maori of the benefits of the railway in order to gain their support for the railway and the sale of land around it and an evaluation of the extent to which these benefits were realised.
- An analysis of Crown actions, policies and processes in relation to the survey, purchase and title determination of the Waimarino block, and the legislative context in which these policies and procedures operated.
- An analysis of the adequacy of the Native Land Court investigation of title, the negotiations surrounding the size and location of seller reserves and non-seller blocks and an assessment of the adequacy of reserves. This will include an examination of the reserves made for Te Kere Ngaitaierua and his followers.
- An examination of Maori protest over Waimarino sales and the Crown response. This should also address protest over lands at Tieke and Kirikiriroa.
- An examination of the extent to which Maori continued to use Waimarino 1 after the sale and of the Maori interpretation of the nature of the original transaction. This was also to include an evaluation of the loss of Waimarino 1 block for Whanganui Maori.
- An exploration of the decommissioning of Waikune prison on Waimarino non-seller block 4 in 1986, including negotiation for the return of the site by Whanganui Maori and associated issues.

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<sup>1</sup> Commission, 24 October 2003, Wai 903, 2.4.48

Apart from the issues outlined above, the later history of the non-seller and seller reserves in Waimarino from their creation are the subject of a separate report by Peter Clayworth.<sup>2</sup>

The around 450,000 acres of lands contained within what became known as the Waimarino block are located in the interior North Island. In the east, the lands stretch as far as the peak of Ruapehu. Moving north from Ruapehu, the northeastern boundary is largely the Whakapapa River as far its confluence with the Whanganui River. The boundary then generally follows along the Whanganui River in a north and westerly direction before turning south. The western boundary continues along the Whanganui River, as far as its confluence with the Manganui a te Ao River (although excluding the Kirikau and Retaruke blocks in the northwest). From this confluence, the southern boundary of the block drops towards the east again, generally following the Makotuku and then Mangaturuturu streams before reaching the summit of Ruapehu (see map 1).

By the time this research commenced, the Waitangi Tribunal had received a number of claims concerning the Waimarino block requiring investigation for this commission. The combined Wai 48 claim, concerning Whanganui ki Maniapoto land, includes reference to the Waimarino block, particularly regarding background events relevant to the creation and early history of the block. These include government public works policies and legislation, the operation of the Native Land Court, the influence of the King Country Rohe Potae, and negotiations and agreements between interior iwi and the government over the opening of interior lands, including the Waimarino. This claim is also concerned with the subsequent government treatment of these agreements, including the investigation and purchase of the Waimarino block. Reference is also made to Maori protest over government actions concerning the block, including petitions from Te Kere and others. Later issues include the High Court injunction of 1988 to restrain the sale and destruction of the Waikune Prison buildings on part of the Waimarino block.<sup>3</sup>

Wai 146 and amendments, on behalf of Tama Upoko, Hine Ngakau, Ngati Tupoho, Ngati Rangi and Ngati Maniapoto, also refers to the government acquisition of the Waimarino block in 1886-87 and Waikune prison farm land.<sup>4</sup> Wai 221, on behalf of the Tamaupoko subsection

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<sup>2</sup> Clayworth, Peter, 'Located on the precipices and Pinnacles'; a report on the Waimarino Non-seller Blocks and Seller Reserves' report commissioned by the Waitangi Tribunal, 2004

<sup>3</sup> Statement of Claim, Wai 48, 23 November 1988 and amendments, Record of Documents, Waitangi Tribunal, Wellington, 2002

<sup>4</sup> Statement of Claim, Wai 146, and amendment, Record of Documents, Waitangi Tribunal, Wellington, 2002

of the Whanganui River Maori Reserves Trust, asks for an investigation into ‘all lands purchased from Maori that fall within the terms of the North Island Main Trunk Railway Loan Application Act Section 4 Subsection 5’. The statement of claim specifically mentions the Waimarino 1 Block<sup>5</sup>. Wai 555 and 954 are claims on behalf of the descendants of Tamahaki. These relate to the actions of the Crown concerning a number of Whanganui blocks, including the Waimarino block.<sup>6</sup> More recently, the claims Wai 1072 on behalf of Ngati Ruakopiri and Wai 1073 on behalf of Ngati Kowhaikura, also include issues concerning Waimarino alienations.<sup>7</sup>

In addition to these claim documents, I have been fortunate to discuss issues with claimant groups in more depth at a number of research hui facilitated by Waitangi Tribunal staff in 2002-04, and in a number of less formal meetings.<sup>8</sup> I am very grateful for the insights and generous information made available to me at these hui, although all interpretations and conclusions remain my own. I am also grateful for the facilitation and project management skills and generous assistance received from James Mitchell, Waitangi Tribunal research facilitator for the Whanganui inquiry district and to Noel Harris for his map preparation. This project has also benefited from the generous advice and supply of useful information from colleagues, in particular, Peter Clayworth, Bruce Stirling, David Young, Paul Meredith, Kathryn Rose, Philip Cleaver and Steven Oliver and from the reference staff of various research institutions, in particular David Retter of the Alexander Turnbull Library. I would also like to thank James (Jamie) Mitchell for his research assistance, particularly on Tawata, Kirikiriroa and Waikune Prison. Again all conclusions and interpretations (and any errors) remain my own.

Research for this report has been based largely on documentary sources, including official government records held at Archives New Zealand and within various government agencies, Maori Land Court records, newspapers and manuscripts of various individuals donated to research institutions. These records are inevitably largely one sided and it is expected that claimant groups will bring their own insights and knowledge to these issues. Many of the official records have also only partially survived or have suffered large losses due to fire and other means. It has therefore been necessary, particularly with records of the purchase, to

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<sup>5</sup> Statement of Claim, Wai 221, Record of Documents, Waitangi Tribunal, Wellington, 2002

<sup>6</sup> Statement of Claim Wai 555 and 954, Record of Documents, Waitangi Tribunal, Wellington, 2002

<sup>7</sup> Statement of Claim, Wai 1072 and 1073, Record of Documents, Waitangi Tribunal, Wellington, 2002.

<sup>8</sup> For example, research hui at Putiki Marae, 7 September 2002, Tongaririo Chateau, 9 September 2003, and at Wanganui, 3 July 2004.

piece together much of what happened from a variety of sources. Some use has also been made of correspondence register entries where the original correspondence has been lost. The overview nature of this report and limited time for research means that it has only been possible to consult the most obvious documentary sources. For example, further detail is likely to be found in more in-depth research of newspapers than was possible for this report, and in particular Maori language sources including Maori language newspapers. It has also only been to identify a relatively small number of places in such a large block, such as Tieke and Kirikiriroa, to highlight issues concerned with the consequences of the purchase for Whanganui communities.

The nineteenth century and early twentieth century sources contain a variety of spellings for place names and personal names, particularly those of Maori. Attempts have been made to use reasonably consistent spellings and with personal names to use the spellings used by people of the time. However, sometimes, as in the use of quotes or where the subject being discussed is not absolutely clear, this has not been possible. Place names, such as Manganui a te Ao, have been standardised as much as possible for the sake of clarity, but in many of these cases no claims are made for what might be considered the ‘correct’ choice of spelling.

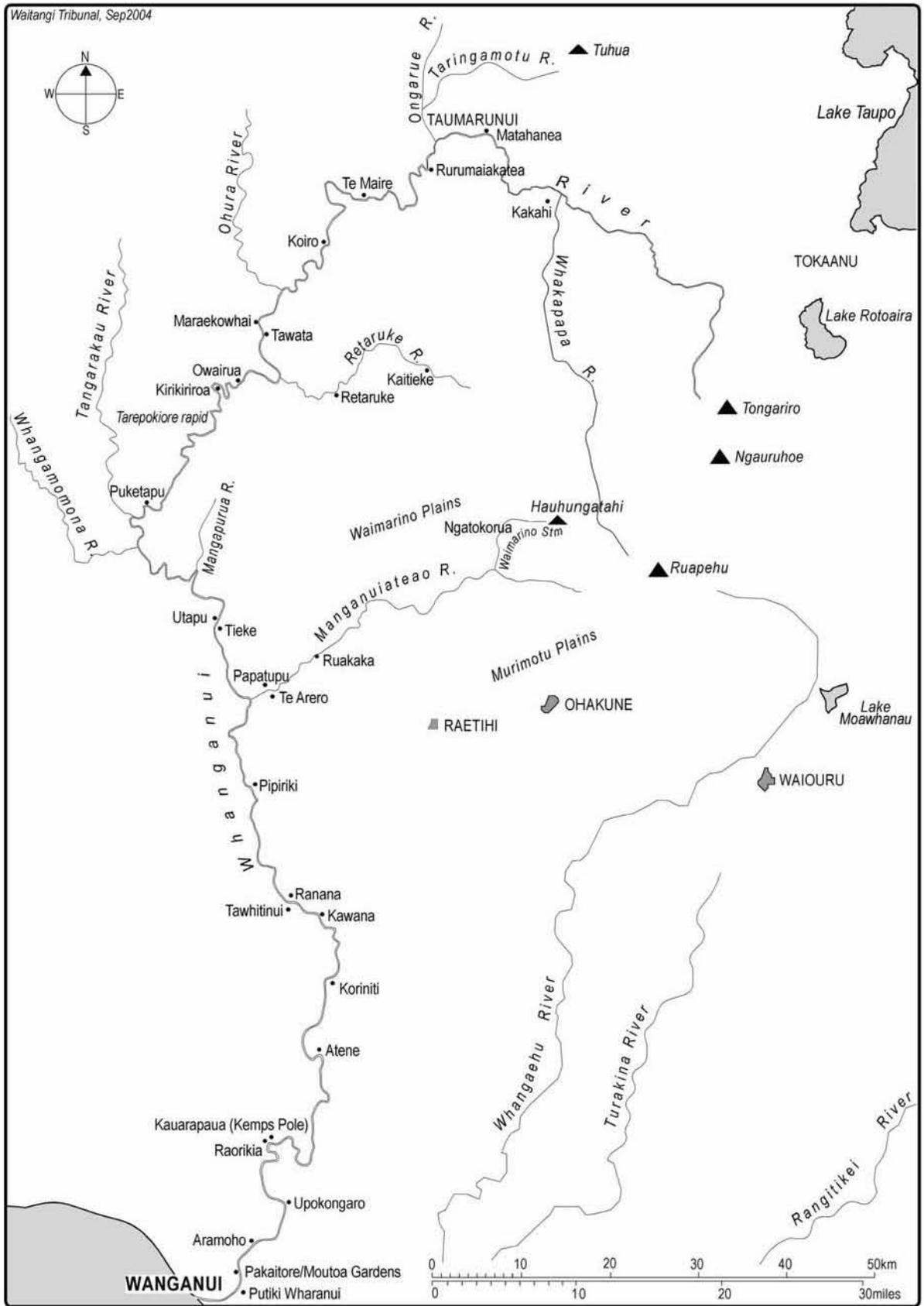
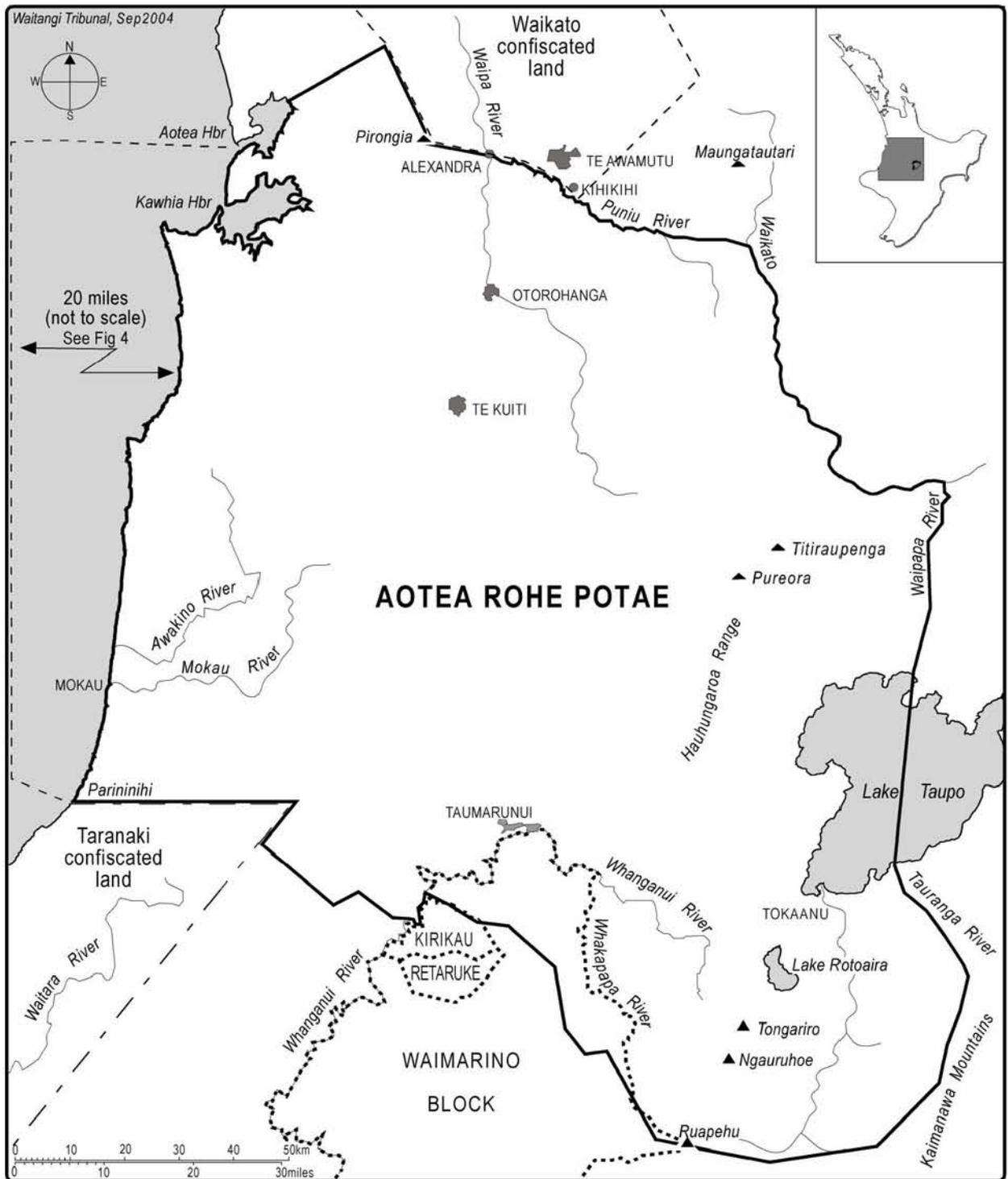
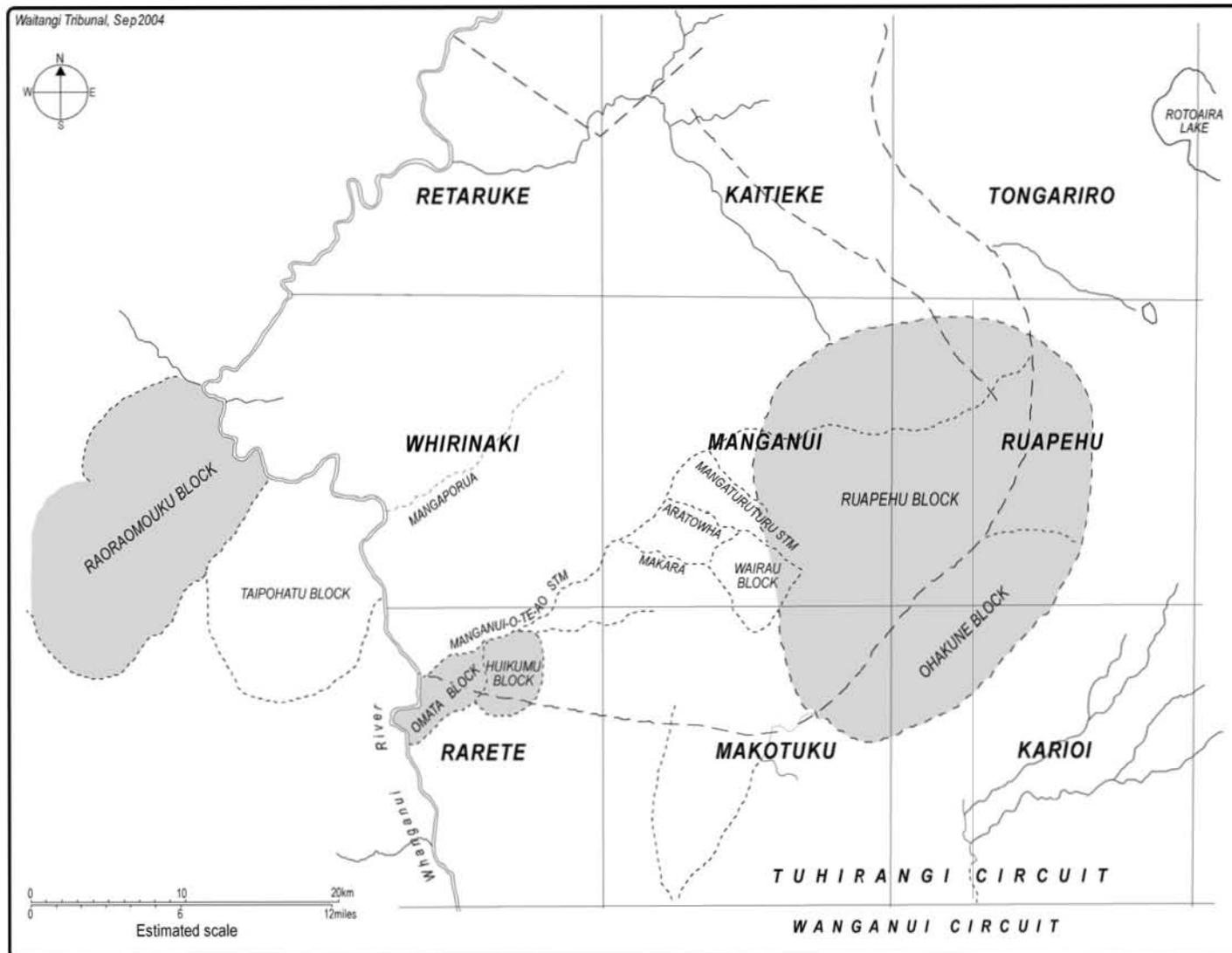


Figure 1: Upper Whanganui, Waimarino, Tuhua District



**Figure 2: The 1883 Aotea Rohe Potae Petition District and Waimarino Lands (Source: Based on sketch map of the King Country as surveyed by Cussen & Co., 1883 – 1884, AJHR 1884 sess II C-1 opp p 29 and 1883 petition boundaries given in AJHR 1883 J-1 p 2)**



**Figure 3: The Extension of Land Purchasing into Waimarino Lands, 1870s (Source: Based on sketch map showing purchasing and survey districts by late 1870s, MA-MLP 1/7, NLP 80/531, ANZ, Wellington)**



## **Chapter 1 The Waimarino lands**

### **1.1 Introduction**

This chapter begins with a brief description of the lands that later became part of the Waimarino block and their traditional importance to Maori communities living on them and also to wider Maori communities of the North Island because of their location on important trade and communications routes through the North Island. This strategic importance also appears to be reflected in the overlapping and intersecting interests and influence of a number of interior iwi and hapu in these lands. These interests have led to a long history of conflict and peacemaking in the district.

What later became the Waimarino block also appears to be a largely artificial construct, created for Native Land Court purposes. The block appears to have contained all or parts of a number of different traditional districts, some of which straddled major waterways rather than being bound by them. For example, the northern part of the block seems to have included part of what was traditionally known as the Tuhua district, while the traditional Waimarino district ‘proper’ was much smaller than the eventual Native Land Court block named Waimarino, and centred on the more open eastern Waimarino plains.

This is followed by a brief description of the continuing strategic importance of the upper Whanganui district, including lands that became included in the Waimarino block, for both Maori and Pakeha communities, through the period of early contact and the establishment of Wanganui township, and the New Zealand wars to the immediate post-war period and the continuance of the southern aukati of the Aotea Rohe Potae, which was also edged by or overlapped lands that were later included in the Waimarino block. This continuing strategic importance ensured that what were to become Waimarino lands remained the subject of both Government and Kingitanga interest as post-war policies were established.

### **1.2 The Waimarino lands and their traditional importance**

What became known as the Waimarino lands were located in the interior North Island, in the upper reaches of the Whanganui River. The lands sloped from the western side of the volcanic peaks, through open plains of pumice and tussock lands to more rugged, densely forested areas in the north, south and west. These forests included the ‘great totara forest’ just south of the upper Whanganui river from Taumarunui and the dense barely penetrable forests to the

west and south, later described by early European travellers. The district was also traversed by a number of rivers, streams and connected waterways. Along with numerous smaller waterways, larger rivers included the upper Whanganui, Whakapapa, Retaruke and Manganui a te Ao (see map 1).

The variety of landforms and waterways and associated flora and fauna, from forests to open volcanic areas, appear to have provided valued resources for traditional use. This appears to have resulted in a long history of occupation of the district by a number of hapu. This occupation and association with the land is likely to be described in more detail and with considerably more expertise by tangata whenua groups in claimant evidence. The information provided here is no more than a general outline, taken from secondary and official sources.

It seems likely that Maori occupation of this interior district may have stretched back at least 600 years.<sup>9</sup> The more permanent settlements were clustered most heavily along the main river systems, especially along the Whanganui, Retaruke and Manganui a te Ao rivers. Early Pakeha visitors noted heavy settlement along the Whanganui River and significant populations still appear to have remained along many of the tributaries into the 1880s. For example, during his explorations in 1883, Kerry-Nicholls described breaking out of dense forest at the head of the Manganui a te Ao, and looking down that valley and seeing in every flat or terraced area, whares and cultivations stretching for miles along the river.<sup>10</sup> Young cites T W Downes as noting a large population along the Retaruke River of up to 3000 people in the 1880s.<sup>11</sup> Young has also noted fortified pa named Takapuna, Otutaura, Kopaituna and Te Rerenga, built close to the confluence of the Whakapapa and Whanganui rivers.<sup>12</sup> This reflected the importance of the rivers for food, transport, trade and communication and as defensive sites in times of conflict.

It also seems likely that a number of settlements were located inland from the major rivers, in selected locations on the interior lands.<sup>13</sup> These may have been located near prized resources such as hot pools, or at strategically important communications points linking more open areas with river-based settlements through dense forest. For example, Pakeha visitors, surveyors and land purchase officers, also noted the important village of Ngatokorua, near the

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<sup>9</sup> Voelkerling and Stewart, *From Sand to Papa*, 1986, p 138

<sup>10</sup> Kerry-Nicholls, J H, *The King Country, or Explorations in New Zealand; a narrative of 600 miles of travel through Maoriland*, p 271

<sup>11</sup> Young p 23

<sup>12</sup> Young, *Woven by Water*, 1998, p 19

<sup>13</sup> Voelkerling, p 138

foot of Mount Hauhungatahi and close to the Waimarino stream, which by the 1880s, was the village of the chief Peehi Turoa.<sup>14</sup> In other cases, interior areas were visited and managed seasonally for the resources they provided.

The various resources of the district appear to have supported significant populations. In addition to the district importance for local communities, however, it was also long recognised to have wider strategic value for iwi and hapu communities of the wider North Island.<sup>15</sup> This upper river district straddled a number of important trade and communication routes between various parts of the North Island, where goods, information and ideas were distributed and exchanged, and through which at times, war parties passed. The Whanganui River itself, with its upper reaches bounding what became the west and north of the Waimarino block, was an important communication and trade link from the Whanganui coast to the rest of the North Island. From the main Whanganui River, a number of tributaries provided communications within the district and to other parts of the North Island. Some of these tributaries, linking into what became the Waimarino block, such as the Retaruke River, were navigable for canoes for much of their length and were therefore important internal district routes for trade and communications.<sup>16</sup>

Other tributaries took travellers further into various parts of the North Island. For example, the Ongarue River provided further access to the north and west and the North Island west coast and Waikato districts. Numerous other tributaries also formed secondary transport routes to various parts of the North Island. For example, a western tributary, the Tangarakau River, took travellers to what was to become known as the Taranaki district.

One significant tributary of the Whanganui, cutting into what became the Waimarino block, was part of a major north-south route through the North Island. Travellers canoed up the Whanganui and then the Manganui a te Ao, as far as the village of Te Arero.<sup>17</sup> From there, they travelled on foot following along the Manganui a te Ao valley, before crossing to Tokaanu and then Taupo. They could then continue on from Taupo further north, or to the Bay of Plenty or the East Coast.

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<sup>14</sup> For example, in 1883, Kerry-Nicholls stayed at the village, Kerry-Nicholls p 288

<sup>15</sup> Young, p 21

<sup>16</sup> Saunders B G R (ed) *Introducing Wanganui*, 1968, p 53

<sup>17</sup> Voelkerling, p 138

A number of early European visitors travelled into the Waimarino district following this traditional travel route along the Manganui a te Ao to reach Taupo and sometimes beyond. For example, E J Wakefield travelled up the Whanganui River and then the Manganui a te Ao on his way to Taupo, in 1841. Wakefield made the trip with the assistance of a Ngati Patutokotoko chief and a guide from Taupo, taking eleven days to reach Taupo from the junction of the Manganui a te Ao and the Whanganui rivers. Having left this junction, his party followed the Manganui a te Ao valley, crossing that river several times before moving northeast towards the Waimarino plains. Leaving the forest at the head of the Manganui a te Ao valley, they came out to a level plain (Waimarino) and grassy tussock lands from where Wakefield could see the snow-capped volcanic peaks. They then travelled in a northerly direction (following a similar route to what would later become part of state highway 4) skirting to the west of Mount Hauhungatahi and the volcanic peaks. On the way, Wakefield's party followed advice on utilising the natural resources of the area, adding to their provisions by digging fern root and shooting birds.<sup>18</sup>

Continuing along the west of the volcanic peaks, the Wakefield party then turned northeast, crossing the Whakapapa River and heading towards Lake Rotoaira. Wakefield noted at this point that the country to the west and south west was heavily wooded. Lake Rotoaira itself was surrounded by tall forest trees, interspersed with cultivations and villages. He observed that the local people grew their potatoes in large raised mounds, evidently in response to cold weather. Leaving Rotoaira, Wakefield's party crossed fern land to the hot springs of Tokaanu and then Lake Taupo.<sup>19</sup> The missionary, Richard Taylor, and other early visitors later followed this same route. Kerry-Nicholls also eventually took this route as part of his journey in 1883.<sup>20</sup>

The various hapu of this upper Whanganui district had close relationships to a number of larger iwi groups whose interests and influence extended into these strategically important areas. These larger iwi confederations included the Whanganui confederation whose influence extended from the southern coastal reaches of the Whanganui River and into the upper river regions, Ngati Maniapoto to the north, Ngati Tuwharetoa to the east, and Taranaki iwi from the west. Ngati Raukawa, with ancestral links to the west and north of Lake Taupo, had also migrated southwards into the Horowhenua by the 1920s, and had interests along the east of

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<sup>18</sup> Wakefield, E J, *Adventure in New Zealand*, pp 207-216

<sup>19</sup> Wakefield, E J, *Adventure in New Zealand*, pp 207-216

<sup>20</sup> Kerry Nicholls, pp 281-310

the district. Hapu of the area generally had close connections to one or more of these larger iwi groups. For example, Ngati Haua of the upper Whanganui River and Ngati Patutokotoko based on the Manganui a te Ao River, had close Whanganui connections.<sup>21</sup> Ngati Tuwharetoa were also linked to the district through the ‘buffers’ hapu/iwi of Ngati Hekeawai and Ngati Hikairo. Young has also noted that Ngati Maru of Taranaki also merged into this area.<sup>22</sup>

This report leaves the detail of iwi and hapu interests and relationships in this area to the more expert evidence of tangata whenua. However, in general, it seems that the intersection and overlap of tribal interests in a strategically important area inevitably resulted in conflicts and competition between groups over time, and the ebb and flow of particular iwi influence as a result. For example, there are traditions of intense conflict between Ngati Haua and Ngati Maniapoto, and between Ngati Tuwharetoa and upper Whanganui tribes in the region.<sup>23</sup> There are also a number of historic boundary areas in or near the region, indicating the long history of intersecting interests. For instance, Young’s Whanganui informants noted Petaania just north of the district, between the junctions of the Taringamotu, Ongarue and Whanganui rivers, was regarded as a tribal boundary between Whanganui, Ngati Tuwharetoa and Ngati Maniapoto groups.<sup>24</sup> Similarly, Te Horongopai where the Taringamotu and Ongarue rivers meet, was also noted as a boundary and place of peacemaking between the Ngati Maniapoto and upper Whanganui tribes.<sup>25</sup> This tradition of peacemaking and accommodation after conflict seems to be an important, if at times overlooked, part of the history of the district.

As well as conflicts, the tradition of peacemaking between various groups pointed to an equally important pattern of finding means of accommodating intersecting interests and dealing with the outside groups who were seeking to utilise trade and travel networks. This often took the form of strong relationship links between occupying hapu who were also affiliated to different iwi groups. For example, there were close hapu connections between Ngati Maniapoto, Ngati Hikairo and Ngati Haua of these interior lands.<sup>26</sup> A notable example of the complicated and interlocking relationship links of the area appears to be illustrated by the Turoa family, who were often described as Ngati Patutokotoko of the Manganui a te Ao. In the mid-late nineteenth century, this family was recognised as having influential

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<sup>21</sup> Young, p 16

<sup>22</sup> Young, p 21

<sup>23</sup> Young, pp 19, 21

<sup>24</sup> Young, p 75

<sup>25</sup> Young, p 77

<sup>26</sup> Young, p 7

Whanganui hapu connections along the entire length of the Whanganui River. Their influence was also recognised to the east of Lake Taupo with their close Ngati Tuwharetoa connections and they had links further afield to the Tainui confederation.<sup>27</sup> These kinds of relationship links were important in providing buffers between wider iwi interests and in enabling extensive use of a strategically important area.

### **1.3 The upper Whanganui/ Tuhua/ Waimarino districts**

This chapter has been careful to refer to what ‘were to become Waimarino block’ lands. This is because it seems clear that what became the Waimarino block in 1885-86, was essentially an artificial construct created for and to accommodate the Native Land Court process. It did not necessarily reflect traditional understandings of what made up the Waimarino area. For example, traditionally, it appears that the rivers of this area were central to customary ideas of land and resource use, not barriers or boundaries. The use of the Whanganui (and other rivers) as a boundary for the Waimarino block may have been convenient for Land Court purposes and may have saved survey costs, but this boundary did not appear to reflect traditional hapu and iwi views of what constituted different districts in the area. This can be seen in the high density of settlements along both sides of river valleys, where using rivers as boundaries tended to cut these communities in half. What later became the Waimarino block was therefore not necessarily an accurate or complete representation of traditional perceptions of what the Waimarino area might include.

This difference was also compounded by the Native Land Court requirement for continuous fixed boundaries for Land Court blocks, while traditionally, as with hapu and iwi relationships, the concepts of what formed the outer edges of districts especially could be fluid as iwi or hapu influence waxed and waned. Districts were also often identified by their natural features or resources and while there was considerable agreement over these centres, the edges of districts were often less well defined and could overlap depending on the views and perceptions of particular communities.

Bearing this in mind, it seems that what became the large Waimarino block, actually included a number or at least parts of a number of traditional districts. What became known as the Waimarino block was bounded to the north by the Whanganui and Whakapapa rivers. This upper Whanganui River appears to have been central to a traditional district that straddled

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<sup>27</sup> Young, pp 38-39

both sides of the upper River, known as the Tuhua district. This district pre-dated European contact although the name was quickly picked up by early Pakeha visitors to the area. By the late 1870s and early 1880s, Pakeha were referring to the name Tuhua for the northern part of what became the Waimarino block, also extending some distance north of the Whanganui River. The exact boundaries of this district are never given clearly by these early accounts and they presumably changed with changing hapu alliances. However, in general, the Tuhua district was regarded as extending both north and south of the upper Whanganui river, in the vicinity of the Taumarunui area and as far south as the Retaruke River valley. It was also demarcated by the dense forests of the region, which were largely impenetrable, apart from the few known tracks through them.

The Tuhua mountain and river lay central to the Tuhua district, just north of the upper Whanganui River and northeast of Taumarunui.<sup>28</sup> The upper Whanganui River itself may also have been considered central to the Tuhua district 'proper'. Tuhua mountain was also visible from the Ruapehu area and from south of the Whanganui river. Young cites Hochstetter as noting in 1859 that the village Petaania, formerly called Teterenga, was also known by the general designation Tuhua settlement.<sup>29</sup> The Tuhua district also appears to have extended south of the upper Whanganui River into much of the northern part of what became Waimarino lands, north of the Retaruke River and a line east of this towards the volcanoes.

This was recognised by the few Pakeha who ventured into the area in the 1870s and 1880s. For example, in 1875, government land purchase officer, Booth, described the early Kirikau and Retaruke blocks (located just east of the Whanganui River, from Kuirau south and later to be partly enclosed by the northwest of the Waimarino block) as being in the Tuhua district.<sup>30</sup> In 1883, the traveller Kerry-Nicholls, also mentioned the Tuhua forests, west of the Okahukura plains and the volcanic peak of Tongariro.<sup>31</sup> The mid-1880s applications for survey and investigation of the Waimarino block also described the lands as being located in the Tuhua district.<sup>32</sup>

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<sup>28</sup> For example, see location of Tuhua mountain and river on Sketch Map of the King Country, *AJHR* 1884, sess II, C-1, opposite p 29, map 2 in this report.

<sup>29</sup> Young, p 75

<sup>30</sup> Booth, in MA-MLP 3 / 4, NLP 75/316, Archives NZ.

<sup>31</sup> Kerry-Nicholls, J H , *The King Country*, 1884, pp 296-7

<sup>32</sup> For example, the 1885 application for survey, LS-W series 46/6, survey application 722 of 27 December 1885, ANZ.

The Tuhua people were often described as a distinctive group by the mid nineteenth century. However, they were also known to band together with their wider iwi connections as circumstances required, such as for mutual defence. For example, in 1820, the lower Whanganui tribes are said to have combined with the Taupo and Tuhua tribes under the Ngati Patutokotoko chief, Te Peehi Turoa, in an area close to the mouth of the Retaruke River, to fight against Nga Puhi invaders.<sup>33</sup> The strategic importance of the Tuhua area from a wider Whanganui perspective was also reflected in a proverb or whakatauki of the Ngati Haua chief Topine Te Mamaku, recorded by Young as ‘Unuunu te puru o Tuhua ma ringiringi te wai o puta’ and which he notes is variously interpreted as ‘If you withdraw the plug of Tuhua you will be overwhelmed by the flooding hordes of the north’ or ‘if you withdraw the plug of Tuhua, you empty the Whanganui River’.<sup>34</sup>

While Pakeha and outside Maori communities tended to generalise the whole upper Whanganui district as Tuhua, within the district the distinctions may have been finer. Further south of the Retaruke valley, the Manganui a te Ao tributary may have been considered as a distinctive cluster of settlements. This valley tended to be more open to outsiders because of its role as a major transport route to the rest of the North Island. This area could be easily closed off when circumstances required, however, by closing the few easily defended and monitored tracks through enclosing impenetrable forest. This southern forest had long been a physical barrier to overland movement from the south. For example, an alternative route to the central Taupo area followed along the Rangitikei River, then overland across the Murimotu plains, just to the south of Ruapehu.<sup>35</sup> However, at this point travellers were met with the band of almost impenetrable forest extending westwards from the slopes of Ruapehu towards the Whanganui River and Taranaki. They were faced with either turning west and following a track to the head of the Manganui a te Ao before crossing the river and then heading east again in zigzag fashion, around the band of forest, and then picking up the main route, as already described, lying west of the volcanic peaks and heading north towards Tokaanu. Alternatively, travellers could turn east when they met the forest and follow an easterly route around the volcanoes and east of Lake Taupo, missing out the western district altogether.

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<sup>33</sup> Downes, *Old Whanganui*, 1915, pp 122-4

<sup>34</sup> Young, p 33

<sup>35</sup> Young, p 48

This impenetrable forest, north of the Murimotu plains and south of Ruapehu, that closed off access to the western interior from the south was noted by Kerry-Nicholls in 1883, in his published account of an expedition ‘through’ the King Country and nearby districts, undertaken while the aukati was still in force.<sup>36</sup> Kerry-Nicholls took a companion, named Turner, who was fluent in Maori and came from a Pakeha settler family living near Alexandra in the northern King Country.<sup>37</sup> The two appear to have taken advantage of Turner’s family contacts in the district to undertake their expedition, while making sure to approach and secretly climb the peaks of Ruapehu and Tongariro from the east. They were well aware the peaks were considered tapu and off limits for climbing at the time. They continued along the eastern route to the south of Taupo, where they reached the Pakeha-leased Karioi sheep station to the north of the Murimotu plains.<sup>38</sup> From there, they decided to return back to Alexandra by the route west of Taupo, in the process crossing the southern King Country aukati, from the upper Whanganui area. Their route through the King Country actually kept close to the eastern edges, along the old travel route over the Waimarino Plains, while avoiding the more intimidating, forested Tuhua interior. Even though Turner was known in the area, and they were ostensibly simply returning to his family home, Kerry-Nicholls recorded some anxiety about breaking the aukati.

As Kerry-Nicholls and Turner headed from the south towards the east of Taupo, they met with the impenetrable forest south of the Waimarino plain.<sup>39</sup> Kerry-Nicholls described this as the Te Rangikaika forest, which he described as stretching from within 1000 feet of the snowline of Ruapehu, west towards the Manganui a te Ao valley, the Whanganui River and on into the Taranaki district.<sup>40</sup> Kerry-Nicholls and Turner were obliged to find a Maori guide to show them the ancient track that zigzagged west of the forest to the village of Ruakaka on the Manganui a te Ao. Even then, they found this part of the forest difficult going. Kerry-Nicholls describes having to dismount their horses and have them jump like circus animals to get through the many vines and roots along the rough, steep, track to the village. From the village, another guide showed them the route eastwards again to the head of the valley from where they could pick up the main travel route along the west of the volcanoes and over the plain ‘known to the natives as the Waimarino’ that Wakefield and others had followed

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<sup>36</sup> Kerry-Nicholls, J H , *The King Country*, 1884

<sup>37</sup> See map of expedition in Kerry-Nicholls, J H , *The King Country*, 1884

<sup>38</sup> Kerry-Nicholls, pp 177-252

<sup>39</sup> Kerry-Nicholls, p 259

<sup>40</sup> Kerry-Nicholls, pp 261-2

earlier.<sup>41</sup> The surveyor Rochfort encountered the same forest barrier south of Ruapehu in exploring a way north for the central railway route not long afterwards, and was also obliged to detour to Ruakaka in an effort to get around this part of the forest, although with less success for his later journey, as will be described in more detail in later chapters.

Further to the north of this forest and east of the head of the Manganui a te Ao valley, the more open plains and grassy tussock lands, west of Ruapehu could be considered another distinctive area in what later became the Waimarino block. This open area was traversed by the Waimarino stream, flowing west from Mount Hauhungatahi. This area may have been traditionally regarded as Waimarino ‘proper’ and the Waimarino plains were noted by Pakeha visitors, including on early maps.<sup>42</sup> Kerry-Nicholls also described this area as being ‘known to the natives as the Waimarino’ as previously described.<sup>43</sup> This area was also described by witnesses as ‘Waimarino proper’ in later Native Land Court investigations.<sup>44</sup> Further north, the continuing open tussock plains were a major eastern ‘gateway’ to the Tuhua district from Tokaanu and the east, similar to the way the Manganui a te Ao was regarded as a major southern gateway. It seems useful to keep these differing perceptions and understandings of the districts that later became wholly or partly included in the Native Land Court Waimarino block, when later protests and complaints over what was understood as being included in the block are considered.

#### **1.4 Early contact and the New Zealand wars**

A number of upper river chiefs with close connections to the Tuhua/upper Whanganui district and what became the Waimarino block lands took part in early hostilities against the fledgling coastal settlement of Wanganui in the 1840s although, according to Young, they were generally hostile to a military rather than a Pakeha presence in the area.<sup>45</sup> The Ngati Haua chief, Topine Te Mamaku led a taua of upper river/Ngati Tuwharetoa against the Wanganui garrison in 1846-7.<sup>46</sup> He was joined by Te Peehi Pakaro Turoa of Ngati Patutokotoko of the Manganui a te Ao. According to Young, at this time, Donald McLean considered that Te Mamaku of Ngati Haua/Ngatirangi and Te Peehi Turoa of Patutokotoko were the most

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<sup>41</sup> Kerry-Nicholls, pp 262-289, p 287 re Waimarino plain

<sup>42</sup> For example, Waimarino Plains shown on Kerry Nicholls map 1883, and on ‘Plan of Waimarino block’, 1887, SO 2351/66, MA1.1924/202 v 1

<sup>43</sup> Kerry-Nicholls, p 287

<sup>44</sup> For example, Te Rangihuatau evidence, MLC- MB13, p 135

<sup>45</sup> Young, p 40

<sup>46</sup> Young, pp 33-36

formidable and warlike chiefs of the Whanganui River.<sup>47</sup> He also recognised that their independent influence needed to be taken into account in any discussions about settlement of the district. From an early period therefore, the settler Government was aware that the upper Whanganui people, while closely related to their river kin, were also distinctive and acted independently when they saw the need.

During the wars of the 1860s, the Tuhua peoples were considered to be closely linked with those interior hapu of a variety of iwi affiliations who tended to support the Kingitanga movement in opposing land sales, the expansion of Pakeha settlement and government and who sought to uphold customary authority over land and resources. Many, although not all, later supported the Pai Marire movement, or as it was widely known by Pakeha, the Hauhau. It was the growth in support for Pai Marire among Whanganui communities that brought the wars directly to the river. However, while Pakeha tended to see the Kingitanga and Hauhau as being the same and equally hostile to Pakeha, it appears that this was a much too simplistic view of the motivations behind hapu and iwi decision-making at this time. At the battle of Moutoa in 1864, for example, a number of prominent Kingite supporters refused to support the Hauhau in battle because they did not accept the right of outside groups to make such decisions on the river. Neither of the upper river chiefs, Topine te Mamaku or Te Peehi Pakaro Turoa took part in that battle.<sup>48</sup> Some years later in 1869-70, when Te Kooti began operations in the upper Whanganui district, a number of upper river communities, for reasons of their own and who had earlier supported resistance to the Government, also now allied with Government forces against Te Kooti.<sup>49</sup>

Nevertheless, upper Whanganui people did take part in some of the fighting against government forces during the wars. At the siege of Pipiriki after the battle of Moutoa, for example, the taua included upper river people with Whanganui, Ngati Tuwharetoa, Ngati Maniapoto and Ngati Raukawa links. This time, the chief Te Peehi Pakaro Turoa was one of the leading men in the siege. His son, Topia Turoa, had been wounded in an earlier battle.<sup>50</sup> Topia Turoa was later to figure prominently in the Waimarino block purchase.

As always, the upper Whanganui region played an important strategic role during the wars, providing travel routes for warriors and supplies, and used as means to rapidly transmit

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<sup>47</sup> Young, p 39

<sup>48</sup> Young, pp 59-60

<sup>49</sup> Young, pp 86-91

<sup>50</sup> Young, pp 68-69

intelligence for the Kingitanga. With the wars, the interior lands known as the King Country or Aotea Rohe Potae and its border lands were also generally closed to Pakeha travel without permission. The southern border of the King Country aukati and its borderlands included much of what were to become upper Whanganui Waimarino lands. This southern aukati remained an important boundary into the post-war period.

### **1.5 The continuing strategic importance of upper Whanganui/Waimarino lands**

In the post-war period, as the Kingitanga continued to maintain a largely independent Maori-controlled district in the central North Island, the continuation of the southern aukati also ensured the upper Whanganui district remained an area of considerable strategic importance for the Kingitanga-supporting communities and the settler Government (see map 2). The Kingitanga wished to keep the southern part of the Rohe Potae aukati firmly under Maori control, as a barrier to the spread of land purchasing and Native Land Court influence. Buffer areas at the edges helped protect the Rohe Potae, while also providing a sympathetic outlying area through which information, trade and communications might be exchanged with outside districts.

The settler Government was determined to undermine or limit the Rohe Potae as much as possible. The eastern and southern gateways to the Rohe Potae, near Taupo and from the upper Whanganui appear to have been regarded as particularly useful for this, because of the relationship links and connections of more cooperative hapu groups from both Taupo and southern Whanganui into the area. It was known that there were close affiliations between the upper Whanganui and lower river peoples, for example, and that these were being strengthened in the post-war period by a series of peacemaking initiatives. At the same time, those same strengthening ties might prove a danger to settlers in providing a relatively safe route for hostile upper river and interior groups to renew hostilities against lower river settlements. The Government appears to have decided to take the initiative in attempting to use the southern and eastern areas to broach and undermine the Rohe Potae, or at least push the aukati boundaries further back.

This Government determination to undermine and limit the Aotea Rohe Potae from the southern or upper Whanganui area provides an important background to the later creation of the Waimarino block, while the importance of constructing a Main Trunk railway line through the district in opening up the Rohe Potae lands to settlement, encouraging economic growth to

combat economic recession and undermining Maori authority, was an important background to the rapid purchase of the Waimarino block.

The exact southern aukati boundaries in the upper Whanganui area are not always clear, and they seemed fluid as hapu and community allegiances at the edges changed. The lines were also not always continuous, with points at travel routes being the main focus. They also did not have defined boundary lines with the outer edges instead being more being flexible buffer areas. When the interior alliance later set out the southern boundaries of the Aotea Rohe Potae in 1883, they did not attempt to closely follow customary boundaries. Instead, they outlined areas that had not yet been included within surrounding Land Court block boundaries, that is land still under customary authority, 'still remaining to us' and to which, to the best of their knowledge, the Crown or Pakeha had no legal claim.<sup>51</sup> These were effectively lands within the original aukati that had been pushed back to some degree by this time by Crown purchasing and other more informal dealing.

In terms of river travel, Young has noted that in the 1860s, the southern aukati boundary on the Whanganui River was being defined at Maraekowhai, just north of the junction with the Retaruke River.<sup>52</sup> West of the Whanganui River, the aukati seems to have included the Tangarakau River, while a toll-bar was also enforced further south at Utapu.<sup>53</sup> To the east, and into lands that later became part of Waimarino, it seems that the aukati may well have been considered to lie just north of the Manganui a te Ao river, possibly taking in the Retaruke valley.

The settlements on the lower Manganui o te Ao River further south do not seem to have been clearly within the aukati, yet they were a buffer area, controlling access further inland. The communities of the Manganui a te Ao were also known to be largely supportive of Kingitanga objectives and independent in decision making, even while beginning to reforge close ties along the river with post-war peacemaking. The heavily forested upper valley area of the Manganui a te Ao and the open plains behind this, including the Waimarino plains, also seem to have been right at the edge of the aukati, possibly just within it (as Kerry-Nicholls believed) although, more accurately, this may have also been another buffer zone, closely monitored but not entirely closed off, especially as the northern plains were closest to the

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<sup>51</sup> Rohe Potae petition, *AJHR* 1883 J-1

<sup>52</sup> Young, p 47.

<sup>53</sup> Young p 48

eastern entrance to the Rohe Potae through Tokaanu. With the Manganui a te Ao valley and the Waimarino plains both being parts of major travel routes, it may also have been considered more appropriate to closely monitor but not necessarily prevent travel, while the heavily forested interior provided a more secure line of defence. It was along these travel routes that Kerry-Nicholls and Turner travelled in 1883 in defiance of the aukati, although it seems that unknown to them, it is likely they were closely but discreetly monitored along this route, and regarded as eccentric but generally harmless tourists. The two met up with and travelled with a party of Maori soon after they left Taupo heading north and when they met Te Kooti at a hui near the end of their travels, and it seems clear from their expedition record that Te Kooti was already well informed of their travels.<sup>54</sup>

Caught in the middle of these wider strategic objectives, the leadership and communities located in the upper Whanganui region were subject to strong, often conflicting, pressures and influences in the post-war period. Many maintained strong links and ties with the Kingitanga iwi and hapu they had fought alongside during the wars and many continued to at least support the general objectives of the Kingitanga to resist alienation of land and retain customary Maori authority and forms of management over it. It seems there was also continued strong participation in the forms of runanga and inter-tribal decision making developed among themselves during the wars over common issues, such as establishing and maintaining the aukati.

However, although, through the 1870s and early 1880s, the majority of settlers and their newspapers tended to assume that the upper Whanganui district was universally ‘hostile’ or ‘uncooperative’ to settlement, in fact there appears to have been a range of views in the district about how best to deal with the continued pressures of expanding Pakeha settlement and retaining traditional authority. In the post-war period, these communities were also subject to new and sometimes conflicting pressures and influences. Many of the upper river communities took part in the inter-iwi and inter-hapu peacemaking after the wars between former adversaries. A number of efforts were also made in the 1870s to reach peaceful agreement on inter-iwi and hapu boundaries. For example, as will be described in more detail in later chapters, at this time a series of peacemaking hui were held among affiliated communities along the entire length of the Whanganui River. The peacemaking, while healing rifts and renewing bonds, also brought communities into contact with a wide variety of views

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<sup>54</sup> Kerry-Nicholls, pp 315-337

about how best to engage with the Government and deal with continued government and settler expansion while also taking advantage of new economic opportunity.

There were also increasingly strong pressures for communities, tired of war and the poverty following the dislocation of war, to make their own ways of dealing with pressures, such as by following various prophetic movements. Others determined to deal with their land themselves on their own terms as opportunities arose, even if this meant they had to deal with government officials and engage with the Native Land Court system. Communities and their leadership, faced with rapidly changing circumstances after the wars and pressures to find new forms of economic security, adopted or rejected or modified these options to best meet their perceptions of what seemed likely to best meet their needs at the time.

In the 1870s and early 1880s, pressures from Government policies reached into the upper Whanganui district, placing increased pressure on communities in these areas to decide whether to uphold Kingitanga objectives or break off and take their chances in new systems, especially as pressures on their land forced them to consider whether it was best to engage with the process and try and manage it or if they refused, to possibly find themselves legally shut out of their own lands. The next chapter outlines major Government policies impacting on upper Whanganui lands and their communities from the 1870s until the early 1880s, and community responses to this.

## **Chapter 2 Government land purchasing in Whanganui lands, 1870s**

### **2.1 Introduction**

Post-war Government policies were largely focussed on promoting extensive immigration and public works development in aid of more intensive settlement, particularly in the North Island. This was intended to promote economic growth as well as swamping remaining Maori resistance to settler expansion. These policies were reflected in the Whanganui district, where land purchasing programmes were intended to provide cheap Maori land for settlement and the Native Land Court process extended the reach of settlement and settler authority by promoting the alienation of land and transforming customary title and management into title derived from the Crown.

During the 1870s to early 1880s, the Government appears to have been content to allow the combined processes of the Native Land Court system and land purchasing to effect its policies. Land purchasing was also extended as far as possible into the upper Whanganui district, in an effort to undermine and push back the southern part of the Rohe Potae aukati. As a result of these policies, some areas of what were to become Waimarino lands were subject to the first stages of land purchasing under earlier block names, with advance payments being made on them. Some purchases were also made close to what became the Waimarino block, in the adjoining Retaruke and Kirikau blocks, in an effort to create a settlement close to the Rohe Potae aukati, to assist in undermining it.

A number of Whanganui Maori communities and leaders were initially willing to engage with the Land Court process and provide land for settlement in anticipation of the promised economic benefits expected to flow from this. However, as communities experienced the way the systems of land purchasing and the Land Court process were allowed to develop, many became increasingly concerned that they were being effectively shut out of managing their lands, with little chance of preventing extensive alienation or of managing the harmful impacts of the process. This increasing concern and criticism about the impacts on Maori communities brought many of those communities and their leadership much closer together than had previously been the case. At the same time, widespread passive resistance and obstruction to surveys for the Land Court process was a major factor in causing the Government to reconsider its policies.

## 2.2 Government post-war policies - public works and immigration

From the 1870s, Government policies were directed at promoting immigration, public works, and land settlement, particularly in the North Island, still then largely owned by Maori under customary tenure. There had been public borrowing and public works developments before this. However, the programme of the Fox ministry from the 1870s, with Julius Vogel as Treasurer, was on a much greater scale. Central government also took a more prominent role, abolishing the provincial governments in 1876.

An indication of the massive nature of this growth in public works can be seen in that in 1870, there were only 46 miles of public railway in the country. By the early twentieth century a main trunk railway had been completed throughout the country, with numerous branch lines linking outlying centres.<sup>55</sup> Road works were also developed to access this railway infrastructure and borrowing and spending on public works occurred on a similar scale. Belich notes that central government borrowed £10 million for such purposes between 1871 and 1876 and the same amount was spent on railways alone between 1871 and 1881.<sup>56</sup> Central Government also spent £1,100,000 making roads and tracks between 1871 and 1881.<sup>57</sup> The Pakeha population doubled in the 1870s, and continued to grow rapidly in the North Island to the mid-1880s.<sup>58</sup>

The massive scale of these public works programmes at first generated further demand and economic growth in themselves.<sup>59</sup> This helped encourage the belief that public works development in an area would promote economic development and prosperity for the whole district. Maori were encouraged to take this view as well. For example, during this period Maori were encouraged to take on road-making contracts in many areas of the North Island and to welcome public works programmes such as railways and new settlements for the economic wealth they were expected to bring. Many Maori communities accepted that these developments would create economic benefits. However, they also came to realise that they brought with them significant issues such as the expansion of settler forms of authority and pressure to alienate their lands.

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<sup>55</sup> Belich, *Making Peoples*, p 352

<sup>56</sup> Belich, *Making Peoples*, pp 351-2

<sup>57</sup> Belich, *Making Peoples*, p 353

<sup>58</sup> Belich, *Making Peoples*, pp 249-50

<sup>59</sup> For example, Belich, *Making Peoples*, pp 353-5 re the 'progress industry'

Historians such as Belich have noted that one important source of funding these development programmes was the profit acquired from the on-sale of cheaply acquired Maori land.<sup>60</sup> Maori land, particularly in the North Island, was required for settlement purposes. The Immigration and Public Works Act 1870, establishing the massive public works and immigration programmes, was described as an Act to provide for immigration, the construction of railways and other public works, and to promote settlement. In debates on the Act, the Government acknowledged that the public works programme was intended to include the purchase of a 'landed estate' for the North Island, and to assist with the construction of railways and the introduction of immigrants. This would include purchasing land from Natives 'and others'. This land could be handed over to provincial authorities on certain conditions, including that the proceeds of the land were to be devoted to the furtherance of immigration and railway construction.<sup>61</sup> A necessary component of this programme was, therefore, to acquire large areas of Maori land as cheaply as possible. This raised issues of how the Crown and Maori might manage these pressures, so that Maori communities might also be able to participate in and benefit from the anticipated economic developments.

The Government also anticipated that the public works and immigration programmes would assist in addressing the 'Native problem' in the North Island. At the least, they were expected to undermine and limit further Maori resistance. In debates on the Public Works Act 1870, Government members acknowledged that the legislation was also expected to strengthen the Government's authority in the North Island with the construction of works such as roads (and the employment of Maori on them) confidently expected to be an essential element in pacification and in the restoration and maintenance of peace.<sup>62</sup> It was also expected that public works would help 'open up' the North Island, enabling settlers to form settlements even in the interior (presumably 'civilising' Maori communities in the process). If the maintenance of peace failed, then the construction of such works would have an additional benefit – to greatly facilitate the Government's 'defensive or aggressive operations, as the case may be'.<sup>63</sup>

The issue then became how far the Government wished to simply ensure the maintenance of peace and good order, and to what extent this would involve the assimilation or swamping of Maori communities and customary authority and whether, in the process, any allowance

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<sup>60</sup> For example, Belich, *Making Peoples*, p 356

<sup>61</sup> *NZPD*, 1870, p 183

<sup>62</sup> *NZPD*, 1870, pp 179-81

<sup>63</sup> *NZPD* 1870, pp 179-181

would be made for some form of Maori authority or regional self-government to co-exist alongside settler government authority.

After the wars, as previously mentioned, there were large areas of the North Island still held under Maori customary title rather than Crown grant. In addition, a number of districts such as the Aotea Rohe Potae or what was known as the King Country, and the Urewera Rohe Potae remained largely outside effective Government authority. These autonomous 'states-within-states' survived the wars and continued into the post-war period.<sup>64</sup> The leadership of these districts appeared determined to retain effective customary authority over their lands, not necessarily rejecting Crown authority, but seeking to be an effective partner with the Government, with considerable powers of local self government. These semi-autonomous districts often incorporated a number of iwi and hapu interests and were often bounded by the reach of Pakeha settlement and authority rather than by traditional boundaries.

The Aotea Rohe Potae or King Country, just north of what became the Waimarino lands and merging into them, had at its core Ngati Maniapoto territory but it also had a distinct pan-tribal character. Other iwi of the area, including Ngati Raukawa, Ngati Hikairo, Ngati Tuwharetoa and upper Whanganui peoples also had customary interests in what had become the King Country, especially in the areas around the outer core. Ngati Maniapoto had also welcomed into the district many Waikato refugees, whose own territory had been confiscated. As such, the district had become the heartland of the Kingitanga, as its enduring name indicates, and the current head of the Kingitanga, the prophet-King, Tawhiao, also lived in the district.

The Kingitanga was one of a number of pan-tribal movements that emerged in the 1850s, in response to the impact of the extension of Crown authority and Pakeha settlement. From 1854 a series of inter-tribal meetings culminated in the inauguration of the Waikato chief Potatau Te Wherowhero as Maori King in 1858. In many respects, the Kingitanga was an attempt to provide an equivalent structural relationship to the perceived authority of the Crown for settlers, with a unified pan-tribal approach to asserting and protecting Maori authority over matters to do with land and government. It did not attract complete Maori support, but it did attract active support from a significant section of North Island iwi, and even wider sympathy among many Maori communities for many of its aims and concerns. Belich describes this

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<sup>64</sup> Belich, *Making Peoples*, p 263

kind of pan-tribal movement as something quite new, developing from an increasing sense of 'Maori' as a collective identity.<sup>65</sup> This type of movement could articulate many general Maori concerns to Government, such as the desire to protect remaining Maori land and customary authority over that land. This movement did not attempt to supplant tribalism but to give common concerns a voice. Belich notes it was 'intertribal' rather than overtly challenging traditional tribal authority.<sup>66</sup>

The Kingitanga also challenged the apparent Government reluctance to recognise any co-existing form of Maori authority, in favour of an apparent determination to exert absolute and exclusive authority, in which Maori appeared to have little real influence. Ward has noted that there was some settler and official consideration of recognising some form of continuing Maori authority for Maori districts. In the late 1860s and early 1870s some individuals in New Zealand and at the Colonial Office, for example, urged the Government to recognise the Kingitanga in some form. The former Chief Justice, Sir William Martin, suggested that the Waikato be established as a separate province, linked by some form of Treaty relationship with the rest of the country and granting the Kingite chiefs authority to make regulations and govern within their borders.<sup>67</sup>

However, these proposals were utterly rejected by the Government of the time. McLean (then Native Minister) claimed that any recognition of the King movement would be 'madness'. He believed nothing could be done to 'restrain the European race from overrunning the Island' and recognising an active Maori Government would inevitably lead to war. McLean was, however, willing to allow the King an 'imaginary state and power'. He would recognise this imaginary Kingship, as long as the allegiance the King could claim was substantially no different from that any chief could claim; 'very different from recognising and legalising his right to exercise independent authority'.<sup>68</sup> This insistence on treating as 'imaginary' any Maori attempt to create a more modern vehicle to express their authority and concerns, and this refusal to recognise attempts at establishing collective inter-tribal authority as having any more authority than any individual chief, became a feature of government policy during this period, effectively rejecting Maori attempts to respond to new systems of Crown authority at a more equal, partnership level.

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<sup>65</sup> Belich, *Making Peoples*, pp 232-234

<sup>66</sup> Belich, *Making Peoples*, p 245

<sup>67</sup> Ward, *A Show of Justice*, p 233

<sup>68</sup> Ward, *A Show of Justice*, p 233, citing McLean note on Martin memo, 21 February 1870, McLean ms 30, ATL.

The district known as the Aotea Rohe Potae, or more commonly to Pakeha as the King Country, has often been described as that area of roughly circular land covered by Tawhiao's hat (or potae) when placed on a plan of the interior.<sup>69</sup> However, while this describes the territory covered by the Rohe Potae, it does not explain the concept itself. It is difficult for researchers limited to official English-based documents to fully recover the meaning of the concept Rohe Potae at this time, not helped by Government determination to regard the concept as 'imaginary' and really just another way of describing a traditional territory or rohe.

Nevertheless, there are some indications in the official record of the meaning to Maori of the Rohe Potae concept. For example, the Ngati Kahungunu chief Ropitini te Rito, regarded as generally 'friendly' to the Government, described the meaning of the concept to Maori in giving evidence in the Waipaoa block case in 1889, just a short time after the creation and alienation of the Waimarino block. He explained that in using the term 'potae' regarding land, the Maori idea of potae 'was similar to the crown worn by the Queen'.<sup>70</sup> In other words, the concept appears to have been devised to match the concept of authority derived from the Crown. The 'Potae' was equal in concept to the 'Crown'. Authority could and did at the time, derive from either equally. There were many Maori who saw no reason why these two sources of authority could not continue to co-exist. The autonomous Maori districts, protecting a Maori source of authority, naturally also became referred to as Rohe Potae. This was not only true of the Aotea Rohe Potae, but also true of the Urewera Rohe Potae. More generally, it could also apparently refer to other areas of customary land still held by customary Maori authority.

During the late 1860s and the 1870s, the Government made a number of attempts to negotiate an agreement with the Maori leadership of the Aotea Rohe Potae, while refusing to compromise or recognise Tawhiao as anything more than a traditional hereditary chief. However, the parties were clearly so far apart these efforts generally failed. For example, McLean met with Kingitanga chiefs Rewi and Manuhiri on a number of occasions from 1869, without conclusive agreement.<sup>71</sup> Grey and Sheehan made further attempts in 1879 to 1880 but still largely failed. For most of the 1870s, the aukati lines set by the Kingitanga leadership, with the agreement of local hapu leadership in the boundary areas, held firm. These lines might shift slightly as hapu alliances shifted, but as historians have noted, the aukati was

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<sup>69</sup> For example, Hamer, 'The Crown's Purchase of the Waimarino block and related issues' 1992

<sup>70</sup> evidence of Ropitini te Rito, 1889, MLC – Wairoa MB 3B, p 90

<sup>71</sup> Ward, *A Show of Justice*, pp 233--5

generally still effective through most of the 1870s. Pakeha were only allowed to enter with the equivalent of a visa and Pakeha trespassers might be killed or imprisoned inside the aukati without retaliation from the government.<sup>72</sup> At the same time, Maori who had transgressed Pakeha law, such as Te Kooti, might find protection within it.

While attempts at negotiation generally failed at this time, the Government appears to have relied instead on its programme of public works, immigration and land purchasing to effectively promote the policies of extending Government authority and undermining the aukati and Kingitanga authority. As Ward has noted, this did have some of the desired effects. The economic dislocation and poverty caused by war did tempt many interior Ngati Raukawa and Ngati Tuwharetoa communities, for example, to take up road works contracts and sell some land to attract economic development.<sup>73</sup> One of the most successful institutions underlying these policies, in both facilitating land alienation and undermining customary authority, proved to be the Native Land Court. Through the 1870s, Court operations began to practically define and limit the Rohe Potae boundaries, while land purchasing associated with the Court began to penetrate what would become Waimarino lands.

### **2.3 The establishment and objectives of the Native Land Court**

The Government's development and immigration policies required the acquisition of large areas of Maori land in the North Island for settlement purposes. To provide for this, the pre-war system that had led to overt conflict, was replaced with a more 'objective' system of a Native Land Court. This was intended to provide a new, more acceptable way of determining and recognising customary ownership of land and then transforming it into a legally recognised form of title that could be alienated. Following earlier concerns about pre-war purchases and then the disruption of warfare, many Whanganui Maori communities also welcomed the prospect of a peaceful, more secure way of placing selected lands into new economic use, as long as they retained considerable control over the process.

Initial explanations of the proposed new Court seemed to offer this. For example, in 1862, the resident magistrate John White reported that he had explained to Whanganui chiefs that under the proposed new system, Maori wishing to sell or lease land would be able to do so to anyone, once their claim to it had been investigated by and proved before Native assessors.

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<sup>72</sup> For example, Belich, *Making Peoples*, p 264

<sup>73</sup> Ward, *A Show of Justice*, p 235

These assessors would be under the overall supervision of a European magistrate, but would follow Maori custom respecting the land. After that, the Government would issue Crown grants to those in whose favour the Court gave the land. White reported that the chiefs accepted ‘this explanation of the Maori Mana with much satisfaction’.<sup>74</sup>

Many features of the new proposals appeared to appeal to the chiefs. Many chiefs had become dissatisfied with the way Crown pre-emption had appeared to operate, because it seemed to provide the Crown with a means of ensuring low prices and managing alienations to its advantage. They welcomed a freer, more competitive market, in anticipation of better prices and less pressure to alienate such large blocks of land. The proposals also appeared to imply a significant degree of choice over what land might be placed before the Court, generally land Maori wished use for new economic opportunities, such as sale or lease, not necessarily all land. The proposals also emphasised the role of Maori authority and participation in determining ownership according to their own customs. The assessors were to be under the overall ‘supervision’ of a European magistrate (presumably to provide legal advice and give Government sanctioned legitimacy to their decisions). However, essentially the assessors would be responsible for the actual investigations and decisions. This was not a great deal different to efforts already being made in the Whanganui district by Maori communities themselves in the 1870s, to resolve boundaries and decide what land might be offered for sale or lease. The critical addition the Government appeared to be offering, as explained by White, was to provide legal recognition and sanction of this process, so such decisions could be accepted and enforced.

Even so, there was still concern among some Maori communities and leadership about the implications of such a process for continued Maori authority over land. While the Government and settlers were convinced that title derived from the Crown was superior to and should replace customary title, a number of chiefs questioned why this had to be so. For example, O’Malley has noted that at the Kohimarama conference of 1860, the Ngati Whatua chief Paora Tuhaere asked why the Government could not issue grants for customary lands in the same way it did for settlers for land they owned.<sup>75</sup>

The new Native Land Court system, as it was eventually established, became operative from 1865, although because of war, it really only began to operate extensively in the Whanganui

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<sup>74</sup> RM John White, 1862, JC-Wang 4 Outwards Letterbook, 1862-4, p 6, Archives NZ

<sup>75</sup> O’Malley, *Agents of Autonomy*, 1997, p 20

district in the 1870s. The way the Court operated during the 1870s is a matter for other reports and will not be covered in detail here. However, it does seem relevant to note the general context of the Court process by the 1870s, as this early process began to impact on what would become Waimarino lands.

By the 1870s, there had already been some Maori criticism of the way the Court process was developing and being implemented. These criticisms have already been outlined in some detail in a number of published works and research reports.<sup>76</sup> In brief, the system as it developed tended to facilitate the unmanaged alienation of land by Maori found to be owners, encouraged by the heavy costs of the system, the ease with which debts could be encouraged and the creation of new individual and easily transferable rights in land without any community or collective sanction.<sup>77</sup> The process also tended to simplify and reduce customary interests to a simple title in land, while undermining customary iwi and hapu authority over land and resources and transforming title derived from customary authority into title derived from the Crown.<sup>78</sup>

Maori were also dismayed to find the Court process made it almost impossible to engage with the Court in a selective manner. Instead, once some individuals invited the Court in, whole communities found themselves obliged to engage with the process or face possibly losing any recognition of their interests in their lands.<sup>79</sup> Similarly, Maori found their participation in the Court determination of title rapidly reduced to little more than assessors advising Pakeha judges who ran their Court according to their notions of Court rules and formality. Although Maori witnesses and claimants gave their evidence in Maori, the official Court language was also English. Effective participation was also limited by a Government failure to translate and widely circulate much of the legislation and myriad amendments relevant to the Court.

The Court also tended to interpret custom as it suited, for example, emphasising rights through discovery, ancestry, conquest and long continuous occupation or gift.<sup>80</sup> At the same time, the Court downplayed customary mechanisms and principles providing for co-existence,

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<sup>76</sup> For example, Ward, *A Show of Justice*; and *An Unsettled History*, 1999; Williams D, *Te Kooti Tango Whenua; The Native Land Court 1864-1909*, 1999, Anderson R, 'Report of Whanganui Iwi and the Crown 1865-1880' 1999

<sup>77</sup> For example, Williams, pp 189-196

<sup>78</sup> For example, Ward, *An Unsettled History*, p 133-8

<sup>79</sup> For example, Williams, pp 84-85

<sup>80</sup> For example, Williams, p 187

overlapping interests, inclusiveness, flexibility and compromise. This was further distorted by the highly legalistic and formal conduct of the Court and the development of many Court rules and procedures. These included the insistence that all evidence had to be presented in Court, and the adversarial conduct of hearings that tended to give the benefit of any doubt to the initial claimant.<sup>81</sup> The creation and adherence to Court rules, such as the '1840 rule' also tended to have a major impact on the continuing recognition of Maori authority and attempts by Maori communities to respond to the impact of Pakeha settlement and government. Relationships and rights were effectively frozen at 1840 preventing the Court from considering alliances, carefully agreed inter-tribal agreements, and population movements in response to new developments since 1840. This had particular significance in the North Island interior, where the Native Land Court refused to recognise post-1840 developments such as agreements to vest authority in land with the Kingitanga or the movement of refugees from war.<sup>82</sup>

In addition, the Native Land Court system became very closely linked with land purchasing, especially by the Government. With the advent of the Land Court, private as well as government purchase agents were able to purchase or lease land directly from Maori. Issues have been raised about the possible manipulation of the Court process by officials and purchase agents to facilitate and confirm purchasing, the politicisation of the Court in the interests of pursuing government purchasing policy and the close relationship between Court officials and judges and land purchase agents.<sup>83</sup>

These concerns highlighted the main objectives of the Native Land Court process as it was developed, which were to facilitate the alienation of Maori land and to undermine customary Maori authority. These overall objectives were often clearly admitted by politicians and officials of the time. The most well known comments in this regard are probably those of Henry Sewell, who had been attorney-general when the original legislation establishing the Native Land Court was passed in 1862 and 1865. In 1870, he explained the object of the legislation was to 'bring the great bulk of the lands of the Northern Island which belonged to the Natives...within the reach of colonization. The other great object was the detribalization of

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<sup>81</sup> Williams p 145

<sup>82</sup> Marr, *The Alienation of Maori land in the Rohe Potae (Aotea block) 1840-1920*, 1996, pp 16-17

<sup>83</sup> For example, Williams, p 155 p 178

the Natives'. According to Sewell this would remove obstacles to the 'amalgamation of the Native race into our own social and political system'.<sup>84</sup>

Maori concerns about the way the Native Land Court system was developing in practice in contrast to the way it was originally explained and promised, provoked a large number of petitions and other forms of protest, including from Whanganui leaders. As early as 1871, the government held an inquiry into the Native Land Court at which the Whanganui chief, Te Keepa, gave evidence of the difficulties already being experienced with the Court. He complained that 'under the present system, men lose their lands; others get land that does not belong to them, because they are strong to talk. There is much confusion also about Crown grants'.<sup>85</sup> Sir William Martin also summarised many concerns. He noted that Maori had been promised that the law would place them in safe and quiet possession of their lands, free to sell them as they might think best, without disturbance or interference from their neighbours. This was promised as a substantial benefit, but the result had been the reverse. The pressure to transfer land was becoming a cause of disaffection.<sup>86</sup>

#### **2.4 The legislative framework and the Native Land Court, 1870s -1880s**

The 1871 Government inquiry led to some limited legislative reforms, although historians such as Ward have argued these were never allowed to threaten the main focus of the Court, in facilitating the alienation of land and undermining Maori authority, being generally ineffective, and either rapidly overturned or simply not implemented.<sup>87</sup> Nevertheless, the framework created by these reforms was operative for much of the period of the 1870s to the early 1880s, when Government purchasing began to impact on lands that would later become included in the Waimarino block. Many of the principles and practices established during this time also continued to be relevant when the Waimarino block was created and investigated in 1885-1886.

The Native Land Act 1873 (operative from 1 January 1874 and not fully repealed until 1886) laid down the main principles of the Court process through this period until the mid-1880s when the Waimarino block was investigated and alienated. It was also amended a number of times during this time, and was accompanied by several other legislative measures, often

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<sup>84</sup> Williams, pp 87-88, citing Sewell 29 August 1870, *NZPD*, vol 9 p 361

<sup>85</sup> *AJHR* 1871 A-2A p 39

<sup>86</sup> Williams, pp 77-78

<sup>87</sup> Ward, *An Unsettled History*, 1999, pp 136-8

intended to continue the close alignment of the Court and land purchasing. The 1873 Act appeared to include some attempts at reform based on criticisms of the Court process by the early 1870s. The 1873 Act did finally replace the previous notorious ten owner rule, whereby only ten owners were commonly included on a title as assumed trustees but treated in reality as absolute owners. This new reform was intended to prevent the disenfranchisement of owners created by the policy of including only ten in a block.

However, the replacement still failed to acknowledge customary tribal authority over land as many Maori had called for. Instead the Act required that all owners were to be listed in a memorial of ownership attached to the title.<sup>88</sup> This provision continued the creation of a new individual form of title and, in the process, continued the marginalisation of Maori communal and chiefly authority. As Ward has noted, with all owners listed, those chiefs who had been good trustees of their people's land were powerless to stop surreptitious sales by rank and file owners.<sup>89</sup> In addition, by recognising many more individual interests, the new provisions were used to promote the further fragmentation of ownership of freehold Maori land, sometimes into hundreds of shares. This process also facilitated the piecemeal acquisition of such shares, even if this involved a slower process than dealing with just ten owners.

The shares themselves were also often not immediately linked to any actual piece of land until a further subdivision or partition of the block was made by the Land Court.<sup>90</sup> The lack of a clear link between an actual area of a block, or the resources on it, and a share helped facilitate the purchase of that share. At the same time, the uncertainty about where shares might eventually be located on the land and what parts might eventually be allocated to purchasers undermined decisions about future economic use. The legal remedy was to partition off certain areas of land for owners but this incurred more survey and court costs. It also resulted in particular areas of a block, such as bird snaring areas or land suitable for farming that had once been available to all owners, now becoming the exclusive property of only those owners of the new partition that enclosed those areas.

The system also tended to disadvantage those who refused to become involved in the determination of interests or the partition process. The listing of individual owners at an initial hearing excluded those who were not included on lists from any legal recognition. Those

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<sup>88</sup> Native Land Act 1873, section 47

<sup>89</sup> Ward, *A Show of Justice*, p 256

<sup>90</sup> Williams, *Te Kooti Tango Whenua*, 1999, p 285

individuals who were listed also found it difficult to resist further partitioning. Without partitions they could not be sure which land their shares were recognised as applying to. They could not use or manage this land securely or protect it from purchase claims. If they refused to take part in purchase deals they also risked having little control over partitions. The Court often viewed selling as evidence of ownership. When non-seller interests were partitioned the ‘dissenting’ owners could be left with the ‘residue’ and often least useful parts of blocks, or find their interests scattered over many separate areas, all incapable of being used economically.

There were a number of other attempted reforms in the 1873 Act, although some of these also appeared to strengthen Government influence. For example, the 1873 Act excluded private surveyors who had often encouraged debts, and surveys became solely the responsibility of Government surveyors. Mortgages could no longer be enforced against undivided interests in Maori land. Other safeguards were intended to prevent abuses such as forgery of signatures or mistranslation of deeds.<sup>91</sup> Later amendments and related legislative provisions also attempted to meet serious criticisms. For example, the Native Lands Frauds Prevention Act 1881 (amended 1888 and 1889) and later the Native Equitable Owners Act 1886 attempted to protect the rights of owners, but these were again limited to protect purchasers. Owners could also ask the Land Court to place restrictions on alienations, and for some time this appears to have provided some protection, although it eventually became clear that such restrictions could also be relatively easily removed.<sup>92</sup>

The 1873 Act (section 24) also attempted to protect against fraudulent claims to land and complete landlessness. It established district officers who were to make preliminary inquiries into the credibility of claimants over areas of land. They were also to ensure that 50 acre reserves were to be set aside for every Maori man, woman and child in a district. However, as Ward and others have shown, this kind of attempted reform was either ineffective or not properly implemented. For example, the district officer system appears to have been largely unsuccessful.<sup>93</sup> Nevertheless the idea of reserves for those individuals selling their shares in land continued to be an important part of purchase negotiations. This was ostensibly a means of protecting against landlessness, but was also a useful means of encouraging sales, by promising Maori they would still retain essential areas of land. The 50 acres also became a

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<sup>91</sup> Ward, *A Show of Justice*, 1974, p 255

<sup>92</sup> Ward, *A Show of Justice*, pp 256-7

<sup>93</sup> Ward, *A Show of Justice*, p 256

useful standard for size of reserves, regardless of the suitability of the land involved to actually economically support people in 50 acre blocks. The 1873 provisions also allowed for land to be leased for up to 21 years, which was the preferred type of economic use by Maori. Sales of land could also only occur when all owners in a block agreed to sell. However, this possible protection was undermined by contradictory provisions. These enabled just a majority of owners to agree to sell, by applying for a partition to exclude the non-sellers from the block to be sold.

Many of the provisions also appeared to protect the Crown's interest. The Native Land Court (by section 107 of the 1873 Act) could investigate incomplete purchases made by the Crown and partition out land proportionate to the interest acquired. This provision was amended through the 1870s to enable the Native Minister to apply to the Court to have Crown purchases determined and a proportionate area of a block declared vested in the Crown.<sup>94</sup> At various periods (1878 until 1882, and again from 1886) any interested person including a prospective Pakeha purchaser, could apply for such a partition. The Native Land Court Act 1886 Amendment Act (section 7) continued to enable the Minister to apply to the Court to have Crown interests in land owned by Maori ascertained and vested in the Crown, with a declaration as to the owners of any residue. Williams has also noted that even when protections were made, the Crown generally tended to exempt itself from them.<sup>95</sup>

The Government also retained the ability to stop or delay Court investigations, for tactical reasons if necessary. The 1873 Act (section 20) provided for the Governor to stay any proceedings of the Native Land Court by notice or telegram to the presiding judge. This was continued in the Native Land Court Act 1880 (section 38) and the Native Land Court Act 1886 (section 16). Following this, an 1877 amendment enabled the Native Minister to appoint any person to represent the Crown in matters before the Native Land Court regardless of Acts to contrary.<sup>96</sup> A Native Land Amendment Act (no 2) 1878 (section 12) also provided more flexibility for the Crown, in enabling other officials other than the required judge or resident magistrate to witness an alienation deed, as long as they were not involved in the transaction. At the same time interpreters were prevented from certifying deeds they had translated.

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<sup>94</sup> Native Land Act Amendment Act 1877, section 6

<sup>95</sup> Williams, p 329

<sup>96</sup> Native Land Act Amendment Act 1877 section 5

An 1881 amendment also provided that any deed or contract made with the Crown was to be given effect to in the Native Land Court despite the 1873 Act or any other law to the contrary.<sup>97</sup> The Native Land Court Act 1886 (operative from 1 October 1886) section 66, also provided for deeds in favour of the Crown to be admissible in evidence and given effect to, despite any law to the contrary.

The 1873 Act also appears to have generally failed to address Maori concerns about secret dealings in land and the negotiation of purchase deals with reputed owners before land was properly and thoroughly investigated. Williams has noted that in 1865 and 1873 Parliament refused to entertain proposals to require sales of Maori land to take place in an open manner by public auction after title had been determined, or to at least declare pre-investigation dealings in land illegal.<sup>98</sup> The 1873 measure and subsequent amendments through the 1870s did continue earlier provisions that made any contracts signed before a certificate of title was issued 'void'. This meant such a contract was of no legal effect and could not be enforced against a seller who refused to complete the deal or return any money already received.

However, although it was not technically legal to continue making purchase deals before a Court investigation and agents risked owners refusing to acknowledge advances made, there were few real sanctions if agents decided to take this risk and continue with such methods anyway. For most of the 1870s, purchase agents seemed to prefer dealing with those they had identified as influential owners, speculating that this would pay off once 'their' owners had received title. Agents then relied on 'managing' the later Land Court process to ensure those named as owners were those they had negotiated with, even though this 'management' undermined the perceived neutrality of the Court in making a fair and objective investigation.

Williams notes that in practice there was considerable pressure for Maori to take part in these pre-investigation negotiations. Those who did generally had their survey and Court costs paid for them by would-be purchasers, while those who refused to take part were required to pay all Court and related costs themselves to protect their interests.<sup>99</sup> The continued tolerance of a system of pre-investigation deals, combined with Court rules that made it extremely difficult to keep lands out of the Court and favoured the initial applicant, struck a major blow at earlier

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<sup>97</sup> Native Land Acts Amendment Act 1881 section 3

<sup>98</sup> Williams, p 261

<sup>99</sup> Williams, p 261

assurances of an objective Court process that would allow all interests to be heard and fairly determined.

The 1873 Act also appeared to do little to alleviate the heavy costs associated with the Land Court system. Land surveys were a requirement of the Court process before new title could be issued. As noted, the 1873 Act provided that all surveys now had to be conducted under government supervision. However, survey charges continued to place heavy costs on owners and provisions were continued enabling surveys to be charged against the land, even against those owners who had been forced to prove their interests but who had not wished the land to be brought before the Court in the first place.<sup>100</sup> Surveys were to be ordered by the Government at the request of Maori claimants with costs to be advanced by the Crown (section 69). Applicants were required to guarantee the cost of a survey, to be paid in cash or by land transferred to the Crown (section 39) and no memorial of ownership could be issued until a survey plan was approved by the Inspector of Surveys (section 71). A written agreement was required with applicants as to the rate to be paid for a survey and the method of payment being cash or land (section 72). The Court could also order land transferred to the Crown in payment for survey costs (section 73).

The Courts could be flexible and where necessary hold initial investigations based on just sketch plans to get lands to the Court. However, more stringent survey requirements were imposed, and charged for, as land passed through the Court process. From 1878 the Native Land Court could make a temporary order if a survey map was found to contain errors.<sup>101</sup> The Chief Judge could then issue a final order once a map was approved (section 15). From 1880, an application to the Court was required to include a statement that a survey plan had been deposited. The government could also continue to advance money for the payment of a survey on the request of claimants. Where a claimant paid for a survey and then others were also found to be owners by the Court, the Court could also order the others to pay a proportionate amount of the cost of the survey.

By 1886, the Native Land Court Act 1886 (operative from 1 October 1886) section 18, provided that no investigation could be made without a certified map, although the Governor could authorise the Court to proceed using a sketch map. The Court could also direct persons entitled to partition to have a survey made of that land and make a charging order over land to

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<sup>100</sup> Williams, p 308

<sup>101</sup> Native Land Court Act 1880 (operative from 1 October 1880)

the surveyor who was owed the money. The 1886 Act continued provisions that if any owner paid for a survey and others were then found entitled by the Court, it could order them to pay a proportion of the survey cost. The Crown was also entitled to continue advancing survey expenses at the request of Maori. If survey expenses were not paid, the Court could make a mortgage order in favour of the Surveyor General. The mortgage could be registered and would incur an interest charge of 5 percent per annum.<sup>102</sup>

The continued manipulation of the Court system to promote land purchasing, especially by government agents, was also encouraged or at least allowed by many other legislative provisions continued through the 1870s and early 1880s. For example, the Maori Real Estate Management Act Amendment Act 1877 (section 2) provided trustees of infant Maori with power to sell their interests to the Crown. If there was no trustee, one could be appointed on the recommendation of a Native Land Court judge. This measure, as will be seen, provided an opportunity for purchase agents to promote minors (with cooperative trustees) as owners in land blocks. The shares of minors appear to have been a favourite early target for applying sales pressure. The Native Land Amendment Act (no 2) 1878 (section 8) provided trustees with power to sell or lease lands to private persons as well as to the Crown.

A number of legislative provisions of the 1870s were also intended to provide the Government with advantages over private interests in purchasing Maori land. Prior to the 1860s, the Government had purchased Maori land through a pre-emptive right claimed through the Treaty of Waitangi.<sup>103</sup> As noted, from the mid-1860s the Native Land Court system was accompanied by opening purchasing of Maori land to private as well as government agents. Private purchasers were not always regarded as unwanted competition to the government. At times they were very useful in promoting government policies as when, through contacts into Maori communities such as through marriage or business they were more successful in promoting the alienation of Maori land. They also assisted in government purchases or sold their purchased interests on to government buyers. Many agents moved freely between acting for government and private interests, sometimes combining the two although this was officially discouraged.

However, at times private purchasers were also seen as directly competing with or undermining government purchasing. This was particularly the case when they pushed prices

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<sup>102</sup> Williams, pp 311-312

<sup>103</sup> Williams, p 297

up by competing over the same block of land, and they ‘spoiled’ deals for large areas of land by opting to buy in smaller areas. The willingness of some agents to engage in unsavoury tactics, such as converting storekeeper debts into land purchases, encouraging local jealousies, providing misleading advice and claiming to act simultaneously for owners and purchasers was also at times seen as creating unwanted Maori hostility and resistance to all land purchasing. The Government therefore, from time to time, passed measures to ‘protect’ its purchasing in whole blocks or even districts, effectively recreating a Crown monopoly in purchasing in those areas. These measures effectively prevented any competition not only in prices for land but for resources such as timber on that land.

An important measure of this type in this period was the Government Native Land Purchase Act 1877 (operative from late 1877). Sections 2 and 3 of this Act enabled the Crown, once it had paid money or entered negotiations to purchase a block of Maori land, to give gazette notice of this. It then became unlawful for anyone else to attempt to buy the same land or part of it (or the resources on it). This meant that government land purchase agents only had to claim to have bought one or two interests out of possibly hundreds in a block. The block could then be gazetted, and all owners of the block were then debarred from negotiating with anyone but the Crown over it, parts of it, or resources on it, even if private agents were willing to offer higher prices. These proclamations could continue for very long periods, placing pressure on owners to continue negotiations (often at the original prices even if values had generally risen in the meantime) or remain barred from using their land and resources for any kind of economic gain at all. This situation only ended if the Crown, also by gazette notice, declared it had ceased negotiations and had such proclamations over a block withdrawn.

As will be seen, the fact of such a proclamation did not necessarily stop all private agents from taking the risk of pursuing a purchase in a block anyway. However, there were real risks with this and the proclamations certainly gave the Government a significant advantage while also assisting with keeping prices down. The system may have also indirectly assisted some private agents who knew how to work it. They could take the risk of paying slightly higher prices in blocks where the Government was having difficulty completing a purchase, repay all government advances and expenses paid on the block, and then have the proclamation lifted effectively protecting themselves from any other competition over the block. Again, the end result was still to drive overall prices down and to promote land alienation.

As well as this and succeeding measures providing for a form of pre-emption over particular, selected blocks, the Government also at times restored a more general right of pre-emption to

itself over whole districts for periods. In 1884, as will be discussed, this would include the whole railway alienation area under the Native Land Alienation Restriction Act 1884, sections 3 and 7. This included the Aotea Rohe Potae and much of the Whanganui district including the land within what was to become the Waimarino block (see map 4 of this report).

It seems that by the mid-1880s, while there had been numerous legislative amendments, the result for Maori was mixed. There were some apparent reforms, although in many cases historians such as Ward have found that attempted reforms or protections did not go far enough, were ineffective, or were not enforced adequately.<sup>104</sup> At the same time, the process that individualised land holding and facilitated land alienation remained essentially unchanged, as was the increasingly close relationship between the Land Court and Maori land purchasing. In particular, the Crown had given itself considerable advantages and protections in undertaking such purchasing. It remains to be seen how this system was practically implemented in the Whanganui district, and the experience and expectations this created leading to developments over the Waimarino block.

## **2.5 Government land purchasing in the Whanganui district, 1870s**

There is some evidence of initial Whanganui Maori enthusiasm for the new Native Land Court in the lower Whanganui area at least. However, it appears that the whole Land Court system, including the legislative provisions, Court developed rules, and administrative practices associated with the Court, rapidly became the focus of considerable concern, especially as communities became familiar with its operation and as land purchase operations in connection with the Court also began to make an impact.

After the disruption of the wars, and under the new regime of the Land Court system, land purchases began gathering momentum again in the Whanganui district from the early 1870s, this time conducted by both government and private land purchase agents and requiring the ultimate sanction of the Native Land Court that the 'real' owners had been dealt with. By the mid-1870s, this land purchasing was extending into the interior upper Whanganui district and what were to become Waimarino lands. Government land purchasing at this time reflected the wider policy objectives noted earlier, particularly the acquisition of large blocks of land to provide for expected settlement and development needs. In addition, the proximity of upper Whanganui lands to the interior King Country Rohe Potae, and the possibility of using this as

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<sup>104</sup> Ward, *An Unsettled History*, pp 134-142

a means of entry to, or undermining the Rohe Potae also made the area a focus of government purchase attempts.

Some parts of the Whanganui interior were regarded as immediately suitable for farming. For example, the naturally grassed open interior plains of the Murimotu district in the eastern interior appeared suitable for extensive pastoralism. Further north, if the dense forest could be penetrated, or access gained from the east, the Waimarino plains and northwards also seemed to offer promising grazing. However, much of the rest of the Whanganui interior was rough, steep and heavily forested, requiring considerable development, such as the building of road and rail networks and the removal of timber, before more intensive farm settlement could take place.

Nevertheless, it was widely believed that much of the North Island interior could eventually be made suitable for farming and, in the short term, the interior was also known or believed to contain many economically valuable resources, such as millable timber, gold and coal.<sup>105</sup> The increasing possibility of such national works as the North Island Main Trunk Railway being located through the North Island interior, also brought the district under closer government attention. The Government responded to this interest by embarking on a programme of purchasing large areas of Maori land in the Whanganui district as cheaply as possible before settlement and the extraction of resources raised land values. As part of this, officials such as the upper Whanganui Resident Magistrate, Richard Woon, encouraged Whanganui Maori communities to put all their lands through the Land Court, ensuring as much land as possible was transformed from customary ownership into title derived from the Crown and at the same time transformed into a form of title that facilitated alienation.<sup>106</sup>

Reflecting the perceived value of the district, the government land purchase office at Wanganui appears to have been a significant operation during most of the 1870s, with the Wanganui purchase district covering the Otaki-Manawatu, Murimotu, Wanganui and Upper Whanganui districts. For example, office reports typically covered the Wellington-West Coast district (Waikanae River to the Manawatu River) Murimotu, Wanganui and the upper Whanganui districts.<sup>107</sup>

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<sup>105</sup> Voelkerling, p 138

<sup>106</sup> Woon correspondence, MA-Wanganui 2/2 Resident magistrate letterbook 1872-1880, ANZ

<sup>107</sup> For example, report in NLP 75/316 in MA-MLP 1/4, ANZ.

James Booth was the leading government land purchase officer in the Whanganui district through most of the 1870s, with a number of staff working under him. Booth's previous career reflected the common pattern of the time of very close links between land purchase duties and other official government roles, including even judicial or semi-judicial roles in relation to Maori communities. The same individuals appeared to swap easily from judicial functions to land purchase activities and sometimes back again. The status and knowledge gained from these judicial and other official roles is likely to have substantially assisted with land purchasing. It also led to concerns, outlined by the later 1891 Rees Commission, that the Court process was seen as less than impartial and open to government officials manipulating it to promote purchasing, while even Land Court judges seemed to openly promote purchases.<sup>108</sup> At the least, the apparent lack of separation between official land purchase, judicial and Land Court roles may well have undermined Whanganui Maori confidence in the system and their ability to establish a more positive partnership relationship with the Government.

For example, Booth had previously been a resident magistrate in the Upper Whanganui area from 1865, and the resident magistrate at Patea from 1867.<sup>109</sup> He had been active as a government official during the wars and in later conflicts with Te Kooti and Titokowaru in the Whanganui district. When he was appointed government land purchase officer for the Whanganui district in 1872, he retained the same salary as for his previous judicial positions (plus travelling allowance).<sup>110</sup> This appears to reflect the government view of the equivalence of judicial and land purchase duties, with regard to Maori communities. Those communities in turn could have expected someone of such status in the Pakeha community, and who had such prior knowledge of their leadership and communities, to treat with them in a more open, and even-handed way than might be expected from private land agents.

Walter Buller, another purchase officer actively purchasing in the Murimotu and upper Whanganui districts in the 1870s, was also a former resident magistrate.<sup>111</sup> There was also a very close relationship between Land Court and government officials in the Whanganui district. A number of Land Court judges, including those later active in the Waimarino case were previously land purchase officers. For example, E W Puckey who was later a Native

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<sup>108</sup> Rees Commission report, *AJHR* 1891, sess II, G-1, p xiii

<sup>109</sup> MA 25/1, p 87, ANZ

<sup>110</sup> MA 25/1, p 87, ANZ,

<sup>111</sup> Young, p 105

Land Court judge in Waimarino hearings, had previously been in charge of government land purchase operations in the Thames district from 1879 until 1880. In March 1881 he was then employed on a special project to complete the Piako land purchase. Shortly afterwards, in May 1881, he was appointed a judge of the Native Land Court.<sup>112</sup> W J Butler, who was the government land purchase officer in Waimarino, was also appointed a judge of the Native Land Court from 1893.<sup>113</sup> As will be noted for Waimarino, there were also demonstrably close links between land purchase agents and Native Land and other Court officials. For example, it seems to have been common practice to use Court clerks and interpreters as witnesses to purchases, and some were even seconded to temporary purchase activities, while also carrying out their judicial functions. This will be noted in more detail in the chapter outlining the purchase details of the Waimarino block. Although it could be expected in a small frontier society that much of the separation between officials and their roles and functions would be more blurred than is expected now, the degree of blurring with regard to Maori communities still seems to have been more extreme even by the standards of the time.

From the mid-1870s, the Government appears to have placed pressure on the Wanganui purchase office to substantially increase the pace of Maori land purchasing in the district. One indication of this was a substantial increase in the staff of the Wanganui office so that by 1879, it had a permanent staff led by James Booth, with his brother Richard and Gilbert Mair undertaking general land purchase duties and J W Buller being primarily responsible for land purchasing in the Murimotu and Upper Whanganui districts. The Wanganui office also had the services of two clerical staff.<sup>114</sup> In addition, the government occasionally hired private land agents on commission to purchase particular blocks in the district. For example, the private agents, McDonnell and Brassey, were paid on commission to assist in the purchase of the Maungakaretu block in 1878.<sup>115</sup>

Two Whanganui chiefs, Te Keepa Te Rangihwinui (Major Kemp) and Mete Kingi, were also on the official land purchase payroll for the Wanganui purchase office for most of the 1870s. It seems their appointments were largely political, as was acknowledged when cuts were being considered to the Land Purchase Department by the late 1870s. At this time it was noted that Te Keepa had really been employed by McLean 'for political reasons'. The chiefs

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<sup>112</sup> MA series 25/1 p 226, ANZ

<sup>113</sup> *NZ Gazette* 15 June 1893, p 893

<sup>114</sup> NLP 79/497, MA-MLP 1 /5, return of officers in land purchase Whanganui 1878-79, ANZ

<sup>115</sup> MA-MLP 1, 1897/102, ND 78/1895 attached, ANZ

did provide assistance with some purchases, but they seem to have been most valued for the impact of their presence in supporting the office and in deflecting opposition to it. In 1879, officials noted that while Te Keepa had not provided a great deal of direct help with land purchasing, his appointment had prevented ‘to a large degree’ the ‘obstruction’ that might otherwise have been made to the government acquiring Maori land in the district. As a result they advised the government, at this time, that ‘perhaps it would be neither politic or expedient to strike him off’.<sup>116</sup> It seems the chiefs provided much needed advice and prestige to the purchase office, and in turn appear to have regarded payments made to them and reliance on their advice as acknowledgement of their mana.

## **2.6 The land purchase process, 1870s**

As well as increasing the strength of the Wanganui Land Purchase Office to promote purchases, the government also made a number of legislative and policy changes to further assist purchasing in the Whanganui district from the mid-1870s. A major legislative change, as previously described, was the Government Native Lands Purchases Act 1877, which was passed to provide for, as noted in the preamble, the ‘better protection’ of Crown interests in completing the purchases or acquisition of Maori land. The Wanganui Land Purchase office appears to have taken full advantage of this measure and by 1879, purchase officers were reporting on large numbers of gazette proclamations of various blocks in the district under this Act and its amendments in order to keep out private purchasers.<sup>117</sup>

The ability, from 1877, to proclaim lands under government negotiation (and therefore excluded from any other dealing) appears to have been particularly important for agents in exerting pressure on reputed owners to enter pre-investigation purchase deals. The proclamations had a major impact on how owners could commercially use their lands. They affected not only the land involved, even preventing leasing while negotiations for a sale might be ongoing. They also affected the use of any resources on the land such as timber, sometimes for many years while a proclamation remained operative. Agents would also attempt to hold owners to the original price when the first advances were made, even though by the time real purchase negotiations were underway, land values might have increased substantially.

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<sup>116</sup> return in NLP 79/639, MA-MLP 1/5, ANZ,

<sup>117</sup> For example, reports and notices in NLP 79/22, NLP 79/84, MA-MLP 1 /4, ANZ

The system of being able to proclaim land in this way also appears to have encouraged agents to buy up even small interests in as many blocks as possible so they could be proclaimed and then either the rest of the block could be purchased at leisure or if necessary ‘abandoned’. It also encouraged agents to purchase as large blocks as possible, to gain the full advantage of proclamation rather than buy the smaller areas preferred by Maori. The system also appears to have encouraged government purchase agents to spread their advances as widely as possible over the district, even into the upper Whanganui where there was little real hope of purchase at the time. The proclamation at least ‘protected’ such areas until a time when circumstances might be more favourable.

Booth noted some of the consequences of these proclamations in a report of 1881, regarding a block in Manawatu. He reported that, since negotiations had first begun and a proclamation had been gazetted, it had become the centre of a settled district and very valuable. If the proclamation were to be removed now, the owners would be able to lease the land for as much per year as the purchase price originally set. Although the Government had maintained the proclamation over the block intending to eventually purchase it, by 1881 the situation had changed. By this time the Government was reducing its purchase programme in the district and Booth reluctantly acknowledged the block was a likely casualty. A quick completion of the purchase seemed unlikely with the values so high. In this case, Booth recommended the removal of the proclamation, as long as the owners refunded any advances paid and survey expenses.<sup>118</sup>

The use of proclamations to pressure owners is illustrated in the same report by Booth regarding a block in the Murimotu district. In that case, Booth reported that one section of owners had refused to cooperate in the survey of the block and in consequence only a small portion of the block originally under purchase negotiations was surveyed. He recommended that the Crown apply for an order for the surveyed part, while the rest should be left under proclamation until Te Aro and his people ‘agree to give value for the money they received’.<sup>119</sup>

A major complaint of Whanganui Maori communities by the late 1870s was the use of this type of proclamation by government land purchase officers to not only shut out competition but to force owners into sales. For example, an 1879 petition from Aperahama Tahunuiarangi and others, among other complaints, charged that the gazette proclamations were directly

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<sup>118</sup> report re Aorangi block, NLP 81/285, MA-MLP 1/9, ANZ,

<sup>119</sup> Booth report 1881, NLP 81/ 285, MA-MLP 1/9 ANZ,

opposed to the terms and spirit of the Treaty of Waitangi and to ordinary principles of justice. They noted that the use of payments to some individuals in a block (and the subsequent proclamation) thereby compelled all others with interests in the same land to dispose of their interests to the Crown against their wishes. This procedure could also be used to indefinitely postpone the granting of title to any portion of the land proclaimed.<sup>120</sup>

As noted previously, negotiating a purchase of Maori land before the Land Court determined ownership of a block was considered legally ‘void’ at this time, although there were many private agents willing to take the risk. This was intended to be a protection for Maori and it seems that in the early 1870s, in the case of new blocks being considered for purchase at least, government agents were instructed not to begin negotiations before a Land Court investigation. Booth notes this in his 1875 report, and it seems to be why he initially focused on ‘tidying up’ purchases where earlier advances had been made, but sales still had to be completed. Booth also noted with satisfaction how willing Whanganui Maori had been to admit liability to these previous advances (although presumably they were under no legal compulsion to do so) allowing them to be deducted from the final price in completing purchases and enabling him to recover over £1500 in advances.<sup>121</sup>

However, Booth claimed that, by 1878, it had become clear that private speculators willing to risk pre-investigation negotiations, including advancing money freely on lands which had neither been surveyed or passed ‘the ordeal’ of the Native Land Court, had gained a considerable advantage over government agents.<sup>122</sup> Booth noted these speculators also commonly paid retainers to the ‘reputed’ owners of the land, interpreters, and certain cooperative chiefs to assist them in their operations.<sup>123</sup> Booth may have been over-emphasising the effectiveness of these speculators as a defence against the relatively poor showing of his office. He had been reprimanded in 1877, when his attention was officially drawn to the ‘unsatisfactory’ progress of government land purchasing in his district in spite of his large staff.<sup>124</sup> Nevertheless, his complaints worked, and as Booth noted, the government had decided to meet private agents on their own ground in the Whanganui district from 1878.<sup>125</sup>

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<sup>120</sup> copy of petition, MA 23/13 (a) ANZ,

<sup>121</sup> Booth report, 5 July 1879, NLP 79/193, MA-MLP 1 /4 ANZ

<sup>122</sup> Booth report 5 July 1879, MA-MLP 1 /4, NLP 79/193, p 2, ANZ

<sup>123</sup> Booth report, 5 July 1879, MA-MLP 1 /4, NLP 79/193, p 2 ANZ

<sup>124</sup> Letter to Booth, 10 March 1877, MA-MLP 3/2 outwards correspondence, pp 120-2, ANZ

<sup>125</sup> Booth report 5 July 1879, MA-MLP 1 /4, NLP 79/193, p 3, ANZ

It seems, therefore, that in order to increase the rate of land purchase, the Government decided to abandon its previous attempt to protect Maori over pre-investigation purchases. In 1879 Booth reported that in early September 1878, the then Native Minister had instructed him to acquire as much land as possible ‘in this district for a Public estate’.<sup>126</sup> At the same time, to compete more directly, the Minister had instructed that while money advances could be paid on lands, the claimants to them should prove their claim in open meeting.<sup>127</sup> Effectively, the Government appeared to be allowing its purchase agents to move back to land purchase negotiations before a formal Land Court determination of title. The only protection was that these agents were presumably responsible for holding ‘open meetings’ where claims were to be proved. This seemed little different to the situation that had been severely criticised in the pre-war era. It also involved similar temptations for the agents to manipulate such meetings to favour cooperative sellers, and in the process sideline those chiefs and communities considered ‘obstructive’. A number of commentators have criticised this as a major direct factor leading to the wars of the 1860s.

The procedure for negotiating a purchase before a Land Court hearing as reported by Booth, now required, in the first instance, a written application from a reputed owner to sell a block of land, giving the name of the block, estimated area, and boundaries of the block offered for sale. On receiving this, Booth would call an open meeting of all those interested in the block, at which the written offer would be read out and ownership discussed. If those making the offer ‘made good’ their claim he would enter into treaty with them. If the claim was not sustained, he claimed the application would be destroyed.<sup>128</sup> Booth could also rely on the advice of cooperative chiefs such as Mete Kingi to assist with preliminary inquiries as to the soundness of the claims made.

This may have seemed to offer local communities a chance to openly and publicly discuss interests and possible negotiations over land, as Maori had been asking for. However, in practice, it seems the land purchase officer had the last say in deciding whose claim was ‘good’ and this seems to have come perilously close to having land purchase officers and their views supplant the promised impartial Native Land Court investigation. This was particularly important when the same ‘commissioners’ were intent and under pressure to conduct

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<sup>126</sup> Booth report 5 July 1879, MA-MLP 1 /4, NLP 79/193, p 2, ANZ

<sup>127</sup> Booth report 5 July 1879, NLP 79/193, p 3, MA-MLP 1 /4, ANZ,

<sup>128</sup> Booth report, 5 July 1879, NLP 79/193, MA-MLP 1 /4 ANZ,

purchases, not just find out who had good claims. It was only natural that they would favour those who wanted to negotiate as far as they felt able to do so.

Booth also made the process of the application to sell and the open meeting sound like a reasonably impartial exercise, in which interested owners took the initiative in seeking to sell. In fact, it seems there were a number of points at which the process could be manipulated to exert pressure to sell. The written application to sell, for example, might be made with the assistance of a purchase agent once initial discussions took place. There was considerable room for confusion over what Maori might understand the application to mean, especially when their advisors were often land purchase officers themselves. For example, it seems there may have been room for confusion over whether an application was being made with the intention of selling land, or whether it simply signalled an intention to have a Land Court investigation, possibly to gain more secure, recognised title, without necessarily any wish to sell.

The process also opened the possibility for Booth and other agents to manipulate meetings, to carefully cultivate influential chiefs, and find sufficient 'reputed' owners to treat with, while sidelining or excluding those who were considered less cooperative. Booth, for example, tended to cultivate certain chiefs, whom he regularly described as helpful or 'loyal' while those who complained about his activities he often dismissed as 'insolent' or greedy.<sup>129</sup> The negotiation process also placed considerable pressure on those who did have interests in the land to take part, or be left to the expense, and what Booth termed the 'ordeal', of pressing their claims in a later Land Court hearing.

Anderson cites complaints about the early Retaruke and Kirikau purchases in the Tuhua district (see map 2). In these blocks Booth was accused of favouring Topine Te Mamaku over other chiefs with interests in the area. Two of the objecting chiefs, Toakohuru and Te Pikikotuku were later prominent among owners in the Waimarino lands. In this case, Booth rejected their objections claiming they were a 'small minority' who should not be able to prevent the 'large majority' from disposing of their interests. He claimed that they could always apply to the Land Court to cut out their interests, and if they missed out it was their own fault for refusing to take up their rights under Native Land Court subdivision.<sup>130</sup>

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<sup>129</sup> For example, annotation by Booth 2 April 1879 on letter of complaint 11 February 1879 describing chief as 'insolent' NLP 79/98, MA-MLP 1 /4, ANZ

<sup>130</sup> Anderson, 'Whanganui Iwi and the Crown 1880-1900' pp 14-15 citing Booth memos April-May 1876 in MA-MLP 1, 1899/188 ANZ .

Anderson notes that discontent over the sale of the block continued for some years and the actions of Booth and the lack of government redress were a major factor in the previously 'loyalist' chief Paiaka expressing disillusionment with the purchase system and later joining movements intended to protect land such as Kemp's Trust.<sup>131</sup>

The system of negotiating purchases before Native Land Court investigations took place appears to have become an established pattern in the Whanganui district by the early 1880s and Whanganui Maori communities appear to have become increasingly familiar with the process, even into the Upper Whanganui district. It generally began with government or private land purchase agents identifying and patronising certain chiefs and communities in an area, who were considered 'cooperative' to selling or susceptible to pressure. In many cases these groups were sympathetic or even keen to use some of their land for new economic enterprises, especially leasing. In some cases, they were also open to the idea of selling some selected land to encourage economic development and benefits for the areas to be retained. They often did not want to sell large blocks, although this was generally the overall aim of the agents. The agents would then use this willingness to gain an entry into the block for purchase purposes.

Discussions and assurances of what land was involved in a purchase did take place during pre-investigation negotiations, but often in vague or misleading terms. The claimed boundaries of blocks were often intended to outline those areas where interests were claimed, not necessarily those areas a community might wish to sell. Although block boundaries were described in some detail in official proclamation notices, these were compiled by purchase agents and officials and altered as necessary to fit in with other blocks. It is doubtful whether owners got to see these, or would have entirely agreed with them or even understood them if they did.

Agent reports on claimed blocks, with their often extremely vague descriptions and unknown acreages are generally more revealing of the actual state of many blocks than the official notices. Land purchase agents commonly named blocks after places or natural features those claiming to have interests pointed out on the land. However, agents were also keen to apply concepts of precise, defined and exclusive block boundaries that were at this time still foreign to many Maori communities. It was also in the interests of agents to describe blocks that were

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<sup>131</sup> Anderson, 'Whanganui Iwi and the Crown 1880-1900' p 16

large and covered as much of the district as possible. This meant that the actual, ‘official’ boundaries of a block might owe more to the views of agents than the communities claiming interests in them. As negotiations progressed, agents might then be obliged to reduce or alter the area of blocks, or even alter block names as different owners proved more influential.

This lack of certainty inevitably caused confusion among owners over what areas were really being negotiated for. This often, initially at least, was advantageous to the agents. They could placate potentially hostile owners by allowing them to believe their lands were not involved. This confusion could also result in Maori communities having entirely different views to officials over what land any particular named block might contain. For example, in 1882, Booth noted on a letter from Tuhua chiefs protesting government purchase negotiations with Ngati Tama over the ‘Tangarakau’ block, that the writers were referring to a block adjoining and north of the block of the same name ‘in our books’.<sup>132</sup> It was often only much later, when the actual progress of surveys began to reveal the true position, that Whanganui Maori opposition to many of the pre-investigation purchase deals really intensified.

The system of pre-investigation negotiations and the tactics associated with them provoked many complaints from Whanganui Maori. Official documentation of the Ahuahu block purchase provides examples typical of the complaints raised by this approach. It appears that Booth began making advances on this block in 1879. In this case, protests began almost immediately. For example, in February 1879 one of the owners Toma Haumu and others complained to the Minister of Native Affairs, John Sheehan, about Booth’s activities in the block. Haumu explained that Booth had paid £1000 in advances. However, he and his hapu did not wish to participate in the sale and wanted to withdraw their piece from the block under negotiation. In response, Booth claimed that Haumu had refused to attend the meeting he had called and was ‘insolent’ when sent for. He also claimed that Haumu had asked for a large payment for himself. Booth reported that he was confident Haumu’s threat to withdraw land would not come to much, as Booth had already got his relatives to sign the purchase agreement. He reported that he had told Haumu that he would now have to wait until the land passed through the Court to press his interests.<sup>133</sup>

Sheehan received several other angry letters from those claiming interests in the same block, who believed they had been ignored or badly treated by Booth. One letter claimed that Booth

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<sup>132</sup> Booth report NLP 81/513, MA-MLP 1/10, ANZ

<sup>133</sup> Letter 11 February 1879 annotated by Booth 2 April 1879 NLP 79/98, MA-MLP 1 /4, ANZ

had held one meeting concerning the block where £1000 had been advanced. He had then held a second meeting for those who had been unable to attend the first one, but only had £500 to be shared among those people.<sup>134</sup> It seems that many owners felt they were not being treated equally by Booth. Another letter complained of being missed out from either meetings or money payments altogether.<sup>135</sup> A number of complainants also sought reserves for themselves in the block, as they had received no money. Officials of the Land Purchase Department appeared largely unmoved by these complaints. Those making them were variously portrayed as jealous, greedy or indulging in empty threats, while those wanting areas of land excluded were advised to make their case when title was investigated through the Land Court.<sup>136</sup>

It seems clear that some individuals involved in purchase negotiations did act for personal gain, while others used the system of payments, advances and other patronage as an opportunity to engage in new ways of pursuing traditional rivalries or of enhancing mana. In other cases, communities and their leaders clearly wanted some way of engaging in new economic developments and expected government agents to offer a means of achieving this. They had few other sources of advice for engaging with the Pakeha world and it could be unclear what capacity some government officers were acting under at any particular time. A number of communities weary of war and economic disruption also appear to have been convinced that accepting Pakeha law (and with it institutions such as the Land Court) was their best hope of securing their land and obtaining economic benefits. None of these necessarily involved the willing alienation of the majority of a community's land. However, once even a few owners agreed to begin negotiations this placed significant pressure on others to join in or risk missing out altogether.

Once negotiations were opened in a block, land purchase agents had a range of tactics to win communities over to the idea of selling. It is beyond the scope of this report to investigate in detail the tactics used by government land purchase agents at every stage of the purchase process in the Whanganui district during this time period. These tactics have also already been referred to in reports such as Anderson.<sup>137</sup> Very briefly, it seems that agents did indulge in many of the unsavoury tactics historians such as Ward have condemned.<sup>138</sup> There were also

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<sup>134</sup> Letter to Sheehan from Te Ikamanu and others, NLP 79/71, MA-MLP 1 /4, ANZ,

<sup>135</sup> Letter to Sheehan from Te Metera Te Uira and others, 18 March 1879 NLP 79/1199, MA-MLP 1 /4, ANZ,

<sup>136</sup> Letter and annotations, May-June 1879, NLP 79/98, MA-MLP 1 /4, ANZ

<sup>137</sup> For example, Anderson, 'Whanganui Iwi and the Crown 1880-1900' chapter 1

<sup>138</sup> Ward, *A Show of Justice*, p 256

many similarities with the pre-investigation part of this process and the tactics used pre-war. Government purchase officers even continued to be called land purchase ‘commissioners’ during this time, as though they had a more political, negotiating and judicial role than mere agents.

One important tactic appears to have been to promise purchase reserves for those who sold. This was used to convince owners that even if they engaged in negotiations they would still be able to retain sufficient land, through the reserves, for their needs, valued sites and to retain close proximity to, and therefore participate in, the expected benefits of new developments. As in pre-war times, government agents also tended to place considerable emphasis on the future benefits that selling lands were expected to bring communities. It was argued that selling some land would attract settlement and development to an area, providing employment, infrastructure, and markets for produce. As land was more intensively settled it was also claimed that nearby lands, including remaining Maori land and reserves, would also rise in value.

These promises of future benefit appear to have been very important. For example, in 1875, Booth reported that he had managed to fend off competition and higher prices from private agents by persuading Maori owners that the considerable advantages to them in dealing directly and only with the Government- in the shape of roads, bridges and reserves - would ‘more than compensate for the difference in price’ with proper purchase reserves being made under the Native Land Act 1873.<sup>139</sup> Clearly, Government promises of adequate reserves and future economic benefit in return for land sales were an important part of the sale process. Booth was able to report that as a result of his persuasion, for some months now there had been no attempt at further private ‘interference’ with Government purchases.<sup>140</sup> Even so, the competition from private agents did force Booth to report that he had been obliged to raise the prices he was paying in some areas in the Whanganui district.<sup>141</sup> This indicates that in the absence of competition, government agents also tended to set prices as low as possible rather than offering a ‘fair’ price for land.

It also seems that agents assured Maori that even though they were smaller in area, their new reserves would still be more valuable and easier to use economically than the much larger

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<sup>139</sup> Booth report 1875, MA-MLP 1 /4, NLP 75/316, ANZ

<sup>140</sup> Booth report 1875, NLP 75/316, MA-MLP 1 /4, ANZ

<sup>141</sup> Booth report, 1875, NLP 75/316, MA-MLP 1 /4 , ANZ

areas they still held under customary title, which would remain isolated from settlement and development. Agents and officials also assured Whanganui communities that holding land by freehold title was vastly superior to customary communal title and this of course necessitated taking it before the Land Court. They were assisted in this by the lack of legal recognition for customarily held land and the legal difficulties in the way of using it for new economic purposes. For example, there was no other legally recognised way of securing customary land against other claimants, and thereby protecting a particular economic use for it, other than by taking it to the Land Court with all the expense that entailed. It was also difficult to enforce legal agreements such as lease agreements or to raise loans on customary land.

Another favourite tactic appears to have been for agents to assist with food and other costs for meetings to discuss purchases or even for general living expenses and then to use these debts to pressure sales. Payments for services and advances took a number of forms and could easily be misunderstood. It was common practice for agents to help out with food costs and transport costs for meetings, including the use of store accounts. Agents also followed earlier practices of paying moneys to acknowledged chiefs in recognition of their status. It was easy to confuse these additional payments with actual advances being made on land. It was also easy for agents to encourage debts and then insist on repayment in shares in land.

Although there were constant complaints about these practices, it is often difficult to trace evidence of them in official records as agents were naturally not inclined to publicly record them in their reports and senior government officials tended to turn a blind eye as long as they did not openly bring the government into public disrepute. Nevertheless, there are some glimpses of unsavoury conduct when officials did feel government agents were going too far and possibly endangering future purchase work. For example, a government circular of 1877 reminded purchase agents that as long as they were paid public servants they were not to enter negotiations concerning Maori lands for themselves or other persons, except with the permission of the head of the department.<sup>142</sup> More was revealed when Native Minister John Bryce began a clean-up of what he regarded as the more objectionable practices of the Land Purchase Department from the late 1870s. For example, Bryce described as ‘objectionable in the highest degree’ a report by Booth of 1879 where he described gathering together many of the owners of the Aratawa block together. Believing he could get them to sell, but finding he had no cash available, he gave orders on the storekeepers in return for signatures. He intended

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<sup>142</sup> circular no 6 of 11 December 1877 in MA-MLP 3/2, ANZ

that payments to the storekeepers for goods supplied would be made a charge against the land. However, Bryce, already critical of what he regarded as the excesses of the McLean purchase system, ordered that such practices must be ‘absolutely discontinued’ for the future.<sup>143</sup>

It is not clear whether Booth actually desisted from this practice, or whether he simply became less open about reporting it officially. However, he was reprimanded again a year later, when he attempted to gain reimbursement for having paid Kingi Topia £40 out of his own pocket. He was instructed that the Native Minister disapproved of this and while reimbursement would be allowed this time, the practice must stop in future.<sup>144</sup>

There were other, more open, ways of pressuring owners to join in negotiations. For example, agents commonly paid the survey and Native Land Court costs of those who agreed to enter negotiations. Those who refused risked being forced to Court anyway, and then obliged to pay all costs themselves if they wished to protect their interests. For example, in reporting on various interior blocks in 1875, Booth noted that for the Kirikau, Retaruke and Kawautahi blocks, the Government had agreed to pay survey costs and Native Land Court expenses.<sup>145</sup>

The next stage of the process, as indicated by agents such as Booth, was to take the block to the Native Land Court to have the ‘reputed’ owners confirmed. This required a survey of the land before a hearing could begin. As far as agents were concerned, their focus then moved to attempting to manage or manipulate the hearing to ensure that ‘their’ people were confirmed as principal owners and the purchase deal could go ahead. This appeared to further undermine the promised impartiality of the Court process and had already been the subject of criticism from Maori. As noted, it was also often only at this stage, when the actual survey took place, that communities could really begin to appreciate exactly what land was involved. This was the point in this process therefore, where opposition against the claimed sale tended to grow and become really apparent in the official record, often well after initial advances had been paid.

Although, as far as Booth was concerned, the government decision to allow its agents to re-engage in pre-investigation deals and advance payments made them more competitive, it did not remove private agents from the Whanganui district altogether. Booth reported in 1879 that he had been obliged to raise the prices he was paying for land to meet those being paid by

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<sup>143</sup> Letter to Booth 29 November 1879 , NLP 79/597 in MA-MLP 1/5 ANZ

<sup>144</sup> Letter to Booth 24 June 1880, MA-MLP 3/3 p 488, ANZ

<sup>145</sup> Booth report 1875, NLP 75/316 , MA-MLP1 /4, ANZ

private agents. He believed this had largely driven private agents out of the district and made land purchasing 'not nearly so troublesome'.<sup>146</sup> This was over-optimistic, as private agents clearly did continue operating in the district. However, the fierce competition Booth portrayed only seems to have occurred when government and private agents were in direct competition over the same block. In many other cases private and government agents worked quite closely together to ensure sales of Maori land went ahead. They often knew and assisted each other, especially where one party had little chance of completing a purchase. Private agents often sold interests they had acquired to the government, and government agents allowed private sales to go ahead in proclaimed blocks they no longer intended to operate in, as long as advances and survey payments were repaid.

Many individual purchase agents also moved regularly between government and private work using much the same tactics. The major difference was that the government was often sensitive to such tactics becoming public and therefore causing possible embarrassment. For example, as previously noted, in 1878 the government hired private agents McDonnell and Brassey to assist with some purchases on commission. Draft instructions to McDonnell required all payments to be in cash in the presence of credible European witnesses and with deeds to be signed when payments were made. No orders were to be issued on storekeepers and no large advances were to be made. This was to prevent, as far as possible, dealings with those who afterwards failed to prove their title to the land. Any mistakes in this regard were to be recovered from the commission paid.<sup>147</sup> However, according to Anderson, officials later had cause to note that McDonnell's continued mix of private transactions and debts was threatening his government work in the block.<sup>148</sup>

Another example of private and government agent cooperation can be seen with the Pikopiko 3 block in the Whanganui district, which was proclaimed as under negotiation for government purchase in 1878.<sup>149</sup> Booth began purchasing in the block but then apparently met with difficulties in completing the purchase within a reasonable time. He was instructed to recover the advances he had made and abandon the purchase, although not it seems to lift the proclamation. In the meantime, a private agent named John Stevens, who was active in purchasing Maori land in the Upper Whanganui and Manawatu areas, apparently decided to

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<sup>146</sup> Booth report 5 July 1879 NLP 79/193, MA-MLP 1/4, ANZ

<sup>147</sup> MA-MLP 1, 1891/102 ND 1878/1895 attached., ANZ

<sup>148</sup> Anderson, 'Whanganui Iwi and the Crown, 1880-1900' p 12

<sup>149</sup> *NZ Gazette*, 1878, no 11 of 7 February 1878 p 159

take the risk and begin negotiating over the block himself. The owners he identified included Aperahama Tahunuiarangi, Moko Rongohikaia and Tamehana Makohu. The government agents do not appear to have opposed Stevens in this, as long as all their advances and survey costs were repaid. Stevens obliged and the Native Land Court subsequently confirmed the owners he had been dealing with. The government then lifted the proclamation in 1879 allowing his purchase to go ahead.<sup>150</sup> Effectively, Stevens had also benefited from the proclamation and his relationship with government agents, as he had also been able to act without real competition.

This was not the only block in which Stevens cooperated with government agents. Official records show, for example, that he was also paid £222 17s 6d commission for his part in the Mangoira Ruahine block purchase in the Wanganui district in February 1878.<sup>151</sup> As will become clear, in a few years time, still as a private agent on commission, and with considerable experience of earlier purchasing behind him, John (Jack) Stevens would also play a significant role in the Government purchase of the Waimarino block.

## **2.7 The extension of land purchasing into upper Whanganui lands**

It seems that Government land purchase officials in the Whanganui district at first focused on completing purchases in land blocks where advances had previously been made. Nevertheless, by 1875, Booth began reporting that purchases were extending into the upper Whanganui district. He reported that seven blocks in the interior Whanganui district were under negotiation for purchase by this time. Three of these blocks, Kirikau, Retaruke and Kawautahi were located in the interior Tuhua district.<sup>152</sup> Only Kirikau and Retaruke were actually successfully purchased as a result of the efforts begun at this time (see map 2). Kawautahi was later abandoned as a block and incorporated into what became the new Waimarino block.

Booth later explained in 1881 that these blocks had been purchased for strategic reasons, ‘in this the Tuhua country, which a few years ago was the heart of the King district’. They were intended to be part of a larger Pakeha settlement, which was to be located on the edge of the King Country (including the proposed Kawautahi block). For example, in the case of Retaruke, Booth had managed to bring the block before the Court for investigation in 1876.

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<sup>150</sup> NLP 79/268 in MA-MLP 1/4, ANZ

<sup>151</sup> NLP 79/454, MA-MLP 1/5, ANZ

<sup>152</sup> report in MA-MLP 3/4, NLP 75/316, ANZ

He had been purchasing interests in the block and by 1881 claimed to have purchased a majority of interests for the Crown.<sup>153</sup> As previously noted, there had been some considerable disquiet over purchasing in the blocks, which Booth simply countered by noting non-sellers could have their interests cut out. By 1881, Booth was still attempting purchasing with the assistance of another land purchase officer from Taupo, Grace, and Te Keepa as part of his land purchase duties. This involved payments to Topine Te Mamaku and Te Pikikotuku and promises of reserves, resulting in an initial Crown award for most of Retaruke, except for three agreed reserves.<sup>154</sup> Shortly afterwards, Booth claimed to have purchased even more interests in Retaruke, causing the Crown award to be increased.<sup>155</sup> By this time, however, with pressure to reduce purchasing and the alarm caused by the killing of Moffatt in the nearby Rohe Potae in 1880, the plan for such a settlement had fallen through and therefore the purchase was not being pressed for the time being.<sup>156</sup>

The others blocks reported by Booth as being under purchase in upper Whanganui by the mid-1870s, were Te Kopanga, Hauhungatahi, Maungaporau and Ngarakauwhakaara. Booth could only report very vague details on these last blocks with acreages unknown and surveys still to be made. The lack of precision makes it difficult to tell if any of these included lands that later become part of the Waimarino block. However, Hauhungatahi for example, was described as a 'very large' block west of Tongariro, containing good sheep country.<sup>157</sup> Presumably, if it was named after the mountain just west of Ruapehu, it did include lands that would become part of the eastern area of Waimarino, including the Waimarino plains.

By the late 1870s, government agents were purchasing further into the upper Whanganui and Tuhua districts, claiming to have begun purchases on lands that were later to be included in the Waimarino block, although these purchases were claimed under different block names. Reports of 1879 indicate agents were negotiating with selected assumed owners in several blocks in the upper Whanganui district. Blocks described as being under negotiation at this time included Opatu (west of the Whanganui River opposite Kirikau). This block was estimated to be located about 150 miles up the Whanganui River. The only access from the Wanganui coast was by a seven day canoe trip up the Whanganui River or alternatively by a three day overland trip by track from New Plymouth. There was also supposed to be a track

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<sup>153</sup> MLC-Whanganui MB 3 pp 188-189, evidence of Booth.

<sup>154</sup> MLC-Whanganui MB 3 pp 188-189

<sup>155</sup> MLC-Whanganui, MB 3, pp 417-8

<sup>156</sup> Booth report 25 May 1881 re Opatu block, NLP 81/285, MA-MLP 1/9, ANZ.

<sup>157</sup> Booth report, NLP 75/316, MA-MLP 1 /4, ANZ

into the Waikato district from the block although this was still not readily accessible to Pakeha. As such the block was clearly also of strategic interest to the government and seems to have been part of the original plan to create a large settlement on the edge of the Rohe Potae. Booth noted the block was partly owned by Hauhau, who had obstructed the survey. Further west of Opatu was Tangarakau, which like Opatu was known to contain coal fields. The Taipohatu and Raoraomouku blocks were also located to the west of the Whanganui River towards the Waitara and Waitotara districts.<sup>158</sup>

In the east of the upper Whanganui district, Booth reported on negotiations for the Ruapehu, Wairau and Ohakune blocks. The Omata and Huikumu blocks were described as being just east of the upper Whanganui River and near the Manganui a te Ao River. North of the Manganui a te Ao, the Owango block was estimated to contain about 500,000 acres. Booth reported that negotiations for this last block had recently begun, but would require ‘much time and care’ as the block was claimed by a variety of hapu.<sup>159</sup> In this, Booth seemed to be acknowledging the ‘border’ status of intersecting and overlapping interests characteristic of the interior Tuhua/upper Whanganui area.

Booth described the Owango block as a large area, extending from the Kawautahi block to Mount Ruapehu and Lake Taupo, and estimated to contain half a million acres with large areas of open land and a large area of fine totara forest. He reported that a number of large meetings had been held with the reputed owners, where he claimed that the chief Topine Te Mamaku’s proposals to sell to the Government were fully discussed. It is not clear from Booth’s report exactly what Topine Te Mamaku was intending, although it does seem clear that having fought against settler forces during the wars, this chief was now willing to enter agreements that he believed would secure some prosperity for his people. Whether or not this was the same kind of sale that Booth was anticipating is not clear at this stage. There was clearly some concern about the implications of this kind of dealing and Booth also reported that the first of these meetings had revealed considerable opposition to a sale. However, he claimed that at subsequent meetings the opposition was almost wholly withdrawn. He does not say how he managed to persuade those attending to change their views, but claimed he had only failed to progress further because money imprested for the purpose had not come to hand. As a result, he reported he had advised the people to return home and the matter would

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<sup>158</sup> report by James Booth 5 July 1879, NLP 79/193, MA-MLP 1 / 4, ANZ,

<sup>159</sup> report by James Booth 5 July 1879, NLP 79/193, MA-MLP 1 / 4, ANZ,

have to stand over for some future time.<sup>160</sup> Nevertheless, an 1879 return shows that in the year to the end of June 1879, £310 17s 4d in purchase money, and £14 in food and other expenses had been spent on the Owhango block.<sup>161</sup>

The Owhango boundaries were officially proclaimed as under government negotiation in 1879. At that time the boundaries of the block were described as beginning on the Kawautahi boundary at Upokowera, then to Tutaepatua, Oio, Kaitieke, Tutumaire, Okete, Ngamutu, Te Kopanga, Mangahohonu, Makaretu, Te Rerenga, Pukutai, then the Whakapapaiti stream to its junction with the Whakapapa River and down said river past Mangahouhi, Piopioatea, Mangapungapunga, Te Ruranga, Paupoutunoa, Te Kiro Kiri, Kaitoke, Tikapu, Ohinetonga, Kopua, Owairua, Taharua, Takapuna, then down the Whanganui River past Otamaruarangi, Otutaura, Ngararahuarau, Kakahoto, Parapara where the boundary leaves the Whanganui River and turns inland to Rangiatea then to Waetea, Pakiihiniti, Te Puke, Tunanui, Mihirangi, Te Papaka then Maunganui, Hurutahi, Kaitaura and on to Upokowera the starting point.<sup>162</sup>

Even then, the official description seems to enclose a significantly smaller area than Booth had originally described as stretching to Taupo. Although it is difficult to locate all the place names on extant maps, it generally seems to encompass the northern part of what became the Waimarino block with the ‘fine totara forest’ being the forest that government agents were so keen to have included within the Waimarino block. Later, a presumably redefined and even smaller Owhango or Ohango district is shown as lying between northern Waimarino and Taupo.<sup>163</sup>

Other blocks of this time may also have contained some of what later became Waimarino lands. For example, the Ruapehu block as it was shown at this time appears to have contained some of what later became the southeast part of Waimarino. It also seems possible the Wairau and at least parts of the Omata and Huikumu blocks of this time may also have become parts of what later became the Waimarino block (see map 3).<sup>164</sup>

Although outside the focus of this report, it also seems the Government was encouraging attempts to penetrate into the Waimarino from the east by the late 1870s, through grazing run leases. As previously noted, leases were being made at this time for the open Murimotu plains

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<sup>160</sup> Booth report 12 May 1879, NLP 79/82 , MA-MLP 1 /4 ANZ

<sup>161</sup> NLP 79/483, MA-MLP 1/5, ANZ

<sup>162</sup> amended boundaries for gazettal NLP 79/22, MA-MLP 1 /4, ANZ

<sup>163</sup> see map based on map from AJHR 1884 sess II C-1 opp p 29 (map 2)

<sup>164</sup> see Thorpe-Booth sketch map NLP 80/531, MA-MLP 1/7 ANZ

area south of what became the Waimarino block. Kerry-Nicholls would later stay at the sheep station at Karioi before attempting to enter the King Country in 1883. Grace, in his history of Tuwharetoa, also notes that in 1879, Bryce met with the grazier Studholme and John Grace (land purchase officer) at Tokaanu in 1879 to discuss stocking the Waimarino (plains presumably) with sheep.<sup>165</sup> Bryce apparently asked Grace at this time to assist with having the area surveyed. This presumably involved Grace persuading some local chiefs to make an application for a Native Land Court survey. However, in this case, no survey was proceeded with at this time.

Reports also indicate that Booth was now pushing purchases further into the upper Whanganui area from his office, possibly as a result of the increased pressure to expand purchasing in the district. However, in spite of his optimism and claims of cooperation, it seems clear that he was reporting a very one-sided version of the negotiations. At various times Booth claimed to have the support of a number of interior chiefs, including Topine te Mamaku, Paiaka, Pikikotuku and Toakohuru. Some of these chiefs had joined armed resistance against the Government during the wars, and had been supporters of the Kingitanga. Nevertheless, as pressures on their district increased through the 1870s, they do appear to have taken independent decisions to negotiate over their lands, possibly trying to secure them through the law and the Native Land Court. There is also some evidence they may have wanted to use some of their lands for economic benefit, at least through leasing as would become evident with the Opatu block. However, it is not clear whether this necessarily meant they also intended to alienate large parts of their lands.

It also seems that, regardless of this interest from some chiefs, there remained substantial sections of the upper Whanganui people and leadership who remained suspicious of the Native Land Court and Government intentions in the district. They were also determined to resist moves that might lead to the loss of their land and their authority over it. Booth acknowledged this when referring to the obstruction of the survey of the Opatu block by its Hauhau owners and more indirectly to the initial general opposition to negotiations over the Owango block, which he nevertheless claimed had subsequently been almost 'wholly withdrawn'.

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<sup>165</sup> Grace J te H, *Tuwharetoa: the history of the Maori people of the Taupo District*, p 502

Even though the Government continued to regard purchases into this interior area as politically important, it was well aware that there was considerable opposition to Booth's dealings in the area. This became particularly evident when the process moved from advances on purchases, to having blocks surveyed in preparation for Native Land Court investigation. Just a few weeks after Booth reported progress on Owhango, in May 1879, the Government received a letter from the chief Paiaka dated 12 June. Paiaka told Sheehan that he had received a letter from the Hauhau tribes of Tuhua (given to resident magistrate Richard Woon) in which they stated they intended to physically resist any surveys. Paiaka told Sheehan that he believed the activities of Booth and Mete Kingi in the Upper Whanganui district were causing trouble and would result in armed resistance to any secretly sold land there. Paiaka reminded Sheehan that he had often assisted the government since Sir Donald McLean's time but now these secret dealing were causing trouble. Major Paiaka had previously fought with government forces and had apparently assisted with earlier purchases along with Taitoko (Te Keepa). However, now he told the Government his assistance with purchases and all other government work would cease so he was free to allow 'my Hauhau tribes' to obstruct these people (indulging in secret deals).<sup>166</sup> Paiaka offered to use his influence to help solve the trouble in the district. He also asked for Mete Kingi to be dismissed, accusing him of taking money for lands in which he had no interest, and therefore causing protests and occupation of some of the blocks.<sup>167</sup>

In a reply shown to the Native Minister, Booth denied there was any armed party and insisted the land was not being sold 'privately'. He claimed there had been several days discussion before money was paid. He thought Paiaka had been at the discussions but was not sure. Booth also denied that he had given £100 to Mete Kingi for the block. He noted it was 'possible' the sellers had gifted a present to Mete Kingi in return for his hospitality, although he knew 'nothing about that'.<sup>168</sup> The lack of a Government response to his concerns appears to have increased the disillusionment Paiaka was already feeling over Retaruke, confirming his decision to join Kemp's Trust.

Purchase dealings over the nearby Opatu block also revealed a great deal of discontent over the Government's secret dealings in various interior blocks. Booth began making advances on

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<sup>166</sup> Paiaka to Native Minister, 12 June 1879, MA-MLP 1 /4, NLP 79/127, ANZ

<sup>167</sup> Paiaka to Native Minister 12 June 1879 NLP 79/127, MA-MLP 1 /4 , ANZ

<sup>168</sup> File note by Booth 15 August 1879, NLP 79/127, MA-MLP 1 /4, noted seen by Native Minister 17 September 1879, ANZ

the block in late 1878, again paying Topine te Mamaku large advances and this time claiming support from Paiaka, Tuao and others over a proposed survey. However, Anderson notes that when Annabell and Mair began a survey in early 1879, they soon found there was considerable opposition to it. The surveyors persisted, however, because it involved breaking through the aukati at Utapu and Tukipou and this was seen as politically important to the Government. However, they encountered considerable difficulties and had their survey gear removed at times. In the end, although their survey plan was completed, the Crown interest in the block was not awarded until early 1886.<sup>169</sup>

In the meantime, the chiefs of the interior experienced some of the hardship caused by having to attend the Land Court process. In 1882, many of these chiefs complained to the Government that they had travelled all the way to Upokongaro, some 189 miles from the interior, to attend a hearing of the Opatu block as notified by Booth, only to find it had been postponed. The Government refused to entertain their request for a payment to help cover their costs. The chiefs making the request included Hakiaha Tawhiao, Te Pikikotuku, Te Waratu, Winiata, Tuao, Topine te Mamaku and Hoani Paiaka.<sup>170</sup>

It seems therefore, that by the late 1870s, the system of pre-investigation land purchasing and the concerns and divisions as a result of it, had even reached as far as the chiefs and communities of the Upper Whanganui area. Scattered advances had been paid on some of the lands that would later form the Waimarino block and government officials had become aware of those chiefs who might prove cooperative, or susceptible to pressure, and therefore of value to later government purchasing. There was less experience of the actual Native Land Court investigations of title in the Upper Whanganui district, as the Court generally had not reached that far. A number of upper Whanganui chiefs had some experience of hearings, due to their wider interests in blocks further down the Whanganui River. However, this experience does not appear to have involved a detailed knowledge of the Land Court process.

## **2.8 Whanganui responses to Government land purchasing**

Land purchasing generally appears to have extended through the Whanganui district, including the upper Whanganui area, during the 1870s. From the mid-1870s, the Government in particular also increased pressure to promote government land purchasing. The Native

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<sup>169</sup> Anderson, 'Whanganui Iwi and the Crown 1880-1900' pp 17-18

<sup>170</sup> letter from chiefs to Government, 29 March 1882, NO 82/813, MA-MLP 1/11, ANZ

Land Court process also appeared to be closely linked to the purchase process, facilitating and confirming purchases. These developments appear to have provoked a high level of concern among many Whanganui Maori communities, although they often varied in their response and the way they expressed their concern. This concern was not necessarily expressed as a complete rejection of settlement and development, although there were some elements of this. Instead the concern was more over whether these processes enabled Maori to effectively participate in the benefits of settlement and how any negative impacts on Maori communities might be managed or minimised.

It is beyond the scope of this report to analyse in detail the response of Whanganui Maori communities generally during this time and it is likely to be covered in detail in more general research reports. For the purposes of this report, it is sufficient to note that Whanganui Maori concern appears to have generally increased during this time, although the ways in which this concern was expressed varied widely, as did the ways in which various communities and their leaders attempted to address these concerns.<sup>171</sup>

It seems that immediately after the wars, a number of Whanganui communities, especially in the lower river district initially supported some degree of land sales and the operation of the Land Court. They appear to have been actively seeking conciliation among the various communities linked to the river and also seeking ways to peacefully engage politically and economically with settlers and the settler Government while maintaining their own authority as much as possible. These attempts at conciliation included Whanganui connections in the upper river and interior areas. From the 1870s, a series of hui were held along the river in an attempt to heal the divisions caused by the wars. By the mid-1870s, government officials were also noting moves to extend the conciliation to interior areas. For example, Resident Magistrate Richard Woon reported on a meeting he attended in February-March 1876, called to discuss matters between the Tuhua peoples and the wider Whanganui district.<sup>172</sup>

It was the first time Woon had entered the Tuhua country and he noted evidence of the continuing strong support for elements of Pai Marire there, including the standing niu poles and the continued use of chants and prayers in the Hauhau manner. He described the meeting as being held at the junction of the Ongarue and Whanganui rivers at the foot of Hikurangi Mountain and in sight of the Tuhua range, some 230 miles up the Whanganui River and to the

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<sup>171</sup> See, for example, Anderson reports vols 1 and 2,

<sup>172</sup> Woon report of 7 March 1876 re Tuhua meeting, MA-Wang 2/2, ANZ

‘rear’ of Tongariro. The hui meeting place called Waiakatea, Woon noted had also been a meeting place for Waikato and upriver Maori during the wars and Te Kooti had also stayed there.<sup>173</sup>

According to Woon, this hui was attended by some 300 people, including chiefs from the Whanganui, Waikato and Taupo districts. Woon’s naming of these chiefs in hurried handwritten notes is not always legible. However, the principal Whanganui chiefs named appear to have included Mete Kingi, Hanaimua, Mamaku, Tima Tawhati, Urutara, Ngaupiki, Takemata, Te Rauioakai and Pikiotuku. The principal Taupo chiefs named included Topia Turoa, Heuheu, Matuahu, Kingi Herekiekie and Marino. The Waikato chiefs included Manga, Tamui and Kawhakaari.<sup>174</sup>

The meeting went on for several days and much of what happened was not described by Woon. However, he did report on what he believed to be the important speeches of the meeting between Manga (Rewi Maniapoto) presumably on behalf of the Kingitanga, Mete Kingi of Whanganui and Topia Turoa of Ngati Tuwharetoa and Whanganui. It is difficult to be sure of the exact meaning of what was said and Woon admitted that he found some ‘ambiguity’ in what Manga said, especially.<sup>175</sup> However, he did record a strong sense of mutual respect and conciliation between the various groups, and a willingness to move forward. He also sensed a more positive attitude from the Waikato people to Pakeha and presumably, the Crown.

Woon reported that Manga told Mete Kingi that he had finished speaking about the land. He had supported its retention but had not been listened to. Selling land still troubled him but he told the chiefs that if they must sell or lease – to do so. He told them he had ceased to protest about the land but he wanted the chiefs’ personal support for his ‘inspiration’. Topia was also reported as saying that if land sales were persisted with, let those sell who will. He had ceased talking about sales. Many of the chiefs at the meeting, including Manga, seemed to be acknowledging that their direct chiefly control over land dealing was becoming increasingly circumscribed. Manga also seemed to be acknowledging that the Kingitanga would no longer attempt to control land sales directly among member iwi. Instead, while relinquishing attempts to directly control all land dealing, he seemed to be asking for moral support from

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<sup>173</sup> Woon report of 7 March 1876 re Tuhua meeting, MA-Wang 2/2, ANZ

<sup>174</sup> Woon report of 7 March 1876 re Tuhua meeting, MA-Wang 2/2, ANZ

<sup>175</sup> Woon report of 7 March 1876 re Tuhua meeting, MA-Wang 2/2, ANZ

influential iwi chiefs for overall Kingitanga objectives or ‘inspiration’. Manga also denied that the Kingitanga supported indiscriminate killing of Pakeha or that they would necessarily protect any criminals. Woon reported that a number of Tuhua chiefs had expressed abhorrence of crimes committed by Winiata and others and promised they would be given up if found.<sup>176</sup>

Mete Kingi was reported as replying that Manga’s word was ‘good’ and he had a safe resting place for his inspiration among the Whanganui people. This did not mean that he necessarily supported the Kingitanga movement but he did seem to offer cautious support for better future relationships with the interior chiefs on those issues they did agree upon. However, he also seemed to be saying that the greater impact of settlement and government authority in the lower Whanganui district had circumscribed what he felt able to do. He told Manga ‘I am a servant under bondage to the govt. and my tribes’ while ‘you are independent’.<sup>177</sup>

Overall, Woon was optimistic about the meeting. He appears to have believed there was considerable conciliation and goodwill apparent between the various chiefs and marked friendliness shown to himself and the few other Pakeha attending. He did note, however, that Mamaku (Topine te Mamaku) who had accompanied them did not show up for the discussions. He presumed this was because Mamaku did not want to be criticised and even censured by Rewi for breaking the land league; ‘he takes very high ground and will submit to no dictation and he carries the majority of Whanganui with him!’<sup>178</sup> This was presumably a reference to Te Mamaku’s involvement in blocks such as Opatu on the border of the Rohe Potae.

Although Woon essentially supported and expected the extension of Pakeha settlement and institutions through the area, and he was ready to find any signs of friendliness, the sense of conciliation seemed real. Woon himself had earned considerable personal respect among Whanganui Maori, assisted by his insistence in keeping his office apart from land purchasing. The invitation for him to attend the meeting in the Tuhua area and his report that the Waikato people had suggested that he return with them and become a councillor for Tawhiao (even if it was made jokingly) was a mark of this respect. His achievements were all the more

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<sup>176</sup> Woon report of 7 March 1876 re Tuhua meeting, MA-Wang 2/2, ANZ

<sup>177</sup> Woon report of 7 March 1876 re Tuhua meeting, MA-Wang 2/2, ANZ

<sup>178</sup> Woon report of 7 March 1876 re Tuhua meeting, MA-Wang 2/2, ANZ

impressive, given Woon's physical disabilities, as noted by Young, reporting the missionary Taylor's comments that Woon was not much more than three feet high.<sup>179</sup>

Woon's report of the meeting also indicated the difficulties chiefs and their communities were facing by the mid-1870s. The increasing post-war pressures meant that the Kingitanga could no longer hope to expect its decrees to be followed by the various iwi who had supported it during the wars, especially where pressures were greatest on the borders of the Rohe Potae. The communities and chiefs of these areas insisted on their independent right to make their own decisions according to their views of their best interests and their experience. At the same time, even those chiefs who had initially cooperated over the Land Court and land dealing also found their authority to be circumscribed by the process. They had been persuaded that cooperation would enable their communities to share in the prosperity to be gained from settlement and that the Land Court system would also protect them in land they wished to retain. However, their experience was that once the Land Court was engaged with, their authority was increasingly marginalised, along with their ability to effectively manage their lands with their communities.

The Whanganui chiefs Te Keepa and Mete Kingi appear to exemplify many of these difficulties. For example, Te Keepa grew up on the Whanganui River and as a young man became friends with the missionary Richard Taylor. In his youth he also worked for the government as a police constable and mail runner between Wanganui and Wellington. He and Mete Kingi both allied with government forces during the wars. Te Keepa, for example, led a kupapa force during the wars, including against resistance to government military actions in the Bay of Plenty and Te Urewera. Both chiefs also pledged to work within new government laws. For example, Young describes Te Keepa's involvement in the Land Court process in pursuit of re-establishing and promoting the fortunes of his Muaupoko people after their losses under the Ngati Toa/Ngati Raukawa dominance. His alliance with the Crown during the wars may have also owed a great deal to his desire to gain leverage in changing circumstances for his people.<sup>180</sup> Mete Kingi was the first elected Member of Parliament for Western Maori from 1868.<sup>181</sup>

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<sup>179</sup> Young, p 58, citing R Taylor journals, qms 1996, 7 April 1864, p 95

<sup>180</sup> Young, p 65

<sup>181</sup> Young, p 73

Both chiefs allowed their authority to be linked with the government, and agreed to assist with land purchasing believing that judicious sales would increase settlement and prosperity for their communities. During the 1870s, as previously noted, they were placed on pay to assist with government land purchases in the Whanganui district. They rejected the Kingitanga alliance and insisted on the right of individual chiefs and communities to make independent decisions concerning their land. Their alliance with the government was not necessarily a wholehearted acceptance of all government policies, however. They remained strongly focused on traditional imperatives and obligations even as they sought to engage in new opportunities for their people. Young notes, for example, the rivalry between the two and their building of significant whareniui as expressions of personal mana and political power.<sup>182</sup>

When they became increasingly concerned about the Native Land Court and the system of land purchasing, both Te Keepa and Mete Kingi initially pushed for reforms rather than rejection of government institutions and they encouraged participation in new economic initiatives, including building schools and promoting farming.<sup>183</sup> At the same time, they attempted to curb the negative impacts of new developments, such as drunkenness and the spread of disease. Initially their confidence seemed to be rewarded with Te Keepa and his people, for example, being awarded 52,000 acres of the Horowhenua block by the Native Land Court.<sup>184</sup> However, this soon turned to disenchantment, when after a series of expensive inquiries, and crippling survey and legal costs, the Muaupoko people were forced to sell large areas of their land.<sup>185</sup>

Even when Te Keepa became critical of aspects of the Land Court process, he initially pressed for reform rather than rejection of the whole process. Nevertheless, the increasing loss of Maori land in the district and the prospect that this was leading to economic marginalisation had become a major issue by the late 1870s. By 1878, Resident Magistrate Woon was reporting to the Government that so much land was being sold, Maori were now abandoning farming.<sup>186</sup>

Later developments with Te Keepa and Mete Kingi also reflect some of the variety of response in the district as a result of this growing concern. Te Keepa seems to provide a

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<sup>182</sup> Young, p 106

<sup>183</sup> Young p 107

<sup>184</sup> Young, p 112

<sup>185</sup> Young, p 113

<sup>186</sup> Woon to Under Secretary Native Department, 1878, *AJHR* 1879 G-1, pp 812

classic example of increasing disillusionment, leading to policies that brought him remarkably close to Kingitanga objectives, even if he never approved of the movement. By the late 1870s, he was becoming further disillusioned as he noted that the combined Native Land Court and land purchase process was promoting reckless and uncontrolled sales of Maori land, in place of the careful negotiations and limited alienations that most Maori communities preferred.<sup>187</sup>

Te Keepa's concerns focused in a practical way over the question of the Murimotu block surveys in the late 1870s and early 1880s. He had interests in the area and when the government sent him to mediate, as he believed over various iwi interests in the area, he found the government surveyors apparently determined to push ahead to promote the interests of pastoralists rather than wait for a proper investigation of customary rightholders. His angry rejection of this, by force if necessary, led to his dismissal from government service.<sup>188</sup> A short time later, he became involved in an attempt to protect a significant area of Whanganui customary land from both the Land Court and land purchasing through the creation of what was known as Kemp's Trust.<sup>189</sup> His objectives in this seemed very similar to the policies of the Kingitanga in attempting to protect the customary lands of the Rohe Potae. When the Trust failed, Te Keepa turned again, as will be seen, to trying to engage constructively with the Government to protect his people's interests while also welcoming developments that appeared to offer them more chance of economic prosperity. Nevertheless, he continued to support reforms that might improve the Land Court process and give Maori more control over their land. In this, as will be seen, he also supported the Kingitanga chief Wahanui's attempts to obtain legislative reforms in the mid-1880s.

Te Keepa was by no means alone in his disillusionment. Mete Kingi also appears to have become increasingly disenchanted with the way the Land Court and purchase process was impacting on Whanganui communities. He tended to stay more within the system in working for reform including through his duties as a Member of Parliament. Nevertheless, he also seems to have shared many concerns with the land purchase process and supported the Repudiation Movement's call for lawful redress of grievances and reform of the system.

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<sup>187</sup> Anderson, vol 1, p 156

<sup>188</sup> Le1/1880/151, return to House of Representatives re dismissal of Major Keepa Rangihwinui 3 June 1880, ANZ

<sup>189</sup> Anderson, vol 1 pp 159-166

Woon reported that one of his sons had openly joined the movement, while Mete Kingi himself was believed to be a supporter.<sup>190</sup>

Historians have noted that Whanganui communities generally, employed a variety of means of expressing and addressing their concern about the impact of government policies and the Land Court.<sup>191</sup> These ranged from efforts to work within the system, including political representation such as already noted by Mete Kingi, and petitions such as that from Aperahama Tuhunuiarangi in 1879. He was one of those chiefs who had been involved in the Pikopiko sale to John Stevens noted earlier, and had been regarded as a cooperative seller. However, his petition complained of the impact of the Native Land Court process, including the use of agents and problems with surveys.<sup>192</sup> Efforts also ranged through various political and religious movements, to physical obstruction and resistance. All these efforts will not be described in detail in this report. However, some examples are briefly noted, as they seem especially pertinent to later developments regarding what became the Waimarino block.

One important response, as described by Anderson, was the efforts made by Whanganui communities to adapt and revitalise local runanga and Native committees as a means of expressing traditional community authority over land and other matters of importance. These were also an alternative to the Land Court and other forms of settler dominated authority for determining land ownership and managing local affairs.<sup>193</sup>

There was also significant Whanganui support for a range of political and religious movements that sought to find new ways of responding to and addressing change and dislocation in the district. As Woon had noted at the Tuhua meeting in 1876, many interior communities also seemed to retain strong support for movements that appeared to have inherited many aspects of the earlier Pai Marire or Hauhau movement. This was not the same as the Kingitanga but had many similar objectives, particularly in seeking the retention of Maori authority. During the wars, the movement had been led by Te Ua Haumene and had gained many adherents in the upper Whanganui River area. Evidence of this could be seen in the carved totara niu poles raised at strategic pa on the upper river.<sup>194</sup> Some of these niu were claimed for the Kingitanga rather than Pai Marire, but they appeared at many points along the

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<sup>190</sup> Woon 16 June 1874, *AJHR* 1874 G-2 p 15, cited in Anderson, vol 1, p 143

<sup>191</sup> For example, Young, *Woven by Water*; Anderson, vol 1

<sup>192</sup> Petition of Aperahama Tuhunuiarangi, 1879, MA 23/13 (a), ANZ

<sup>193</sup> For example, Anderson, vol 1, pp 148-151

<sup>194</sup> Young, p 57

upper river, including one below Taumarunui at Rurumatakatea, in Ngati Haua territory. Other niu were located at Arimatea, Koiro, Upokoiri, Maraekowhai, Whakahoro, Tieke, Pipiriki and Tawhitinui.<sup>195</sup>

Some aspects of Pai Marire were rejected as they seemed to challenge traditional authority, but many elements survived and resurfaced in new, more clearly pacifist movements. In the late 1870s, the pacifist prophets Te Whiti o Rongomai and Tohu Kakahi began to attract a strong following to Parihaka, including from among Whanganui communities. According to Young, there were close links between the movements. Te Whiti, was Te Ua's nephew and a Kingite. As such he was also an 'heir' to the Pai Marire movement.<sup>196</sup> He renounced violence, but he was opposed to the selling of more Maori land. He also encouraged the defence of remaining Maori land. He attracted Maori from throughout the Whanganui district, including Ngati Haua people from the upper river, as well as lower river people from around Kaiwhaiki.<sup>197</sup> In 1881, for example, Government officials estimated that about 175 Whanganui people were living at Parihaka.<sup>198</sup> These followers included numbers of communities who had interests in what were to become Waimarino block lands.

Young also describes a closely related movement based on the following of the prophet-tohunga, Te Kere Ngataierua. Te Kere had also become convinced that the only hope for the future of Maori communities was to engage in peaceful means of pursuing their demands. In his youth he had been involved in a destructive feud with the chief Topine Te Mamaku and some of his followers in 1857-58. He had also witnessed the costly battle between close relatives at Moutoa on the Whanganui River. In later years he was known as a man of considerable influence. He encouraged Tawhiao and the Kingitanga movement to seek peaceful solutions in their dealings with the Government. He also appears to have interceded with the chief Titokowaru, providing him with land and a white charger horse to encourage him to take a more peaceful means of resistance.<sup>199</sup> According to Young, there was also a Ngati Haua tradition that Te Kere once interceded to save the life of Te Kooti in the name of peace and at the King's bidding, although he rejected Te Kooti's use of violent resistance.<sup>200</sup>

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<sup>195</sup> Young, p 57

<sup>196</sup> Young, p 110

<sup>197</sup> Young, p 111

<sup>198</sup> Young, p 111, citing correspondence, Parris to Under Secretary Native Department, *AJHR* 1881 G-3 pp 7-8

<sup>199</sup> Young, pp 130-133

<sup>200</sup> Young p 133

Te Kere was known as a tohunga, healer, and prophet, and led an itinerant life through the lower and central North Island, building a number of ornate houses and gathering a large following of many thousands, including among southern Ngati Tuwharetoa people.<sup>201</sup> He had strong links to the upper Whanganui area and into the Kingitanga movement. His movement was called Pae Tiuihou, translated as ‘sanctuary of new demands’.<sup>202</sup> As part of this movement, he placed a number of hapu followers on interior lands, including in the Tuhua area that later became part of the Waimarino block. This involved hundreds and even possibly thousands of people at the height of his following. Pae Tiuihou supported many Kingitanga objectives, including the rejection or boycott of the Land Court, the promotion of peaceful disruption of the Court process, including surveys, resistance to land selling, and avoiding leasing and debts where they seemed to lead to further land alienations.<sup>203</sup> The movement also strongly supported Maori sovereignty in Maori territory. The movement attracted support from people of the Tuhua, Upper Whanganui, Ngati Maniapoto, Ngati Tuwharetoa, Taranaki and Wairarapa districts.<sup>204</sup>

Te Kere was also a frequent visitor to Parihaka. After the government invasion of Parihaka, Te Kere and Tawhiao visited in 1883, to rebuild relationships between their movements. As part of this, Tawhiao created a number of sacred pou or spiritual supports to preserve and sanctify ancient Maori wisdom. Two of these were named Te Whiti and Te Kere. Tawhiao and Te Kere then went on to Wanganui and after this to Rangitikei, Manawatu, Hawkes Bay, Wairarapa and Wellington, in an effort to rebuild and cement bonds between the communities.<sup>205</sup>

In the interior upper Whanganui area especially, there was also still strong support for the Kingitanga and their policies of boycotting the Native Land Court, resisting land purchasing and pursuing the building of a strong united pan-iwi response to the extension of government authority within those hapu and communities who remained living in their customary areas. Substantial sections of upper Whanganui people still seemed supportive of these policies through the 1870s, and of including their remaining customary land within the larger interior Rohe Potae, under traditional Maori authority. This support remained especially strong within the Tuhua area, and at least the northern part of what were to become the Waimarino lands.

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<sup>201</sup> Young, pp 130-134

<sup>202</sup> Young, p 139

<sup>203</sup> Young, pp 137-138

<sup>204</sup> Young, p 139

<sup>205</sup> Young, p 138

The 1876 Tuhua meeting had acknowledged that the Kingitanga could not directly control all those border communities facing pressures to deal with their lands. Nevertheless it had asked for general support for its policies of protecting the remaining Rohe Potae district and appears to have maintained significant support for this, including for the aukati boundaries that extended into the upper Whanganui area. These appear to have remained relatively intact through the 1870s.

In spite of the pressures that had been applied around the edges of the district, settlers and the Government also generally remained cautious about breaching the aukati. This remained the case even to the early 1880s, when the gunrunner and Pakeha-Maori, William Moffatt, was killed in the Rohe Potae after returning to the area in defiance of the Kingitanga leadership in 1880. In earlier times, Moffatt had been welcomed into the district for his skills as an engineer repairing flourmills and other machinery and his expertise in making gunpowder. He married into communities with strong links to the tohunga Te Kere and in the 1870s lived at Aorangi, about 15 kilometres up the Ohura River from its confluence with the Whanganui River.<sup>206</sup>

However, in time his activities began to undermine his welcome. These apparently included purported land transactions disguised as contracts for gunpowder and mill work and sales of timber from land he did not own. The Tuhua people allowed him to be captured and removed from the district and handed over to government authorities for trial on gunrunning and gunpowder manufacture charges.<sup>207</sup> According to Young, the Kingitanga also decided at the highest level that Moffatt was no longer welcome in the Rohe Potae and informed him of this, warning him not to return. The decision was made by chiefs including Wahanui, Rewi Maniapoto, Taonui and Ngatai te Mamaku. The chief Te Pikikotuku also spoke against him.<sup>208</sup> Ngatai te Mamaku was Topine's younger brother and was gaining increasing influence in the upper Whanganui or Tuhua district by the 1880s, as Topine by now had reached over 80 years of age.

In late 1880, Moffatt did attempt to return following a route from Taupo and along the Manganui o te Ao towards the outlying villages of Taumarunui. He ignored warnings to leave and was met by a Kingite deputation as he crossed the Whanganui River at Matahanea. The deputation including Ngatai, Takarau and Porou, killed Moffatt and allowed his companion to

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<sup>206</sup> Young, pp 163-5

<sup>207</sup> Young, p 167

<sup>208</sup> Young, p 168

go to warn others not to break the aukati without permission. The Government sent no one to pursue the killers, implicitly acknowledging Kingite authority over the district and their judicial deliberations to implement the consequences of their warning to Moffatt. At the time, the settler press and Government appeared to prefer to treat the killing as having no wider significance than the killing of a renegade from both communities. However, other contemporary records appear to recognise a much greater impact. For example, Kerry-Nicholl's account of his trip through the buffer areas of the Rohe Potae just a few years later reveals a noticeable respect for the possible consequences of defying the aukati. Official records, such as a report by Booth on the state of land purchases in the district and the abandonment of a proposed settlement in the Tuhua area, also reveal the impact of the killing on settler interest in the area.<sup>209</sup> It seems the Moffatt killing may also have contributed to a Government decision to abandon attempting to infiltrate into the Rohe Potae through purchasing from the Whanganui district, as will be noted.

The significant support for the Kingitanga and the aukati among interior upper Whanganui people at this time led settlers and the government to generally describe the district as 'Hauhau'. However, it seems that although this support was significant, the people of the district retained their independent right to make their own decisions. They had close connections with sections of Ngati Tuwharetoa and Whanganui who were more inclined to support cooperation and engagement with the government and whose views are likely to have had some influence. They also retained the right to change their approach as experience and their apparent interests seemed to require. In fact, by the early 1880s, there seems to have been a range of views evident in the district. These included those who just wanted to be left alone, as Kerry-Nicholls claimed was the view of some of the Ruakaka people on the Manganui a te Ao by 1883.<sup>210</sup> It also ranged to those who favoured physical rejection of any Pakeha intrusion into the district, and a whole range in between.

Even among those who were generally supportive of Kingitanga polices, there appears to have been a range of views, including those who had begun to doubt the effectiveness of the Kingitanga boycott of the Land Court. Their own experience suggested that the boycott policy and even a slowness to become involved in pre-investigation negotiations had only resulted in lands being awarded to others. Increasingly, the issue for them became how to address the

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<sup>209</sup> Booth report 25 May 1881, NLP 81/285, p 6, MA-MLP 1/9, ANZ

<sup>210</sup> Kerry-Nicholls, p 278

Land Court process and try to manage it or protect against it, rather than simply risk trying to ignore it and possibly lose all legal recognition of any interests as a result.

The approaches taken by various communities and chiefs were also subject to change according to circumstances, experience and changing perceptions of how interests might best be protected or enhanced. For example, a number of chiefs, such as Topine te Mamaku and Topia Turoa had fought against the government during the wars, but later had opposed the Pai Marire and/or Te Kooti, finding themselves allied for a time with Government forces in doing so. Other chiefs, such as Te Keepa, had allied with the Government during the wars, but even while rejecting the Kingitanga, found themselves holding increasingly similar concerns about the damage caused by the Land Court process and the need to protect Maori authority over land.

Some chiefs who had previously opposed the Government also initially supported the post-war land dealing to gain economic benefit from selected lands, such as Te Mamaku had appeared keen to do with the Opatu block, only to find themselves caught up in a process they had difficulty managing. As they experienced the problems of the Land Court process, numbers of chiefs, such as Te Keepa became disillusioned with Government policies and tactics and increasingly found themselves at odds with the Government.

There were also divisions within Maori communities about how best to deal with the Government over the difficulties identified. Some, such as the increasingly influential Ngatai te Mamaku represented the view that some kind of modern pan-tribal movement such as the Kingitanga or the Repudiation movement was the only realistic option for dealing with the Government power in a united effective way. He later represented upper Whanganui in the negotiations between the Government and the interior alliance over allowing the Main Trunk railway through the area in return for Government concessions over Maori land, as will be described in more detail in following chapters. Other chiefs and communities remained concerned that the growth of pan-tribal movements might in themselves threaten to overwhelm traditional iwi and chiefly independence and preferred taking their chances in dealing with their own lands as independent hapu or communities.

These chiefs and communities were often simplistically described by the Government and settlers as 'loyal' or 'hostile' and there was strong criticism of any who appeared to be 'backsliding'. However, this tended to obscure the very real pressures and difficulties such communities were facing in trying to engage successfully with new developments. It seems

their actions and responses are more easily described when their own perceptions of their best interests and their often complex motivations are taken into account. At times these also happened to bring them into alliance with or opposition to Government policies.

## **2.9 Retrenchment in Government land purchasing in Whanganui, early 1880s**

While Whanganui Maori held a range of views about how best to deal with the Government about concerns over the Land Court and land purchase policies, by the late 1870s and early 1880s, this concern had become widespread and had resulted in considerable obstruction by local communities, at the point in the process where they generally became aware of negotiations and could organise resistance to them. This was generally when surveys were being conducted after initial negotiations and preparatory to Land Court hearings to determine or ‘confirm’ title on those involved with negotiations. This was particularly prevalent in the interior Whanganui district, where purchase agents were pushing negotiations regardless of widespread opposition. As Young has noted, the tactics of passive resistance and obstruction to survey, which had become so well known at Parihaka, were also practised in many areas of the Whanganui district at this time.<sup>211</sup> This obstruction included widespread removal of survey pegs and the regular separation of surveyors from their survey gear. Many of the survey instruments were then dismantled and the various parts distributed around the district, sometimes appearing to have been used as symbols of unity between resisting communities.<sup>212</sup>

By the late 1870s, government purchase agents were regularly reporting obstruction with surveys, particularly in the interior Whanganui district. In an 1879 report, Booth noted obstruction to surveys in the Opatu block where some owners were ‘Hauhau’ and therefore opposed to selling or leasing.<sup>213</sup> In July 1879, he also reported that a proposal to sell some upper Whanganui lands had to be reconsidered because of the strength of opposition from counter-claimants.<sup>214</sup> In 1879, Captain Mair reported on armed resistance on the Mangawhero block, involving people from the Manganui a te Ao. He also noted that he had been busy

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<sup>211</sup> Young, p 111

<sup>212</sup> For example, evidence reported by Chas Nelson of Te Pahi Paihou 1880 re obstruction to Booth’s attempts at survey and removal and dispersal of chain and theodolite, report 24 December 1880 in NLP 81/23 in MA-MLP 1/8, ANZ

<sup>213</sup> Booth report, 5 July 1879, MA-MLP 1 /4, NLP 79/193 p 4, ANZ

<sup>214</sup> Booth note for Native Minister, 28 July 1879, MA-MLP 1 /5 , NLP 79/ 294, ANZ

trying to arrange the Rangipo survey but believed there was no chance, without first calling a general Native meeting.<sup>215</sup>

The level of obstruction and resistance appears to have contributed to a Government decision, in late 1879, to instruct Booth not to go ahead with survey arrangements without first obtaining the authority of the Native Minister.<sup>216</sup> When the dispute with Te Keepa over Murimotu arose in 1880, Booth was further instructed to bring all the surveyors working in the area in, and close down the chain work rather than risk further trouble.<sup>217</sup> In April 1880, Booth had also reported survey obstruction in a number of blocks, including Pukearite, Paipaiaka, Te Wharau and Mangaretotara.<sup>218</sup> The continuing difficulties and stoppages over surveys, led in turn to a number of surveyors taking legal action against the Government for loss of income on agreed contracts. For example, a legal claim for compensation in 1880, noted obstructions in a number of blocks, including by the Manganui o te Ao people.<sup>219</sup> The surveyors had no illusions about surveys for the Land Court process, noting the survey contracts over the blocks were made ‘with a view to their being purchased by the government’. In this case the surveyors claimed compensation for the early termination of the contract due to obstructions by Maori.<sup>220</sup>

The increasingly disruptive survey obstructions also happened to coincide with a looming economic recession and from 1879 a new Ministry determined to cut back on what was regarded as a bloated public service, especially the Native Office. The staffing of the Wanganui Land Purchase Office had already been under review, with recommendations made to the Native Minister that the services of Richard Booth should be terminated from the end of the year. It was also recommended that Buller, who was already on leave, should have his service terminated.<sup>221</sup>

The new Native Minister, John Bryce, appears to have been determined to further review the office, and government land purchasing generally. Bryce appears to have been unimpressed with the state of the Native Land Court and the system of making advances on purchases mainly because he had come to view them as an impediment to extensive land settlement in

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<sup>215</sup> Mair report, MA-MLP 1/5, NLP 79/655, ANZ

<sup>216</sup> Instructions, Land Purchase Under Secretary Gill to Booth, 10 December 1879, MA-MLP 1 /5, 79/595, ANZ

<sup>217</sup> Instructions Gill to Booth, 21 April 1880, MA-MLP 1/7, NLP 80/303, ANZ

<sup>218</sup> Booth return on surveys, 29 April 1880, MA-MLP 1/7, NLP 80/313, ANZ

<sup>219</sup> For example, claims by surveyors, MA-MLP 1/7, NLP 80/531 and attachments, ANZ

<sup>220</sup> file correspondence Beere and Barclay claim, NLP 81/212, MA-MLP 1/9, ANZ

<sup>221</sup> H T Clarke, memo re land purchase estimates for 1877-78, MA-MLP 1/5, NLP 79/639 , ANZ

the North Island. In 1883 he explained that he had become convinced that the Land Court system had become unsatisfactory and that attempts to purchase Maori land before title was ascertained had been a 'great cause' of the difficulties with the Land Court.<sup>222</sup> He also believed that competition between government and private agents had been damaging for effective and rational land acquisition and settlement. He noted that on becoming part of the new government he had, therefore, decided to curtail the existing system of government land purchasing as much as possible, winding up purchases in progress and scarcely beginning any new ones.<sup>223</sup> Bryce stated that he much preferred a return to Crown pre-emption in purchasing Maori land, although he recognised this was not politically acceptable to settlers in the early 1880s.<sup>224</sup> The economic recession of the 1880s also seems to have assisted Bryce in his determination to cut back the existing system of land purchasing as can be seen in the reports he requested to review the state of government land purchasing in the Whanganui district. It seems apparent from these that the fall in land values, especially for the more inaccessible, isolated interior lands meant that existing land purchasing in many of these areas had ceased to be economically viable.<sup>225</sup>

It appears that the Wanganui Land Purchase Office was significantly reduced as part of Bryce's new policies and the economic recession that also caused wider retrenchment in the public service. James Booth still remained in the office but was instructed in late 1880 that his salary was to be reduced by £100 per year to £500 per year from 1 January 1881. Booth's duties were now also divided between land purchase and Native Office responsibilities as government agent in the district, with his salary to be paid equally by the land purchase and Native Office.<sup>226</sup> In the process, he replaced Woon, taking over his duties from early 1881, combining land purchase and general government activities even more closely in the Whanganui area. In 1880, it was also decided to terminate the service of the office clerk for the Wanganui office, H T Wright. It was expected that land purchases were to be 'greatly curtailed' in the district, and therefore a new clerk could be hired at a reduced salary.<sup>227</sup>

A return of March 1880, shows the Wanganui Land Purchase office with a much reduced staff of James Booth, Gilbert Mair and Mete Kingi.<sup>228</sup> Booth and Mair were now also working

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<sup>222</sup> Bryce, *NZPD*, 1883, vol 45 pp 456-7

<sup>223</sup> Bryce, *NZPD* 1883, vol 45, p 459

<sup>224</sup> Bryce, *NZPD* 1883, vol 45, p 460

<sup>225</sup> For example, Booth report, 25 May 1881, NLP 81/285, p 2, MA-MLP 1/9, ANZ

<sup>226</sup> MA-MLP 3 /4 , p 6 , letter 18 December 1880, ANZ

<sup>227</sup> Bryce recommendation, NLP 80/51, MA-MLP 1/6, ANZ

<sup>228</sup> return 18 March 1880, MA-MLP 1/6, NLP 80/211, ANZ

reduced hours on land purchase duties, as part of their time was also spent on Native Office responsibilities. A further return of 1881 noted that the services of Major Kemp (Te Keepa) and Mete Kingi had also been dispensed with.<sup>229</sup> Records for the 1882-83 financial year, show that by 1882, the Wanganui office had been reduced to just one agent, James Booth. He also appears to have been employed in land purchase on a part time basis, as he was being paid just £250 per annum for these duties.<sup>230</sup> At the end of that financial year, in March 1883, Booth was transferred to Gisborne and the Wanganui office appears to have been closed. Government land purchasing in the district temporarily ceased, although government officials still encouraged lands to be brought before the Native Land Court, and private land purchase agents remained active.

At the same time as the office was being reduced, Bryce appears to have questioned the wisdom of pushing surveys for the Land Court into difficult country that was isolated from settlement and unlikely to be developed in a time of economic recession. For example, in the case of obstructions in the Murimotu area in 1879, he noted that he was not anxious that such surveys should be pressed unduly forward as he could see no public good to be gained in doing so.<sup>231</sup> He also appears to have instructed Booth to provide a report re-appraising the state of government purchasing in the district, presumably in light of the economic recession and whether purchases were likely to be completed within a reasonable time. Only the most valuable and realistically achievable land purchases were to continue and they were to be closed as quickly as possible, with the rest being abandoned.

In response, Booth submitted a report on the state of purchases in the district in May 1881, which was more revealing of the real state of Maori land purchasing than his previously optimistic returns. In this report, Booth noted that in many cases in the upper Whanganui interior district, the lands under purchase were unsuitable for immediate settlement. They tended to be isolated, often with difficult access, and on steep, broken country with a dense bush cover. With the economic recession most of these lands had now depreciated significantly in value since purchase negotiations had first begun. For example, he described the Mangakaretu block as containing very rough to broken country, with good soil, but steep

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<sup>229</sup> 1881 return, NLP 81/242, MA-MLP 1/9, ANZ

<sup>230</sup> memo 1882, land purchase memo book, MA-MLP 4 /2, ANZ

<sup>231</sup> Bryce note, 16 December 1879, on NLP 79/655, MA-MLP 1/5, ANZ

and covered with bush. He recommended the Government abandon the purchase of this block because it was unsuitable for settlement and the land had depreciated in value.<sup>232</sup>

Booth reported similarly regarding the Mangatawhero, Ngapuinga and Puketotara blocks, located about 50 miles up the Whanganui River, and the Raoraomoutu and Mangapukatea blocks some 100 miles up river, all in the upper Whanganui district.<sup>233</sup> Booth was also much more revealing about the scale of obstructions, especially regarding attempts at survey. He reported obstructions and resistance to sales in a number of blocks. These included the Okehu block near Murimotu and adjoining the Maungakaretu block. He noted 'great difficulty' in completing this purchase as the owners had joined with Major Kemp's movement and wanted 'to repudiate all former land transactions'. Booth claimed the owners had been told that all payments on account of purchases of land that had not been investigated by the Land Court were absolutely illegal and could not be recovered. (Presumably this information had come from the Repudiation movement). Booth claimed that as a result the owners had jumped to the conclusion that government purchases were 'also included' in this. As a result Booth claimed there was a great deal of sympathy for Kemp amongst those who 'having eaten their cake, still wish to have it'.<sup>234</sup> Booth described similar problems with the Whataroa block, in the Murimotu district. He anticipated difficulties completing this purchase as well, with the sellers having joined Kemp's party and 'gone in for repudiation'.<sup>235</sup>

Booth included in this report reference to blocks in the Upper Whanganui district some of which were likely to have contained lands later included in, or nearby to, what was to become the Waimarino block. None of these blocks had been surveyed. These included the Opatu block to the west of what was to become Waimarino and opposite the Kirikau and Retaruke blocks. Booth noted it was 6357 acres and located 200 miles up the Whanganui River. The price per acre had been fixed at 5 shillings and £1359 10s had already been spent on advances. Opatu formed part of what was originally intended to be a large settlement block (also including the Kirikau and Retaruke blocks) in the Tuhua district in what was then the heart of the King district. However, Booth believed that the recent murder of Moffatt

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<sup>232</sup> Booth report, 25 May 1881, NLP 81/285, p 2, MA-MLP 1/9, ANZ

<sup>233</sup> Booth report, 25 May 1881, NLP 81/285, pp 3-4, MA-MLP 1/9, ANZ

<sup>234</sup> Booth report 25 May 1881, NLP 81/285, p 2, MA-MLP 1/9, ANZ

<sup>235</sup> Booth report 25 May 1881, NLP 81/285, p 5, MA-MLP 1/9, ANZ

committed in the neighbourhood, meant there was now 'no immediate prospect of completing the purchase of this block'.<sup>236</sup>

Booth reported a similar situation with what he called the Kawautahi block of some 9000 acres) located about 200 miles up the Whanganui River and adjoining the Kirikau and Retaruke blocks. The price per acre had been fixed at 7/6 and £367 14s 2d had been paid in advances. This block was also supposed to have been part of the large settlement scheme and completing this purchase appeared unlikely for the same reason.<sup>237</sup> The Kawautahi block does not appear to have survived and, from the description, the lands within it are likely to have later been included in the Waimarino block. Booth also described a block named Ngatukuwaru, of around 2000 acres, adjoining the southern boundary of the Retaruke block. The price for this had also been fixed at 7/6 per acre and £150 had been paid in advances. Booth noted this block was in a similar position to the Opatu and Kawautahi blocks.<sup>238</sup> Again it seems likely that these lands were also later included within what became the Waimarino block.

Booth also described the Ruapehu block, of 12,000 acres. He claimed that Major Kemp had originally negotiated the purchase 'on behalf of the Native claimants'. The purchase price had also been fixed at 7/6 per acre and £2121 5s 11d had been paid in advances. All attempts to survey it had then been opposed by the Manganui a te Ao people. Booth believed there was 'no chance' of obtaining a refund of the money advanced.<sup>239</sup> The 1880 land purchase sketch map, reproduced as map 3, shows Ruapehu as containing lands likely to have been later included in Waimarino.

Booth reported that the acreage of the Owhango block was not known and nor had a price per acre been fixed, although £15 advances had been paid on it. Booth recommended the block 'be abandoned'.<sup>240</sup> As noted previously, Owhango is likely to have at this time included some lands later included in the Waimarino block. Booth reported that the Wairau block of possibly 1000 acres, where the price per acre had also been fixed at 7/6, should also be abandoned for the same reason as nearby blocks. £25 had been paid in advances on the Wairau block.<sup>241</sup> The

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<sup>236</sup> Booth report 25 May 1881, NLP 81/285, p 5, MA-MLP 1/9, ANZ

<sup>237</sup> Booth report 25 May 1881, NLP 81/285, p 6, MA-MLP 1/9, ANZ

<sup>238</sup> Booth report 25 May 1881, NLP 81/285, p 6, MA-MLP 1/9, ANZ

<sup>239</sup> Booth report 25 May 1881, NLP 81/285, p 9, MA-MLP 1/9, ANZ

<sup>240</sup> Booth report 25 May 1881, NLP 81/285, p 9, MA-MLP 1/9, ANZ

<sup>241</sup> Booth report 25 May 1881, NLP 81/285, p 10, MA-MLP 1/9, ANZ

1880 land purchase sketch map, (reproduced as map 3) shows the Wairau block adjoining the Ruapehu block to the east. It also appears to have included lands later included in Waimarino.

The same 1880 sketch map shows the Omata and Huikumu blocks along the Manganui a te Ao River near its confluence with the Whanganui. It seems likely that at least part of these blocks were also included in what later became Waimarino. Booth described Huikumu as 1206 acres of very good land in the Manganui a te Ao area, but with the only access by way of Murimotu and then through what was then known as the Rangataua block. If the Rangataua purchase was abandoned then Booth felt the Huikumu would need to be as well. The price per acre was 7/6 and £138 18s 9d had been advanced.<sup>242</sup> Omata contained 4000 acres and was rough, broken, bush country about 80 miles from Wanganui town, with no access except by water. The price per acre was again 7/6 and £122 had been spent in advances.<sup>243</sup>

The report was similar for other upper Whanganui blocks nearby what became Waimarino lands, many of which were also being purchased at 7/6 per acre. In many of these, Booth also noted that obstructions to surveyors had prevented further progress with the purchase of the blocks. For example, for the Taramouku block in the upper Whanganui he noted the surveyor was not allowed to survey all the land offered for sale. He recommended that the overpaid balance (presumably of advances of which there were £122 1s 8d) be charged against another block claimed by same owners.<sup>244</sup> In the Paraeapuia block in the Murimotu district, acreage unknown, Booth also reported that survey was 'impossible' due to 'Native obstruction'.<sup>245</sup>

The situation was similar for the Te Ranga block of 4000 acres, where 'Native obstruction' also made survey impossible. According to Booth, some of the sellers had joined with Te Whiti and gone to Parihaka, while others had joined Kemp 'and neither party is now anxious to complete the sale'.<sup>246</sup> Booth reported there was also 'no chance' of a survey for the Upper Whanganui Tanupara and Tataorumo blocks, owing to Native obstruction.<sup>247</sup> There were also 'difficulties in the way of getting a title' to the large Ohura block of about 20,000 acres about 150 miles from Wanganui town.<sup>248</sup>

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<sup>242</sup> Booth report 25 May 1881, NLP 81/285, p 3, MA-MLP 1/9, ANZ

<sup>243</sup> Booth report 25 May 1881, NLP 81/285, p 9, MA-MLP 1/9, ANZ

<sup>244</sup> Booth report 25 May 1881, NLP 81/285, p 6, MA-MLP 1/9, ANZ

<sup>245</sup> Booth report 25 May 1881, NLP 81/285, p 6, MA-MLP 1/9, ANZ

<sup>246</sup> Booth report 25 May 1881, NLP 81/285, p 6, MA-MLP 1/9, ANZ

<sup>247</sup> Booth report 25 May 1881, NLP 81/285, pp 7-8, MA-MLP 1/9, ANZ

<sup>248</sup> Booth report 25 May 1881, NLP 81/285, p 10, MA-MLP 1/9, ANZ

In the majority of these cases, Booth recommended that with the distance from town, the difficulties of access and the difficulties of progressing with the purchase due to owner obstruction, the purchases should be ‘abandoned’. ‘Abandoned’ meant as far as possible closing down a purchase, while minimising losses to the Government. As Bryce noted in 1882, ‘abandoned’ was contingent on advances being returned and in some cases the Crown’s interest being defined by the Native Land Court. The aim, as far as possible, was to avoid total loss to the government.<sup>249</sup>

It was Government policy to either abandon purchases altogether, as long as the owners paid back all advances and survey costs, or if this seemed unlikely, or the Government especially wanted to retain some land, it meant going to the Land Court. The Court would be asked to make an award to the Crown equivalent to the advances claimed. This at least gave the Crown an opening into the block and of course still required the agents to manage the cases to ensure the sellers they had dealt with over advances were confirmed. For example, in the case of the Te Huri block, Booth recommended that, as there was no prospect of survey due to Native obstruction, the Natives should be asked to repay the advances of £50. If they were unable to pay, then the Government should move to Court action.<sup>250</sup>

In the case of the upper Whanganui blocks likely to contain what later became Waimarino lands, noted above, Booth generally recommended that the purchases be abandoned and in most cases that the Court be asked to define the Crown interest. He does not appear to have believed there was much chance of the Government recovering any advances paid in these areas. For example, in the case of the Ruapehu block, he reported there was ‘no chance’ of recovering the advances.<sup>251</sup> Land purchase officials considered this report, and then Under Secretary Richard Gill further recommended for these blocks that for Huikumu, the purchase should be completed.<sup>252</sup> For the Kawautahi and Ngatukuwaru blocks, he advised that as they adjoined Crown land, while the purchases should be abandoned, the Court should still be asked to define the Crown interest.<sup>253</sup> In the case of the others, the Ruapehu, Omata, Owango, and Wairau blocks, he recommended that the purchases be abandoned and the blocks not even surveyed, as any attempt to survey would likely cause disturbances. The advances should be recovered if possible but he did not think the Land Court could define the

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<sup>249</sup> Bryce file note, 28 August 1882, NLP 82/343, MA-MLP 1/12, ANZ

<sup>250</sup> Booth report 25 May 1881, NLP 81/285, p 7, MA-MLP 1/9, ANZ

<sup>251</sup> Booth report 25 May 1881, NLP 81/285, p 9, MA-MLP 1/9, ANZ

<sup>252</sup> Booth report 25 May 1881, NLP 81/285, p 3, MA-MLP 1/9, ANZ

<sup>253</sup> Annotation of Richard Gill, p 6, Booth report, 25 May 1881, NLP 81/285, MA-MLP 1/9, ANZ

Crown interest as the owners were not yet known and payments may have been made to the wrong people.<sup>254</sup>

In July 1881, Gill instructed Booth that he was to use the Native Land Court sitting at Wanganui to complete the purchases for chosen blocks as soon as possible. Once lists of owners were made, he was to immediately try and complete the purchases. If the owners refused to complete the sale, he was to have the Court define the Crown's interests and make the appropriate orders, using section 6 of the Native Land Act 1877 which, as noted previously, enabled the Minister to apply to have the Crown's interest defined by partition. In the case of other blocks, he was to obtain an order defining the Crown interest when the case was being heard. In some blocks it seemed more had been paid than was required. Gill acknowledged that the excess was probably lost, but that this should not prevent the Court making an award to the value as far as possible.<sup>255</sup> It seems that the upper Whanganui blocks, identified as being likely to have been included in later Waimarino lands, were not pursued through the Court at this time.

Nevertheless, the attempts to close up purchases while minimising Crown losses as far as possible, do appear to have created a flurry of activity involving the Native Land Court and the definition of Crown interests. This may have appeared to indicate a surge in Government purchases but was in fact part of the process of 'abandoning' them. In the case of the steep, isolated and generally forested upper Whanganui/Tuhua area, the government simply appears to have abandoned most efforts to recover advances, or even take the blocks to the Court, largely because of the difficulties of proceeding with surveys.

As noted, by 1883, the Wanganui land purchase office appears to have effectively been closed. Nevertheless, the government land purchasing system of the 1870s and to this time, may well have had important implications for later developments with Waimarino lands. At least some of the upper Whanganui communities had experienced this government purchase system and had developed understandings and expectations as a result. They had learned that the system generally began with secret deals or negotiations and payments, some of which were later claimed to be purchase advances. This early negotiation stage could be prolonged and it was not unusual for some interests to come in (or leave) through the process or for block boundaries and names to change. The claimed boundaries often only really became

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<sup>254</sup> Annotation of Richard Gill, pp 8-10, Booth report, 25 May 1881, NLP 81/285, MA-MLP 1/9, ANZ

<sup>255</sup> copy of letter, Gill to Booth, 18 July 1881, pp 160-2, MA-MLP 3 /4, ANZ

clear when surveys began prior to a Court hearing. They had also learned that the survey stage offered the most opportunity to organise opposition and obstruction. Protests were often made through written complaints and petitions, but obstruction to surveys was often the most effective strategy. Upper Whanganui communities had learned that resistance at this stage could be very successful, and if well organised it could effectively overturn the earlier dealing and prevent a Land Court hearing. Some communities had also learned they could reject claims of earlier deals at this stage and refuse to repay any claimed advances, although there was always the concern that at some stage the government might insist on Court awards in land to meet the claimed advances. In other cases, communities found they could negotiate with the government to have claims abandoned, as long as claimed payments were repaid.

The difficulties encountered in the interior appeared to reveal some of the limitations of the government policy of using purchase pressure to undermine autonomous areas when purchasing got too far ahead of settlement and into areas that were generally hostile, inaccessible and isolated. At the same time, the apparent abandonment of purchasing may have created a false sense of security for some of the interior communities. Obstruction was an important factor, but as noted the reduction was also driven by other reasons. Bryce's ruthless invasion of the Parihaka community on 5 November 1881 revealed the limitations of obstruction in the face of a government determined to settle and develop an area. At the same time, even though government agents appeared to have had little success in purchasing in the interior in the 1870s, they had made useful contacts and gathered important information for the future should the government decide to press ahead with purchasing again. Pressure was also still continuing from private agents and from pressures to secure land by taking it to the Court.

What the temporary reduction in government land purchasing did do, was to contribute towards creating an opportunity for interior communities and the government to turn to negotiations again, in an effort to engage in a more managed opening of the North Island interior.

## **2.10 Conclusion**

In the early post-war period, government policies of promoting public works, immigration and purchases of Maori land were extended into the Whanganui district. Maori land purchasing was also closely linked to the new institution of the Native Land Court, and the Court process was increasingly developed in ways that assisted in the alienation of Maori

land. Government land purchasing in the Whanganui district during the 1870s was primarily focussed on acquiring lands for settlement. At the same time, it was recognised that a large settler population extending into the interior would not only help ensure the security of Wanganui township, the strategic placement of some settlements along the southern borders of the aukati would also help undermine and limit the Aotea Rohe Potae and the Kingitanga. For example, the early purchases of the Retaruke and Kirikau blocks in the upper Whanganui interior were intended to form the nucleus of a settlement right at the southern edge of the Rohe Potae.

The main style of purchasing in the 1870s for both government and private purchasers was to work out a system of land blocks and to make advances to selected owners on these blocks to begin purchases in them. Attempts would then be made to continue purchasing in the blocks until a significant portion was considered sold. The blocks would then be taken to the Native Land Court for investigation, the land purchase agents seeking to manage the case and evidence to ensure that those they had paid money to would be confirmed as the main owners. From 1877, government agents were also able to use proclamations restricting private dealing to better protect the government interest in acquiring selected blocks. By the late 1870s, this system of purchasing was being extended into the upper Whanganui district, including into what were to later become lands within the Waimarino block.

This system of land purchasing raised issues for both the Government and Whanganui Maori communities. Some settler politicians became increasingly convinced that the system of making sometimes quite small advances over a large number of blocks and then taking many years to complete the purchases, while still having to go through the Native Land Court to have them confirmed, was wasteful, time consuming and risky. This seemed especially so by the late 1870s as the economy went into recession and many interior blocks hardly seemed to be worth the money being spent on them. The payment of advances and dealing with only selected owners was also recognised as causing a great deal of dissension and conflict among Maori communities and this was increasingly blamed for the litigious and lengthy nature of many of the subsequent Land Court cases. Some believed this was further worsened by land agents seeking to support 'their' groups of owners against others. Many settlers and politicians came to believe this litigation and delay threatened to clog up the Land Court and hinder further land alienation. The dissension and protests the purchase tactics caused among Whanganui Maori were also seen to be counter-productive in causing disillusionment and loss of support among many of the more moderate Whanganui leaders, such as Te Keepa and

Mete Kingi. In the interior upper Whanganui districts in particular, community concerns had also led to widespread obstruction to surveys necessary for the Land Court process, causing further delays and uncertainty.

If the Government wished to pursue a more focussed and effective system of rapid and extensive land purchasing from Maori in the district, it had to encourage more widespread trust and less obstruction to its policies among Whanganui Maori communities. It also had to find ways of avoiding bottlenecks and delays in the Land Court hearing process, including the widespread obstruction of surveys required for title investigations.

The 1870s purchasing system also raised issues for Whanganui Maori communities. There was a considerable divergence of opinion about how to best address the extension of settlement and land purchasing even among the upper Whanganui communities where support for Kingitanga policies was strongest. There was significant interest in entering into and encouraging new economic developments in order to promote prosperity and overcome the hardships and economic dislocation caused by the wars. The difficulty was in participating in this in ways that did not involve extensive loss of land and authority, and subsequent economic marginalisation. Many communities appear to have agreed to enter 'sale' agreements or at least the Land Court process because they believed this enabled them to protect their interests and to benefit from resulting economic development. The results of the Land Court process in assisting to undermine their collective authority and facilitating the loss of considerably more land than they anticipated caused significant concern and disillusionment.

The system of secret dealing, the adversarial nature of the Court process and the creation of individual title rights undermined community attempts to rationally manage land use. The dealing with selected owners and subsequent manipulation of title investigations also encouraged destructive dissension and internal conflicts. Attempts to reform the purchase and Land Court system or at least to protect some land outside it were also generally unsuccessful. Even the Kingitanga leadership appeared to recognise the impossibility of requiring independent communities to follow its policies. All that could be asked for was the support and trust of those communities in attempts to reform the system to make it more responsive to Maori concerns and interests. Increasingly, however, even some upper Whanganui leaders, such as Topine te Mamaku insisted on their rights to deal in lands according to what they saw as the best interests of their communities.

There were also issues of how best to ensure adequate reforms or protections were instituted. As a form of protest, the tactics of passive obstruction of surveys before the Land Court investigated title had proved partially effective. However, these were really only viable in the interior outside the easy reach of government forces, as shown by the invasion of Parihaka. Effective reforms seemed to increasingly require direct negotiations and consultation with the Government.

By the early 1880s, the prospect of a major new public works development, the Main Trunk Railway, provided the opportunity for both the Government and Whanganui Maori to engage in new negotiations over land settlement and purchase policies, reform of the Native Land Court process and opportunities for more equal participation in expected economic benefits from the railway. For the Government, the perceived need for rapid progress with the railway and associated settlement highlighted the inadequacy of the current system of piecemeal, uncertain and time consuming land purchasing. The Government wanted to acquire land as quickly as possible in the chosen area of for the railway, with a minimum of obstruction from Maori. In addition, whichever route was chosen for the Main Trunk railway, it was likely to involve at least some King Country land. This made the need for negotiations and consultation even more necessary as the only realistic means of dealing rapidly with Kingitanga iwi and hapu. This included those Kingitanga-supporting communities of the upper Whanganui or Waimarino district. The negotiations over the railway and reforms generally are the subject of the following chapter.

## **Chapter 3 Aotea Rohe Potae negotiations, 1882-85**

### **3.1 Introduction**

As described in the previous chapter, the Crown was concerned to undermine and break down the Aotea Rohe Potae. The Government had rejected any idea of separate Maori-managed districts and regarded Kingitanga policies rejecting the Land Court and extensive dealing in lands, as an obstacle to the promotion for more extensive Pakeha settlement. The most the Government appeared willing to tolerate was short-term acceptance of an 'imaginary' Maori kingship. In the 1870s, the Government had made a few unsuccessful attempts to negotiate with the Kingitanga leadership, but for the most part had been content to undermine Kingitanga boundaries and support through land purchasing and the relentless spread of the Land Court around the Rohe Potae. By the late 1870s, on the southern edge of the district, this had included the extension of advance purchase payments for land into the upper Whanganui and what were to become Waimarino lands.

By the early 1880s, however, there were serious concerns about whether the Land Court could move rapidly and effectively enough to promote settlement. The meandering process of land purchasing, through early negotiations and gradual payment of advances until a sufficient proportion of a block could be considered sold, followed by surveys and finally increasingly protracted Land Court battles to determine or 'confirm' ownership to the sellers of a block, was widely seen as hindering 'progress'. What many critics failed to realise was that this same protracted process was also often the only means of extracting land from unwilling owners. At the same time, Whanganui Maori opposition to the process had been spreading and deepening and widespread obstructions to surveys for the Land Court process were threatening even longer delays if not the complete prevention of purchasing in some areas. The economic recession was another factor in causing reconsideration of some of the more isolated and most widely opposed purchases.

By the early 1880s, another issue began to require the Government to further reconsider its tactics. This was the prospect of a major public works project, the completion of the middle section of the North Island Main Trunk railway between Auckland and Wellington. Although the final route of this railway had not been chosen at this time, there was a very strong likelihood that a large part of it would need to run through the Aotea Rohe Potae. This was not the kind of project that could rely on the previous piecemeal and somewhat haphazard mix

of Government and private land purchasing that currently existed. Nor could it be rapidly finished with the prospect of widespread survey obstruction along the route, not to mention the stiff physical resistance such an intrusion might provoke. At this time, (even though it was reluctant to acknowledge it) the Government was not confident of chasing even criminals over the aukati.

The most promising alternative seemed to be for the Government to enter new negotiations with the Rohe Potae leadership and convince them to agree to the Main Trunk railway in the interests of both Maori and Pakeha communities. This chapter covers this period of negotiations from around 1882 to 1885, and the understandings and expectations forged between the Crown and significant sections of the Aotea Rohe Potae leadership at this time, now generally known as the Rohe Potae compact or agreement. These negotiations, although focussed on the railway, were also concerned with agreements over the wider issue of a managed opening of the Aotea Rohe Potae or King Country and its border areas to economic opportunity in ways that provided for a significant level of participation and management for Maori communities. Some upper Whanganui lands were included within these negotiations, particularly the Tuhua lands, within what became the northern part of the Waimarino block, and expectations and understandings created by the negotiations played a significant role in the later creation of the block.

These negotiations were not easy and their protracted nature over a number of years indicates how hard fought they were. The prospect of a North Island Main Trunk railway remained the direct focus and the various stages in preparation for building the railway also largely mirror the various stages of the negotiations. At all these stages, the Government focussed on obtaining what was directly required for the railway, while being obliged to agree to a series of concessions and reforms. The Rohe Potae leadership also held out at every stage of the railway for concessions and reforms that would provide them with the means of conducting a managed opening of the district, avoiding as far as possible the harmful impacts and loss of land that seemed characteristic of the 1870s process, while also participating in expected economic benefits in a controlled and managed way with hapu and iwi authority largely intact.

The negotiations were also made more difficult (and confusing) by the Government refusal to recognise the collective authority it was effectively dealing with. As Native Minister McLean had indicated years before, the Government preferred to regard the Kingitanga as an ‘imaginary’ kingship and its collective authority (or any attempt at pan-iwi action) as illusory.

Nevertheless, the Government did negotiate with the ‘illusory’ collective authority of the interior alliance over the railway. What was essentially a collective agreement was also very useful to the Government in gaining access for a railway route that was likely to run through several iwi and hapu territories. The Government was never willing to acknowledge the interior alliance, however, and as soon as possible returned to dealing with various iwi and hapu separately, recognising no form of tribal authority substantially different from what any chief could claim, as McLean had insisted. This insistence was eventually successful, as by the late 1890s, the continuing development of the Rohe Potae compact had largely been redefined as a Government-Ngati Maniapoto relationship, while the recognised Aotea Rohe Potae district had also become limited to largely Ngati Maniapoto lands.

### **3.2 The beginning of the Rohe Potae negotiations, and the ‘split’ in the Kingitanga**

The initial stages of what became known as the Rohe Potae compact appear to have begun in 1882, with a renewal of negotiations between the Kingitanga leadership and the Government. The direct catalyst for these negotiations was the prospect of joining up the North Island Main Trunk railway between the already built northern and southern ends at the railheads of Te Awamutu and Marton. A number of lesser railway routes and allied roads had already been completed as a result of the public works schemes of the 1870s. The concept of a linking North Island Main Trunk railway had always been considered an important part of this development but had not been tackled by this time. Now it seemed that if economic growth was to continue, the linking main trunk line had to be built. Extension of settlement into the interior had begun to stall because of difficulties with access, isolation and the consequent low value of interior lands. As described in the previous chapter, this was one reason why the Government had begun to abandon purchases in the upper Whanganui area. The linking of the northern and southern ends of the North Island Main Trunk Railway, seemed to offer the means of overcoming this kind of difficulty and further boosting economic growth and settlement by opening new lands and resources such as timber to economic use. In the process, this development, by promoting settlement and the extension of government authority, was also confidently expected to assist the Government objective of undermining the autonomy of interior Maori communities.

The impending construction of the Main Trunk railway was therefore of considerable political importance. The Government also appears to have been convinced that strong, central management was required to build the railway and the necessary infrastructure such as linking

service roads so that the full economic benefit from it could be realised. In addition, many influential politicians had begun to favour a managed, centralised policy of acquiring and developing the lands surrounding the proposed railway so that settlement and economic developments could be most effectively encouraged. Previous policies providing for a competitive, unmanaged mix of Government and private purchase of Maori land, and the gradual, piecemeal acquisition of blocks through purchase advances and later Land Court investigation were losing favour. These policies had resulted in long delays at the Land Court investigation stage as purchasers sought to promote ‘their’ interests and the necessary surveys for the Court had provoked considerable ‘obstruction’ in the interior.

The Native Minister, John Bryce, told Parliament in 1883, that he believed that the Native Land Court system had become unsatisfactory and the system of purchase advances had resulted in great difficulties and delays when the Native Land Court came to investigate title.<sup>256</sup> He also lamented the end of Crown pre-emption in purchasing Maori land as playing to the interests of speculators and land companies and undermining close settlement.<sup>257</sup> The expensive, time consuming delays threatened to undermine the economic benefits possible from a rapid development of the railway. The alternative prospect of negotiating an agreement with interior iwi over the opening of the district, or at least of allowing the railway through, appeared to offer the Government an opportunity to undertake more rapid, managed development of the interior.

The Government need for the railway and its resultant willingness to consider renewed negotiations with the Kingitanga also coincided with a Kingitanga willingness to also negotiate with the Government. The Kingitanga was determined to maintain some kind of managed district under Maori authority but in the post-war period the leadership also had to seek new forms of economic opportunity for their communities. By the early 1880s, the leadership had also realised that increasing pressure from the Land Court process around the edges of the district was having an impact and would eventually prove destructive and unmanageable if some alternative was not found to enable an actively managed, controlled opening of the district to new economic opportunity.

Historians such as Ward have noted that from the early 1870s, there was already considerable trade between the King Country and other areas in crops, livestock and other goods across the

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<sup>256</sup> *NZPD* 1883, vol 45, pp 457-458

<sup>257</sup> *NZPD* 1883, vol 45, pp 458-460

aukati lines.<sup>258</sup> However, new economic developments appeared to centre on the move to pastoral farming and large areas of land were required for this. New economic opportunity appeared to lie in leasing out areas of land for farming, while encouraging small settlements including Pakeha, which would attract development and provide new markets. The burgeoning public works programmes such as road and rail contracts offered the possibility of much needed cash following the economic dislocation of war and capital to develop long term enterprises such as farming. The major difficulty was in managing and controlling these developments, so that Maori authority could be retained and Maori communities could effectively benefit from new developments, without being marginalised from them.

The individual and often secretive land purchasing of the 1870s and associated Native Land Court activity around the edges of the district were seen as pressures that undermined and threatened this management. It was accepted that secure, legally recognised title to land was necessary if it was to be used for new developments. However, there was concern that the Land Court was not providing this in a way that suited Maori communities. The experience of the Court process was closely associated with the loss of Maori land and the destruction of customary Maori authority rather than the protection of Maori communities in their holding and economic use of land. Nevertheless, the Kingitanga boycott of the Court was proving very difficult to implement. The boycott was easier for those Waikato refugees who had already lost their customary lands to confiscation. They had little more to lose. However, for those iwi who still held customary interests in interior Rohe Potae and around its borders, the boycott was much more problematic.

The Native Land Court had reached the edges of the district by the early 1880s, and those who boycotted it found they risked simply having their land awarded to others. This was evident by the early 1880s, with the Land Court investigating blocks in the Waikato district to the north of the Rohe Potae, in Taupo to the east and in Whanganui and Taranaki to the south. For example, in 1882, the Native Land Court sat at Waitara to determine lands between the Taranaki confiscation boundary and the Mokau River, including the Mokau Mohakatino block.<sup>259</sup> This was one of the first instances where Kingitanga leaders broke the Native Land Court boycott. The chiefs Rewi Maniapoto and Wetere Rerenga supported a Ngati Maniapoto application to the Court over the block, evidently feeling unable to allow Ngati Maniapoto

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<sup>258</sup> Ward, *A Show of Justice*, p 265

<sup>259</sup> Marr, 'The Alienation of Maori Land in the Rohe Potae (Aotea block)', p 13

interests in the lands pass to Ngati Tama claimants uncontested. In 1882, Murimotu lands to the southeast (and south of what became the Waimarino block) also began passing through the Court. This continuing Court activity was placing a great deal of pressure on the district and iwi leaders appear to have recognised that urgent reform was required to retain Maori authority over the remaining customary lands of the district.

Physical resistance to the Land Court and surveys was still possible in the interior but it was not a long-term solution, especially with a determined Government, as had been shown with the invasion of Parihaka under Bryce in 1881. There was also apparently some lingering concern that the recent Kingitanga killing of Moffatt might provide a rationale for Government retribution and possibly more land confiscations. It seemed that negotiations would defuse some of this tension. At the same time, significant sections of the Kingitanga leadership saw the Government need for a railway as a critical opportunity for more realistic negotiations. The offer of some concessions over the railway was seen as a means of building goodwill and good faith with the Government so that in turn, the Government would enter more meaningful negotiations over reforms that would protect Maori authority in the management of their lands.

By 1882, the Kingitanga leadership appears to have collectively decided to engage in negotiations with the Government over the railway as a means of gaining concessions and reforms they desired. These objectives did not necessarily rule out further economic development but required significant Maori control over it. For example, in 1881, the government agent, W G Mair, had reported that the Kingitanga wanted to preserve Maori land but was not opposed to leasing.<sup>260</sup> This was followed by an important hui at Whatiwhatihoe in May 1882. This was attended by chiefs representative of major iwi and hapu of the Aotea Rohe Potae, many of whom were also Kingitanga supporters. Discussions covered issues and proposals over land purchasing, surveys and the Native Land Court. Reports of the meeting indicate a widespread willingness to have some form of negotiated, managed opening of the Rohe Potae. They also noted widespread concern about the pressure on the district, through the activities of land purchase agents and the Native Land Court. There was also significant support for Tawhiao's proposal to have a temporary halt to these pressures, including surveys, land sales, road building and the Native Land Court, to enable Parliament and the interior chiefs to agree upon some mutual basis of settlement between Europeans and the Kingitanga

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<sup>260</sup> Mair report, 27-28 May 1881, *AJHR* 1881 G-8, pp 4-6

people. Tawhiao also asked for Parliament to meet in Auckland, to be closer to them and to enable them to go to Parliament to debate their differences with Europeans.<sup>261</sup>

The reports indicated that the chiefs were not necessarily totally opposed to these developments. Instead, they wanted to ensure they could maintain significant control over them. For example, the *Waikato Times* later explained that while the Kingitanga chief, Wahanui, had expressed his total opposition to the railway at the Whatiwhatihoe meeting, he was really only opposed until Parliament passed laws to maintain Maori authority over the King Country. The paper believed his opposition really indicated his wish to end secret dealings with individuals over land and was not itself an insurmountable difficulty in the way of the line.<sup>262</sup>

In the meantime, in anticipation of continued negotiations, the Government began making further preparations for the development of the North Island Main Trunk railway. The North Island Main Trunk Railway Loan Act of September 1882, provided authority for a loan of £1,000,000 to be raised to be spent on railway construction, including the necessary surveys and land acquisition. The preamble noted that it was expedient that construction of the North Island Main Trunk Railway should proceed as soon as possible, and it was expected that difficulties with extending it south from Te Awamutu would shortly be removed. It was therefore expedient that required money should be available for the construction.<sup>263</sup>

Having authorised expenditure on the line, the next practical step was to select the best route for the railway. There were a number of possible routes through the North Island interior, most of which required going through at least some Kingitanga territory. An 1874 public works report had proposed a number of alternative routes.<sup>264</sup> These included an eastern route following the east bank of the Waikato River to Taupo, although this had the considerable disadvantage of requiring a crossing of the elevated Rangipo area east of Taupo. The other two alternatives involved following the Waipa valley into the King Country.<sup>265</sup> From there, a possible western route ran west to Mokau connecting with an existing line to New Plymouth. Another possible route, soon to be known as the central route, extended from south into the central King Country on to the upper Whanganui then through the Murimotu lands and south

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<sup>261</sup> *AJHR* 1882 G-4, *Waikato Times*, 16, 20, May 1882

<sup>262</sup> *Waikato Times*, 29 June 1882

<sup>263</sup> Preamble, North Island Main Trunk Railway Loan Act 1882, no 74

<sup>264</sup> *AJHR* 1874, E -3, report and map on proposed railway routes Newcastle southwards, June 1874.

<sup>265</sup> Waitangi Tribunal, *Pouakani Report*, 1993, p 83

to Marton. At this time, any final decisions on a route still required exploration through the still largely unknown central interior lands.

The Government then began to negotiate with the Kingitanga over exploring the possible routes through the Rohe Potae so that the best route could be chosen. At this time, however reluctantly, the Government appears to have recognised that any negotiations would involve acknowledging the Maori King, Tawhiao, as well as building relationships with the Kingitanga chiefs whose territories were included in the Rohe Potae. As part of this, the *Waikato Times* reported a meeting between Bryce, Wahanui, Tawhiao and other chiefs at Alexandra, on 28 to 29 October 1882, where Bryce presented Tawhiao with a gold medal that allowed him a lifelong free pass on all the railways in New Zealand.<sup>266</sup>

After he was given the medal, Tawhiao referred to earlier meetings with McLean where he claimed McLean had promised him the administration of his own land and the control of his people.<sup>267</sup> These earlier negotiations and understandings of promises by McLean have been referred to in other districts such as Te Urewera.<sup>268</sup> The Constitution Act 1852 had also provided for the creation of separate Maori districts but these had never been created and the Government remained opposed to doing this. Bryce was reported as replying to Tawhiao that he needed to stop looking to the past and should look instead to the future. Bryce claimed the offers of McLean and Grey had now been withdrawn and they could not go back. He claimed that the flood of European civilisation and occupation was now rising and it was time to build a durable canoe together, to float on the flood.<sup>269</sup>

Bryce was also reported as indicating that he preferred to discuss details privately with chiefs rather than in a public meeting, but in general he could say the land was not large enough to support two authorities. Chiefs might still have authority among their people, but the sovereignty of the Queen had to extend over the whole island. The law might be bad in some respects, but they should work to amend it and not resist it. Bryce did, however, promise to assist Maori with their concerns with land. He thought, for example, that permanent reserves should be made for Maori and the rest of their land should be dealt with so as to benefit the owners and the interests of the colony as a whole. This could include investing a considerable portion of the money realised, for the benefit of Maori. On the other hand, he insisted it was

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<sup>266</sup> *Waikato Times*, 31 October 1882

<sup>267</sup> *Waikato Times*, 31 October 1882

<sup>268</sup> Binney, 'Encircled Lands' vol 1 chapter 6.4

<sup>269</sup> *Waikato Times*, 31 October 1882

‘vain’ to expect all land transactions to stop.<sup>270</sup> Bryce also spoke to Ngati Maniapoto chiefs, reminding them that they had assisted the movement that ended ‘so disastrously for Tawhiao’ and that therefore Tawhiao had claims on them.<sup>271</sup> It is not entirely what Bryce meant by this. At this stage he might have felt obliged to support Tawhiao’s influence in the district if negotiations were to proceed. However, it is equally possible that Bryce was hoping to encourage anxiety among other chiefs that the Government might negotiate only with Tawhiao, without recognising their mana in the district. The Government knew that many of the interior chiefs were already concerned about the impact on their land of the Kingitanga boycott of the Land Court. Any further division between them and Tawhiao would be in the Government interest as this would allow the Government to continue negotiations with ‘ordinary’ customary chiefs of the district without having to continue to recognise a Maori King. The Government could also avoid having to discuss Tawhiao’s demands for a continuing, recognised, separate district.

The May 1882 Whatiwhatihoe hui had revealed considerable general Kingitanga support for the objective of stopping surveys, road building and the Native Land Court for a period in the interior, in order to negotiate a managed opening with necessary legislative reforms. While there was widespread support for these objectives, there were clearly also differences of opinion over how to achieve them. Some strongly supported the approach of Tawhiao that nothing short of a separate district was required. Others, however, did not want to lose the critical advantage of the Government need for a railway as leverage in any negotiations.

While there were some tensions, it is not clear that these differences were as acute as the Government later liked to portray them. It is just as possible that there was some general agreement to pursue the objectives by different means, opening more than one front on which to deal with the Government as it were. This is a matter that requires more research than was possible for this report. However, it is evident that from this time, the Government was very keen to encourage a split in the Kingitanga leadership and to promote what it saw as the ‘progressive’ wing led by the influential Ngati Maniapoto chief, Wahanui. The Government also tended to treat Wahanui as though he was the ‘leader’ of this section, and that it was largely a Ngati Maniapoto effort, because this also suited Government preferences for dealing with iwi separately. This was in spite of Wahanui and Ngati Maniapoto making it clear that

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<sup>270</sup> *Waikato Times*, 31 October 1882

<sup>271</sup> *Waikato Times*, 31 October 1882

although they had a major role, at this time they were also part of a collective interior alliance of chiefs and hapu, who had selected Wahanui as their representative.

### **3.3 The agreement to explore the railway route, March 1883**

As part of its efforts to pursue negotiations with the customary chiefs of the Rohe Potae, the Government offered further encouragement to those who may have feared more extensive confiscations in the district by passing the Amnesty Act in September 1882. This Act enabled the Government to make proclamations of amnesty for selected offences or individual Maori involved in insurrections of a more or less ‘political character’ and the consequences of them.<sup>272</sup> In Parliament, Bryce explained the measure was not considered to be an absolute amnesty in itself, or an absolute pardon for any offences. Instead it enabled the Governor to issue a proclamation granting a pardon in selected cases, ‘with or without exceptions’. He went on to insist that no proclamation should be made before some adequate submission was made.<sup>273</sup> Members of Parliament agreed to his request not to discuss the proposed measure at length, although Sheehan welcomed it and acknowledged that it had direct relevance for the railway negotiations. This was because as he explained, it enabled a Minister to go to the Waikato country and say ‘we are prepared to forgive and forget’.<sup>274</sup>

The chiefs the Government selectively pardoned included Te Kooti and the upper Whanganui/Waimarino chief, Ngatai te Mamaku who had been involved in the killing of Moffatt. As the Government intended, the selective use of pardons with regard to the railway negotiations did indeed appear to ease tensions between the Government and chiefs of the interior. For example, in 1884, the government agent Wilkinson reported that the amnesty for Ngatai had helped significantly in building goodwill between the Government and the Tuhua people.<sup>275</sup>

In the meantime, apparently in the hope that the Amnesty Act had smoothed relations, in early 1883, Bryce employed the surveyor Hursthouse to begin work on both triangulation surveys for the King Country and on an initial exploration of the western route of the railway, which

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<sup>272</sup> Amnesty Act 1882, no 70

<sup>273</sup> *NZPD*, 1882 vol 43 pp 853-854

<sup>274</sup> *NZPD* 1882 vol 43 , p 854

<sup>275</sup> Wilkinson report 14 May 1884, *AJHR* 1884 G-1 p 5

ran largely through Ngati Maniapoto lands from Alexandra and Kopua to Mokau (see map 2). However, on attempting to begin this work, Hursthouse was turned back several times.<sup>276</sup>

In response, Bryce was obliged to travel to Whatiwhatihoe in March 1883, and negotiate further with the influential chiefs of the area. He was reported as explaining to Wahanui and other Ngati Maniapoto chiefs at a meeting of 16 March 1883, that Hursthouse was only engaged in exploring a route for the railway before any actual surveys or laying off the railway line began. Bryce promised they would have plenty of time to discuss the matter further before any actual surveys began. After some discussion, it seems that Wahanui and the other chiefs agreed that Hursthouse would be allowed to explore the country between Alexandra and Mokau for its suitability for a railway. Wahanui reportedly asked for time to send messages to other chiefs before Hursthouse began his journey. Several chiefs also offered their services as guides for the exploring party. It was reported that this agreement was put in writing and signed by the chiefs.<sup>277</sup>

This March 1883 agreement was later described by interior chiefs as the first stage in the Rohe Potae compact with the Government.<sup>278</sup> The written agreement has not been found in research for this report and newspaper accounts of it are brief. However, it seems that the main elements of this agreement were that the chiefs agreed the Government exploration for a western railway route could begin. This was only for the exploration, however, as Bryce had explained, and once the route was decided, it was understood and agreed that the Government would come back and consult before any work on the railway went ahead. The Government also appears to have agreed that in return it would consider the requests from chiefs for the protection of their district.<sup>279</sup>

Following this agreement, Hursthouse began his exploration again, leaving Alexandra on 20 March 1883. However, his party was captured and held by the prophet Te Mahuki and his followers of the Tekau-ma-rua movement, at Te Uira, about 32 miles from Alexandra and ten miles from Otorohanga. The party was then released by chiefs who supported the agreement with Bryce, including Te Wharoa and Te Kooti.<sup>280</sup> Presumably as a result of this, Bryce held further meetings with Wahanui, Taonui and other chiefs on 29 March 1883. This meeting was

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<sup>276</sup> *Waikato Times*, 13 March 1883

<sup>277</sup> *Waikato Times*, 17 March 1883

<sup>278</sup> *AJHR* 1885 G-1 pp 13-14

<sup>279</sup> *Waikato Times*, 17 March 1883

<sup>280</sup> *Waikato Times*, 29 March 1883

reported to be private, although Taonui was apparently also invited to another meeting to be held at Wanganui.<sup>281</sup> The surviving details of this meeting are also sparse. However, it does seem that at this time Wahanui and the other chiefs present asked Bryce to stop the triangulation surveys he had ordered, as these would not be understood by their people. This antagonism to surveys is likely to have developed as a result of the surveys in association with land purchasing in the 1870s that always seemed to lead to the Land Court and land loss.

Bryce appears to have agreed to these requests and called off the triangulation survey at this time as part of the agreement. This condition was not reported at the time, although Bryce himself later referred to it at a meeting in December 1883.<sup>282</sup> The cessation of this type of survey work does appear to have eased tensions, as a short time later Bryce and Hursthouse were able to travel successfully from Alexandra to Mokau. Travelling with a number of chiefs as guides, they made the trip successfully in late March 1883.<sup>283</sup> Pakeha settlers and their newspapers immediately treated this first successful trip as a major triumph, heralding the ‘end’ of the Kingitanga and the opening up of the King Country. The *Waikato Times*, for example, reported that settlers at New Plymouth and Opunake had banqueted and toasted Bryce and Hursthouse acclaiming their success in opening up what the paper referred to as the ‘king’ country’.<sup>284</sup>

They were being more than a little optimistic at this time, however, and in response Bryce was reported as being ‘careful to make the distinction’ that while the King Country might be considered open for surveys for road and rail purposes, he anticipated ‘considerable delay’ in the case of ‘other surveys’ (presumably for the Land Court and triangulation surveys).<sup>285</sup> Even this seems to have been an oversimplification, however, as the chiefs had specifically not agreed to surveys for the road and rail, but just to exploration for the route. Nor was any mention made at this time, of the Government concessions to consider Maori aspirations for protection and management of the district as part of the agreement, which would soon be embodied in the 1883 petition. Nevertheless, this did illustrate Bryce’s policy at the time, which appears to have been to push matters as far as he could and place the widest possible interpretation on all agreements, until he was forced back into negotiations.

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<sup>281</sup> *Waikato Times*, 29 March 1883

<sup>282</sup> *Waikato Times*, 1 December 1883

<sup>283</sup> *Waikato Times*, 31 March 1883

<sup>284</sup> *Waikato Times*, 26,28 April 1883

<sup>285</sup> *Waikato Times*, 28 April 1883

### 3.4 The Rohe Potae petition 1883 and legislative reform

While the Government was keen to promote the more ‘progressive’ wing of the Kingitanga, it seems that these chiefs, while willing to offer some concessions over the railway, were still determined to achieve very similar objectives to those outlined by the Kingitanga generally at Whatiwhatihoe in 1882. Having made concessions over the railway exploration, they quickly turned to seeking the Government assistance they believed Bryce had promised in return for the agreement to explore the railway route. As in 1882, these included protection of the interior district from the impact of surveys, roads, leases, sales, and the Native Land Court; while working out a negotiated settlement with the Government over legislative reform, recognition of Maori authority, and a managed opening of the district. Although the Government preferred not to acknowledge this, the leadership also seems to have been determined to maintain a joint interior alliance approach to achieving these objectives, presumably based on the early pan-tribalism and cooperation developed by the Kingitanga.

The chiefs representing the interior alliance then followed up the March agreements with a letter from their representative Wahanui to Bryce. This was written shortly after the agreement was made and followed up Bryce’s promises as part of it to assist them in gaining a temporary halt to such pressures as roads and surveys while negotiations took place. This letter has not been found in research for this report, but it is referred to in newspaper reports of the time, where it is described as outlining a ‘taihoa’ policy. The response of newspapers to this was predictably scathing.<sup>286</sup> The chiefs persisted, however, and appear to have continued to discuss the best means of having their district set aside and legally protected. This included protecting it from interference by Europeans until the various tribes and hapu met and divided it between themselves, while still allowing ample portions for roads and railways.<sup>287</sup> There was also some discussion about the best means of having Parliament agree to this so that it could be given the weight of law. Eventually it seems to have been agreed that Wahanui should take a petition to Wellington on the matter, and newspapers reported that subscriptions were being raised to pay his expenses for this.<sup>288</sup>

The government agent at Alexandra, George Wilkinson, reported these discussions. He noted that it was an all-absorbing topic for discussion among Ngati Maniapoto. They wanted all

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<sup>286</sup> For example, *Waikato Times*, 17 April 1883

<sup>287</sup> *Waikato Times* 12 June 1883

<sup>288</sup> *Waikato Times*, 12 June 1883

surveys and public works postponed until they could find the best way of undertaking a managed opening of their lands. They had seen the unsatisfactory state of the Cambridge Land Court process resulting in Maori being dispossessed of their lands, partly as a result of expensive litigation and partly because of the land purchase system. He reported that they had decided to petition parliament to have a new Land Act to implement their proposals. Then they would have no objection to opening their lands. Wilkinson did note, however, that there were considerable differences of opinion over the detail of how to achieve their objectives. He reported the people were beset by different ideas, jealousies, concern that too much power might be given to chiefs, and wildly differing advice from a variety of Europeans.<sup>289</sup>

What is known as the Rohe Potae petition was developed from these discussions and it was presented to the House of Representatives on 26 June 1883.<sup>290</sup> This petition was printed, and the printed version describes it as being signed by Wahanui, Taonui, Rewi Maniapoto ‘and 412 others’. These first names were those of Ngati Maniapoto chiefs, and the Government preferred to regard it as a Ngati Maniapoto petition, but the petition heading clearly indicated that it was from an alliance of interior iwi. The heading described it as a petition of ‘nga iwi o Maniapoto, o Raukawa, o Tuwharetoa, o Whanganui’ to Parliament.<sup>291</sup> The original of the petition does not appear to have survived and as a result it is not possible to identify the other chiefs and people who supported the alliance at this time. Nevertheless, it seems likely that the upper Whanganui people supporting the petition would have included representatives from lands that later became included in at least the northern part of the Waimarino block.

The translated version of the Rohe Potae petition eloquently described the concerns of the interior iwi. These included the passing of legislation, which tended ‘to deprive us of the privileges secured to us by the second and third articles of the Treaty of Waitangi, which confirmed to us the exclusive and undisturbed possession of our lands’. The laws concerning the adjudication and practices of the Land Court had also become a source of anxiety and a burden. The petitioners had allowed some lands to be adjudicated on to make them secure, but in reality they had only gained the shadow of the lands while, through processes such as the expensive litigation involved, the lawyers and speculators (land-swallowers) had gained the substance. The petitioners noted they were beset on all sides by decoys, outrageous practices

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<sup>289</sup> *AJHR* 1883 G-1

<sup>290</sup> *JHR* 1883, p xviii

<sup>291</sup> *AJHR* 1883 J-1 p 2

and temptations that led them into the 'nets' of the companies and speculators. Yet, when they tried to extricate themselves from this they were told the only remedy was to go to the Court.

They explained they were trying to hold on to their lands, but the surveys for roads and railways appeared to be 'clearing the way' for these evils before they could make satisfactory arrangements for the future. They wanted to be protected from such an 'objectionable system'.

What possible benefit could we derive from roads, railways, and Land Courts if they became the means of depriving us of our lands? We can live as we are situated at present, without roads, railways, or Courts, but we could not live without our lands.

They stated they were not oblivious to the advantages to be derived from roads, railways, and other desirable works of Europeans. They were fully alive to these, 'but our lands are preferable to them all'.

The petitioners noted that during the year the various hapu had selected people to define boundaries and mark with posts the lands 'still remaining to us' on which Europeans to the best of their knowledge had no legal claim. They then asked for 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 title 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 mentioned, the hapu boundaries in each tribe, and the proportionate claim of each individual within the boundaries set forth....

The petition then went on to set out the boundaries of the district the four iwi wished protected. In translation, these were described as commencing at Kawhia and then running in an easterly direction through named places to the Waikato River and the centre of Lake Taupo. The boundary turned south through the lake and down to the Rangipo lands south of the lake before turning west through upper Whanganui lands and across to the West Coast to a

point ‘twenty miles out to sea’ before turning north at this distance and following the coast still twenty miles out at sea before reaching Kawhia again in the north.<sup>292</sup> The named points in the upper Whanganui lands included the ‘source of Pikopiko, thence to Te Tarua te Kaikoara, Te Patunga-o-Hikairo, Te Kiekie, Ohura, Te Whauwhau, Kokopu, Oheao, thence over the Motumaire Ridge into Tangarakau’<sup>293</sup> The land boundaries appear to have generally been followed in the Cussen sketch map, 1884. The petition boundaries as far as they can be identified from the petition are shown in map 2 of this report. It is important to note that these boundaries were likely to have been within the original aukati in some areas. This was part of an effort, as the petitioners explained, to only include land ‘remaining to us’. This was land that still remained under Maori customary authority, regardless of what hapu or iwi claimed interests in it, and land that, as far as they knew, that had not already been the subject of dealing by Pakeha or the Crown. The boundary included the northernmost part of what was to become the Waimarino block, as noted on the annotation on map 2 in this report.

The petitioners asked that once arrangements were completed, they wanted the Government to appoint some persons vested with power ‘to confirm our arrangements and decisions in accordance with law’. Once title to this was made, those with the land would be able to lease it, but this should be publicly notified, not arranged secretly. The petition ended by noting that it was not their intention to keep lands within the boundaries ‘locked up’ to Europeans, or to prevent leasing, or roads being built, or other public works, ‘but it is our desire that the present practices that are being carried on at the Land Courts should be abolished’. If the petition was granted, the petitioners promised they would ‘strenuously endeavour’ to follow a course conducive to the welfare of the North Island.<sup>294</sup>

The interior iwi were seeking legal protection for those lands left in customary ownership that had not yet been passed through the Court or had ‘legal claims’ on them from Europeans, the remaining Rohe Potae lands deriving from Maori rather than Crown authority. The petition sought Government recognition and protection of this remaining land by establishing a legally recognised boundary around it, within which Europeans could not ‘interfere’. Once this was achieved and the laws and Land Court reformed to remove the present ‘objectionable’ system, the petitioners fully intended to manage an opening of the district to new economic use, such as leases, that would nevertheless ensure the protection of the land in Maori ownership. They

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<sup>292</sup> Rohe Potae petition boundaries, *AJHR* 1883 J-1 p 2

<sup>293</sup> Rohe Potae petition boundaries, *AJHR* 1883 J-1 p 2

<sup>294</sup> Rohe Potae petition, 1883, Maori and English versions, *AJHR* 1883 J-1, pp 1-4

were willing to make land available for roads and railways, and they were willing to work towards mutual prosperity. However, it is quite clear that they wanted to determine title and rights to the land themselves, and have these decisions that they made legally ‘confirmed’. While they would consider leasing, they also had no intention of selling the land within this protected district.

There was a counter-petition from the chief Manuhiri and 488 others of Ngati Maniapoto and Waikato, and this was also printed.<sup>295</sup> This essentially protested against ‘Wahanui’s petition’ and those parts that dealt with the ancestral lands of Potatau and Tawhiao. It claimed that Tawhiao’s title came from ancestral right, conquest and because the land was placed under the authority of Potatau, who was succeeded by Tawhiao.<sup>296</sup> This public notice of tension within the Kingitanga appears to have also marked the end of Government concern to take account of Tawhiao over negotiating the opening of the Rohe Potae. From this time, the Government more openly ignored those who still persisted with Tawhiao’s determination to seek a separate district, while negotiating only with the section represented by Wahanui. As part of this policy, the Government appears to have ignored this counter-petition.

Wahanui appears to have held several subsequent hui in the interior, possibly trying to heal any rift with Tawhiao’s supporters and also consulting with other members of the pan-iwi alliance that had supported the petition. The newspapers of the time were generally dismissive when they did report these meetings, interpreting the consultation as a failure of decisive leadership, and the expression of opposing opinions as evidence of Wahanui’s ‘failure’ to gain universal support for the petition. They tended to interpret this failure as an expression of support for the immediate entry of the Land Court into the district.<sup>297</sup> They generally failed to report that a large degree of opposition actually came from those who were even less willing to consider Government (and Land Court) intervention in the district than those Wahanui represented.

In spite of the claims of newspapers, Wahanui does seem to have had some success with these hui. As Ward has noted, a fifth iwi, Ngati Hikairo from the Kawhia area, appears to have decided to support the petition by late 1883.<sup>298</sup> It should be noted at this point that Ngati Hikairo’s support also brought with it some semantic confusion. Wahanui and the other chiefs

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<sup>295</sup> *AJHR* 1883, J-1a

<sup>296</sup> *AJHR* 1883, J-1a, p 1-2

<sup>297</sup> For example, *Waikato Times*, 7 August 1883

<sup>298</sup> Ward, ‘Whanganui ki Maniapoto’, p 42

of the interior generally referred to the alliance as the ‘four tribes’ presumably in reference to the four who signed the original petition. The strong subsequent support of Ngati Hikairo often caused later confusion when attempts were made to identify the ‘four tribes’ with one or other of the original four iwi sometimes being dropped off if Ngati Hikairo was included. However, it seems the ‘four tribes’ title was really meant and used as a general description of the interior support for the petition. For the sake of clarity, this report uses the term ‘alliance’ as a description rather than the term ‘four tribes’ more commonly used at the time.

Following parliamentary procedure, the Rohe Potae petition, numbered 1883/45, was sent to the Native Affairs Committee. The official abstract described it as asking for a ‘less expensive mode of investigating title and otherwise dealing with land’.<sup>299</sup> The Native Committee reported on the petition on 3 August 1883. This report was later printed and was to the effect that the Committee had decided not to summon any of the petitioners to give evidence. It noted that a considerable amount of evidence had been given in other petitions relevant to its allegations. After careful consideration, the Committee had found that the complaints and fears expressed in the petition were ‘too well-founded’ and the apparent desire of the petitioners was ‘reasonable’. The Committee therefore recommended the petition be given favourable consideration by the House when the Native Committees Bill and the Native Land Sales Bill were before it. The Committee ‘of course’ did not feel able to pronounce on the allegations in the petition respecting boundaries or tribal rights.<sup>300</sup>

The Government appears to have made a number of attempts to show that it was considering the 1883 petition requests seriously. Bryce proposed a number of measures for the 1883 Parliament that appeared to be intended to address the concerns expressed in the Rohe Potae petition. These included strengthening provisions for local management through preferred runanga or local committees and the apparent reform of some aspects of the Native Land Court system, especially pre-investigation dealings over land.

As historians such as O’Malley have noted, there was already a strong movement within Maori communities to adapt and develop traditional runanga or committees to provide some means of collective management in the face of settler and Government efforts to undermine the tribal basis of Maori authority.<sup>301</sup> The Kingitanga had played an important role in

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<sup>299</sup> *JHR* 1883 p xviii

<sup>300</sup> *AJHR* 1883 I-2 p 9 ; Le1/1883/8 Native Affairs Committee minute book Friday 3 August 1883, ANZ

<sup>301</sup> For example, O’Malley, *Agents of Autonomy*, pp 11-12

promoting the evolution of these local committees and they had been taken up with enthusiasm all over the North Island, regardless of support for the Kingitanga itself.<sup>302</sup> The runanga took over many local government functions in Maori communities, such as controlling minor crime and settling disputes. To the consternation of officials they also tended to assist communities to organise against land selling. In many cases they also considered disputes over land, leading to many communities asking that such committees adjudicate on customary ownership instead of the Land Court. In this process they provided an effective local expression of continuing Maori authority over their land and their districts.<sup>303</sup>

The major difficulty runanga faced was that they lacked legal recognition and legal authority to enforce their decisions. Aggrieved parties could simply ignore them or take their disputes to other institutions, such as the Land Court. As Maori concern with the Land Court grew, so did their demands to have runanga and their authority legally recognised. This included the Whanganui district. Resident magistrate Richard Woon had described Whanganui Maori attempts to settle a number of boundary issues amongst themselves in the 1870s. The Repudiation Movement and its promotion of local committees had also met with considerable support. Woon reported that by the later 1870s, Whanganui runanga had established themselves as alternatives to the Land Court. They appeared to tolerate Woon's judicial work as complementary to their own, although this may also have been an indication of the high regard Woon had earned along the Whanganui River by this time.<sup>304</sup> By 1880, as previously noted, increasing concern about the Land Court process and purchasing had led numbers of Whanganui Maori to support Kemp's Trust, a form of rohe potae itself, that also sought to protect and manage an area of Whanganui customary land within defined boundaries.<sup>305</sup> Upper Whanganui Maori were making similar requests in supporting the 1883 Rohe Potae petition.

The Government had long appeared willing to consider some legal recognition for runanga, although O'Malley notes that relevant legal provisions were generally aimed more at co-opting runanga, and attempting to undermine the Kingitanga and other groups seeking to assert Maori authority, than at recognising some genuine form of local self-government. For

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<sup>302</sup> O'Malley, pp 17-18

<sup>303</sup> For example, O'Malley, p 18

<sup>304</sup> Young, *Woven by Water*, p 108

<sup>305</sup> O'Malley, pp 74-83

example, F D Fenton had been sent to the Waikato district as resident magistrate in 1857 ‘principally with a view to utilising the runanga as a state-sponsored rival authority to the King’.<sup>306</sup> Since that time a number of legislative provisions had been passed or considered that appeared to give some recognition to runanga, but they had generally failed to provide them with effective powers.<sup>307</sup>

Petitions and protests had kept the matter before the Government and, in 1880, Bryce had been presented with a draft bill providing for the election of Native committees throughout the country. These were to have powers to investigate and settle disputes and other matters concerning Maori land. Bryce had campaigned against the Bill, but by 1883, it seems the Government had decided it needed to re-consider some form of recognition again. O’Malley notes that the Government had suffered some embarrassment from widespread condemnation from some sectors of the community after the Parihaka invasion and from efforts to have chiefs petition the Queen.<sup>308</sup> Now, with the Rohe Potae negotiations, Bryce was under pressure to respond favourably to the petition and its requests for more recognition of Maori authority in return for concessions over the railway.

Bryce still appears to have privately believed that a system of local government for Maori was an ‘absurdity’.<sup>309</sup> Nevertheless, the Rohe Potae petition, in seeking local management of the opening of the district, seemed to envisage some form of runanga for this. When the Native Affairs Committee reported on the petition in August 1883, that its complaints and fears were ‘too well-founded’ and recommended favourable consideration, Bryce had his own Native Committees Bill ready for Parliament to consider. According to O’Malley, this turned out to be a ‘much-modified version’ of the original 1880 Bill, ‘which provided the shell, if not the substance, of local self-government for Maori.’<sup>310</sup> Bryce himself, in speaking to the Native Land Laws Bill, at much the same time, explained that the proposed committees would have power to inquire into the title of land with a view to assisting the Land Court. It was not intended that they would have ‘the power of arriving at a legal decision as to the title to the land’ but it was hoped that allowing Maori to make some investigation themselves to assist the Court in arriving at a just judgment, would to ‘a large extent satisfy the demand which has

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<sup>306</sup> O’Malley, p 19

<sup>307</sup> O’Malley pp 19-57

<sup>308</sup> O’Malley, p 144

<sup>309</sup> O’Malley p 147

<sup>310</sup> O’Malley p 148

been made by the Maoris from time to time, and which has been made recently with greater urgency than before'.<sup>311</sup>

This was considerably less than the petition was asking for although this may not have been evident to Maori at the time. Instead, as O'Malley has noted, the Native Committees Act 1883 was initially greeted with enthusiasm by Maori communities.<sup>312</sup> The 1883 passing of this much-awaited legislation may also have caused the interior pan-iwi alliance to believe that their efforts and concessions over the railway were finally achieving some success.

Other legislative measures may have reinforced this belief. The Native Land Laws Amendment Act 1883 (operative from September 1883) also appeared to contain significant reforms. It seemed to be intended to address part of the 'objectionable' system associated with the Land Court process noted in the Rohe Potae petition, by finally ending the much-criticised system of negotiating sales of Maori land before title was investigated by the Court. This had led to a strong incentive for agents to 'manage' the later Court investigation to ensure that the 'reputed' owners they were dealing with were confirmed as the actual owners. Sections 7 and 8 of the 1883 Act finally made it a criminal offence to negotiate with Maori for the purchase, lease or transfer of Maori land until 40 days after title had been ascertained. Now, in addition to taking the risk that they might not be able to legally enforce such a deal, prospective purchasers could be fined for breaching the Act.<sup>313</sup>

Williams notes that there was at least one major flaw in this Act, in that the Crown technically exempt itself from being covered by the prohibition against dealing before or around the time of investigation of title. (He notes that additionally the penalties do not seem to have been effectively enforced).<sup>314</sup> Interestingly, when speaking to the Bill, Bryce again seemed more concerned with streamlining the work of the Land Court than with the concerns of Maori. He claimed that the work of the Native Land Court had fallen into an 'unsatisfactory condition', largely because pre-investigation deals had caused great difficulty when it came to ascertaining title. Bryce claimed the Chief Judge of the Native Land Court supported him in this, having given evidence that such deals caused by far the majority of the trouble and delays experienced by the Court. Court litigation was believed to be effectively between the purchasers and lawyers over these deals and this was the main reason why Land Court cases

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<sup>311</sup> *NZPD* 1883 vol 45 p 461

<sup>312</sup> O'Malley, p 165

<sup>313</sup> Williams, p 261

<sup>314</sup> Williams, p 261

had become so protracted.<sup>315</sup> Bryce noted his preference for the reintroduction of an exclusive Crown right to purchase Maori land, which he believed would remove these evils, and that Maori might at present welcome, for a little while at least.<sup>316</sup> In the meantime, he claimed the Bill was intended to ‘simplify’ the Native Land Court, by leaving proof of title to Maori themselves.<sup>317</sup>

It seems unlikely that this Act was explained to Maori as a means of streamlining and progressing the work of the Land Court. Instead, as with the Native Committees Act, this legislation must have appeared to be meeting a major concern in stopping secretive pre-investigation dealing and its close links to the Land Court. This allowed for a potentially much fairer, more objective system of investigation, untainted by previous secret deals, where all interests could be properly heard and considered. Again, this seemed to offer a much-requested reform of land purchasing and the Native Land Court process and may have been regarded as another success by the interior iwi alliance.

By 1883, as described in the previous chapter, the Government could also claim that it had stopped land purchasing in the Whanganui district at least. This had occurred from a combination of Maori obstruction, economic recession and Bryce’s own belief that the present system of land purchasing was not effective enough, rather than any real response to Maori concerns. Nevertheless, the Kingitanga had been asking for the stoppage of land purchases while reforms were negotiated, and this was something else the Government could identify to reassure the interior alliance of its goodwill.

The Government also appeared to accept the need to negotiate with Maori over the proposed Main Trunk railway line, even though it had compulsory public works provisions available at this time that it could use and which provided for very little consultation with Maori.<sup>318</sup> In reality, it was hardly practical to try and use compulsory measures in the Rohe Potae, given the opposition (and expensive delays) this would provoke. Nevertheless, the apparent willingness to consult over the railway is likely to have further encouraged the interior alliance of Government good faith.

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<sup>315</sup> *NZPD* 1883 vol 45 pp 458-9

<sup>316</sup> *NZPD* 1883, vol 45 p 460

<sup>317</sup> *NZPD* 1883 vol 45 p 460

<sup>318</sup> Marr, *Public Works Takings of Maori Land, 1840-1981*, 1997, chapters 7,10

The interior iwi may therefore have felt some confidence that the Government was prepared to negotiate in good faith and to begin to implement requested reforms. This was only a beginning, however, and there were still some outstanding concerns for the alliance. Pre-Land Court investigation deals had been made illegal, for example, but the Land Court itself had not been substantially reformed. It may have been expected that the apparent strengthening of Native committees and the promise of further reform would meet this to a large extent but it still remained a matter of concern. The Land Court process, particularly through individualising title, still provided a ‘shadow’ of title, rather than the ‘substance’ of land the petitioners wanted to collectively retain and manage themselves. The interior alliance also wanted a more comprehensive reform of legislation governing Maori land administration, to overcome problems such as managing land with the numerous individual owners the Court system created. In addition, and possibly most urgent by now, the Government had still not at this time, provided any legal recognition of the outer boundaries of the remaining Rohe Potae district as requested.

### **3.5 The exploration of the central railway route 1883.**

The Government, appears to have decided that it could interpret the agreement with Wahanui over the Hursthouse exploration as an agreement for further explorations or initial ‘surveys’ for the railway, especially with the goodwill created by legislative reforms in 1883. It therefore began further explorations of railway routes by September 1883. One of the other possible routes, as previously noted, was what became known as the central route. From the Marton end, this went through the Rangitikei area, on through Murimotu and into the Rohe Potae through the upper Whanganui area and what would later become Waimarino block lands. In September 1883, the surveyor John Rochfort was instructed to begin the ‘reconnaissance survey’ of this central route, while other surveyors were instructed to further explore the possible eastern and western routes.<sup>319</sup> In September 1883, Bryce also drafted a letter to all the interior chiefs, seeking assistance with finding the most suitable line for the railway. He noted the railway would be of great advantage to both races, ‘but especially to you whose lands will be particularly benefited’. He also asked the chiefs to assist the bearers of his letter, by smoothing their path and removing any obstacles in their way.<sup>320</sup>

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<sup>319</sup> *AJHR* 1884 sess I D-5 reports by G P Williams and R W Holmes on eastern and western routes.

<sup>320</sup> Bryce draft letter 15 September 1883, NO 83/2912, MA series 13/43(a), ANZ

As previously noted, the interior communities, including those of upper Whanganui, had learned to distrust surveyors, as a result of their experiences of the 1870s. They had learned that surveys were generally the first indication of secret deals and inevitable Land Court activity with all the associated problems, conflicts and loss of land. They had also found that their best means of opposing such deals and keeping land out of the Court was to obstruct such surveys before they could be completed. The Hursthouse exploration had only been achieved with the personal guidance of several chiefs. These chiefs had made a distinction between exploration and later surveys and Bryce had been forced to call off all attempts at trig surveys. Any leadership attempting to 'smooth' the way for the railway exploration or 'reconnaissance' surveys was likely to face considerable difficulties in allaying these concerns and it is most unlikely they would have been able to go ahead at all without considerable chiefly support.

It seems likely that some chiefs were convinced the Government was acting in good faith over the development of the railway, finally consulting as they wanted and that the railway would bring considerable economic benefit. The Government does appear to have received indications of support for the central exploration from the upper Whanganui and Tuhua areas. Some of the chiefs who were supportive at this time were also later prominent with regard to Waimarino lands. They also tended to be those with the closest relationship with Government officials, some having been involved in earlier 1870s land purchase negotiations. For example, the chief Hoani Paiaka (also sometimes using the title Major Paiaka from his previous military service) seems to have had interests into the upper Whanganui and was willing to take the role of relaying messages and information between Government officials at Wanganui or Wellington and other chiefs of the Tuhua area. In July 1883, for instance, he informed Lewis and Bryce that the Tuhua people had agreed to a route being explored through the Tuhua area and that they would assist with it.<sup>321</sup>

Paiaka was not able to speak for all the communities of the Tuhua and upper Whanganui, however, and it seems clear many communities continued to support Tawhiao or were followers of the prophets, such as Te Kere, who were influential in the area, who remained suspicious of Government intentions and particularly of anything that looked like a survey of their lands. Others supported the interior alliance and its negotiations but still insisted on

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<sup>321</sup> NO 83/2375, MA series 13/43a, ANZ, translation of letter from Hoani Paiaka 4 July 1883 and copy of letter to Paiaka from Topine te Mamaku.

defending their particular territories against surveys. They did not necessarily see any distinction between Wahanui and Tawhiao when it came to protecting their land. In September 1883, Resident Magistrate Ward also informed Lewis that Paiaka had told him that the Native committees of Tuhua had decided to leave the matter of opening the country to Tawhiao and Wahanui.<sup>322</sup>

It seems that Bryce was actively seeking the support of lower Whanganui chiefs for the railway, especially those who had previous dealings with officials and might be more cooperative with Government policies. He also seemed to be hoping that those cooperative lower river chiefs with connections into the interior, might exert some influence with their upper Whanganui relatives. For example, in mid-September 1883, his private secretary W J Butler reported a 'satisfactory' interview between Bryce and Major Kemp.<sup>323</sup> As a result of these meetings, Te Keepa (Kemp) appears to have become convinced of the benefits of new Government reforms and the railway for his people.<sup>324</sup> He had connections into the interior and appeared willing to use these to help persuade interior Whanganui communities to also support the railway.

Nevertheless, Rochfort soon found that in the upper Whanganui, such expressions of support were not always enough. Rochfort took letters of introduction with him from Resident Magistrate Woon and the Rev T Grace of Taupo. These letters addressed to a number of chiefs connected with the interior, including Te Keepa, Aropeta Haeretu and Paora Patapu of the Murimotu and Ranana areas, Hirika te Raupo, Ihakara, Topia Turoa, Te Heuheu, Matuahū, Kingi te Harakeke (presumably Herekieke), Kingi Topia and others of Murimotu, Taupo and Tokaanu; and the chiefs Ngarupiki, Tukimata and Ngatai of Tuhua (presumably Ngatai te Mamaku).<sup>325</sup> These were chiefs considered to be either sympathetic to the Government or at least supportive of Wahanui's policies of negotiating over the railway. They were presumably intended to impress communities along the route of Rochfort's explorations, that they could have confidence that he represented no threat to them.

Rochfort began work at Marton at the southern railhead, and continued exploring north. He first met with Maori groups at Turangarere. He reported that the people there had been

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<sup>322</sup> Ward to Lewis, 1 September 1883, NO 83/2678, MA series 13/43a, ANZ

<sup>323</sup> Butler report 15 September 1883, NO 83/2921, MA series 13/43a, ANZ

<sup>324</sup> For example R M Ward report, *AJHR* 1884 sess II G-1 p 20 report April 1884 on Te Keepa's enthusiasm for the railway.

<sup>325</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 3

unwilling to let him pass without a meeting, but he reported that as their opposition was ‘feeble’ he had gone on anyway. He believed those people had afterwards decided to support the railway for the advantages it would bring.<sup>326</sup>

Rochfort was stopped next at Karioi, just south of Ruapehu, where he was threatened by supporters of Te Keepa, who were still seeking satisfaction over an earlier dispute concerning government land purchasing in the Rangataua block. They threatened to shoot Rochfort if he did not leave and he had to dismiss one of his party who had been involved in the disputed transaction.<sup>327</sup> In response, Rochfort detoured back to Upokongaro, where he consulted with Te Keepa who offered his assistance in settling the matter. Rochfort then returned to Karioi, with more letters from Te Keepa to some of the principal chiefs of the Karioi and Manganui a te Ao areas. Rochfort became involved in long discussions at Karioi, assuring the people that he was only concerned with the railway and had nothing to do with land title. He was eventually allowed to move on. He noted, however, that the disputed block was likely to cause more problems in future, as people were still occupying and planting part of what was now supposed to be a Government block.<sup>328</sup>

From Karioi, the proposed central route took Rochfort into what would become the Waimarino block. Like Kerry-Nicholls, Rochfort immediately faced a band of some twenty miles of impenetrable forest in front of him before he could reach the Hauhungatahi and the Waimarino plains. Also like Kerry-Nicholls, he decided to follow the old track to the village of Ruakaka on the Manganui a te Ao, before turning east again north of the forest and continuing over the Waimarino plains. At the village, he met with more trouble. He had been expecting that the chief Paora Patapu would have already visited Ruakaka on behalf of Te Keepa to speak in favour of the railway but that chief had not arrived. The people had also not heard from Te Keepa themselves, and they were suspicious of Rochfort’s letters from Te Keepa and Woon. After three days of discussions, the people of Ruakaka decided to take him back to Te Keepa. Rochfort was escorted back along the Manganui a te Ao to the settlement of Papatupu, some two miles above the confluence of the Wanganui and Manganui o te Ao Rivers.<sup>329</sup> He was held there another two or three days while another large meeting was held, and where he reported the principal chiefs attending as Taumata, Te Kuru Kaanga, Te Peehi,

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<sup>326</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 3

<sup>327</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 4

<sup>328</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 4

<sup>329</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 4

Winiata te Kakai, Manurewa, Turehu, Raukawa, Rangihuatau, Te Aurere, Huriwaka, Te Whaiti, Eniko and Kaiatua.<sup>330</sup>

Rochfort reported considerable divisions of opinion over the railway at the meeting, with the chiefs Te Kuru and Taumata being particularly opposed. He claimed other chiefs such as Winiata and Te Aurere were basically in favour, but he claimed they were afraid to speak out. Some of what he called the more moderate chiefs also indicated that if he could bring letters from Wahanui or Tawhiao they would not stop him. The meeting eventually decided to turn him back and informed him that if he persisted in returning, he would first be warned and turned back, and if he still returned, he would be killed. Seven chiefs known to Te Keepa were chosen by the meeting to paddle Rochfort back down the Whanganui River. These chiefs were Winiata, Te Kuru, Potatau, Te Aurere, Te Peehi, Iko, and Patena.

The group stopped at a number of places along the river on their way down, where they presumably held discussions, as Rochfort reported most lower river people were generally in favour of the railway. One large meeting was apparently held at Upokongaro with Rochfort and Woon attending along with the Manganui a te Ao chiefs. Rochfort reported that after this those chiefs still remained divided, with some opposed to his returning to their district, while others told him to wait until circumstances were more favourable.<sup>331</sup> He then returned to Wellington to obtain more instructions from the Native Minister and, if possible, secure what seemed to be necessary letters from Wahanui and Tawhiao.

At this time, Rochfort also reported further negotiations and a ‘more amicable understanding’ between Bryce and Te Keepa. On 20 September 1883, another large meeting was held at Ranana with numerous Whanganui Maori attending to discuss the railway.<sup>332</sup> The Manganui a te Ao chiefs escorting Rochfort attended, as did Rochfort. Rochfort reported that this time the chiefs were persuaded by Major Kemp (Te Keepa) of the advantages of the railway and the need for Rochfort to continue his work. However, even with this agreement, it was still considered necessary to send a strong force back with Rochfort to the Manganui a te Ao. Rochfort returned to this area on 27 September 1883, accompanied by six canoes, carrying

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<sup>330</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 4

<sup>331</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 4

<sup>332</sup> For example, correspondence NO 83/2921 in MA series 13/43a, ANZ

Maori from Ranana, Pipiriki, Heruareme, Koroniti, Kaiwhaiki, and Kukuta. The Manganui a te Ao chief Te Peehi and his wife Paeata also went with them.<sup>333</sup>

Even so, on reaching Papatupu village on the Manganui a te Ao again, Rochfort was met with determined opposition. He described the chiefs Taumata, Te Kuru and Te Oeo as being the most obstructive. After a meeting lasting several days, Rochfort reported the up-river people left 'refusing to say or hear any more' and went to their principal village, Te Papa, some seven miles further on. Rochfort's group followed them and attempted to negotiate further but were met by an armed party who fired over their heads. After fruitless attempts at negotiation, Rochfort once again felt obliged to leave and return to Wanganui township for further instructions from Bryce. He reported he asked for some troopers but Bryce thought it 'unwise to force our way' and instead instructed him to go around to the Taupo side and seek assistance from Peehi Turoa so he could work his way in from the east. However, on passing through Ranana on his way back up, Rochfort learned that the 'obstructionists' had dispersed and were away planting, so he continued on up the Manganui a te Ao and reported he had completed his work to Waimarino 'without further stoppage'.<sup>334</sup>

At 'Waimarino', Rochfort sought the assistance of Peehi Turoa, whom he described as 'a rank Hauhau' although, after some talk, 'not averse' to the railway and willing to help.<sup>335</sup> The implication was that Rochfort had persuaded the chief, but it seems more likely that Peehi Turoa was following Wahanui's policy of agreeing to the railway explorations on the understanding that the Government would consult and implement required reforms. Rochfort did not say so, but presumably he met Turoa at the chief's village on the Waimarino plains, Ngatokorua, where Kerry-Nicholls also stayed. Rochfort then went on to the Taupo area, visiting what were regarded as sympathetic Taupo chiefs, Topia Turoa, Matuahu and Te Heuheu, at their pa at Rotoaira, Tokaanu and Waihi, asking for their help.<sup>336</sup> Topia Turoa said he could proceed, while the other two chiefs sent some men as guides. However, messengers from Tuhua arrived to say that there were two powerful aukati to stop Rochfort and there were armed Hauhau patrols waiting to meet them. Rochfort reported this alarmed

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<sup>333</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 pp 4-5

<sup>334</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 5

<sup>335</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 5

<sup>336</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 5

the Taupo people so much that only two guides would go with him, and they left him within a few miles of Taumarunui.<sup>337</sup>

Nevertheless, entering the district again from the eastern Taupo area, Rochfort began travelling towards Taumarunui. He still had some Manganui a te Ao people with him at this time and they apparently showed him some settlements along the Whanganui River above Taumarunui including Watarupurupu, 'the furthest open land up the river'. He reported this was where they first came out of the forest. This was presumably a reference to the fine totara forest mentioned by agents in the 1870s and later to be largely included in what became the Waimarino block. Rochfort was told the open area had been the scene of a celebrated battle between the Ngati Patutokotoko people of Manganui a te Ao (those he described had recently given him so much trouble) and the Ngati Maniapoto.<sup>338</sup>

Rochfort reported he was met at Taumarunui 'sullenly, without a word of welcome'. The chief Ngatai and some others came and offered him protection, but told Rochfort he could go no further 'as the country was stopped'. This was presumably Ngatai te Mamaku, a supporter of the Kingitanga, recently pardoned for his part in the killing of Moffatt and by then considered an influential chief of the Tuhua district. After a few days some of the men 'of the aukatis' came to talk, but refused Rochfort permission to go further or even send a messenger through their country. They explained they were acting for Wahanui, who had 'stopped the country for a long time' and some of them had been watching the district for the last six months.<sup>339</sup> In a further report to Bryce, Rochfort explained he was stopped by an armed party of Ngati Maniapoto at Waimiha. They were acting on Wahanui's orders and insisted Rochfort required a permit from Wahanui. They also asked whether Bryce intended visiting to meet with their chiefs.<sup>340</sup>

Rochfort was left with little choice but to detour back to Tokaanu and go round the west of Taupo to Kihikihi. On reaching Kihikihi, Rochfort met with Rewi and Wahanui, who were expecting a visit from Bryce. They told him he would have to wait until after that meeting so

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<sup>337</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 5

<sup>338</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 5

<sup>339</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 5

<sup>340</sup> correspondence December 1884, NO 84/144 Rochfort to Bryce, MA series 13/43b, ANZ

that matters could be settled.<sup>341</sup> In the meantime, Wahanui brought all the men who had stopped Rochfort earlier to meet with him, including ‘the principal in Moffatt’s murder’.<sup>342</sup>

In spite of Rochfort’s assurances to the Manganui a te Ao people, that he was only exploring for the railway and had nothing to do with their lands, his reports reveal that he was intent on examining and reporting on the country he was travelling through while exploring the central route, identifying and describing the land and resources and its suitability for settlement. For example, in the area that later became part of the Waimarino block, Rochfort reported that near Ruapehu there was a table terrace of some fourteen miles from ‘Raitihi’ to Manganui a te Ao. He described this table land as generally poor but heavily timbered with rimu and kaikawakaroa with some white pine, maire and totara, while the country and timber below it was described as ‘good to the Wanganui River’. He noted that the ‘wide, deep depressions’ of the Manganui a te Ao and Mangatote rivers would need to be crossed for the railway. From Mangatote, for a further few miles until the forest ended, he described the soil as good. Further on, he described the Waimarino plains as ‘not better’ than the Murimotu. They were covered in tussock grass, and were running Maori-owned horses and cattle, which he described as being in generally poor condition. A little further on, he noted a central point where branch lines could be run towards Taupo or west to the Wanganui River and then the West Coast. He then reported the route continued through forest, following the Piopioatea River where the land fell towards Taumarunui.<sup>343</sup>

In his reports, Rochfort also noted the relative independence of the upper Whanganui people from the Manganui a te Ao northwards, from their southern relatives, even while they retained close connections with them. These connections enabled the Manganui a te Ao chiefs to travel the river and attend meetings on it, while in turn, the views of their lower river relatives could be persuasive. At the same time, the interior communities were recognised as having their own views and independence. The best efforts of lower river chiefs were not always sufficient to persuade them. Similarly, the Taupo chiefs also had considerable influence in the district, but accepted the Tuhua people would make their own decisions. The Taupo people were also reluctant to move too far into the area, recognising the independence of these people, even while they had relationship connections.

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<sup>341</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 5

<sup>342</sup> appendix to Rochfort report, 5 February 1884, *AJHR* 1884 sess I D-5 p 5

<sup>343</sup> Rochfort report on the central route, 5 February 1884, *AJHR* 1884 sess I D-5 p 2

Rochfort also noted the various views within the upper Whanganui communities over whether to support the railway exploration and to what extent. Rochfort had been shown past evidence of battles between upper Whanganui and Ngati Maniapoto communities. At the same time there was still very strong support for Wahanui and Tawhiao and general Kingitanga objectives among the communities of Tuhua. Rochfort's report made it clear that little progress would be made on the railway without at least the support of the influential interior chief Wahanui and those allied with him. Wahanui was clearly regarded as influential, even in the upper Whanganui district among the Manganui a te Ao chiefs.

The Government tactic of relying on the earlier agreement with Wahanui over the Hursthouse exploration to carry on with other explorations without further consultation, also proved to be inadequate, even with the assistance of sympathetic lower Whanganui or Ngati Tuwharetoa chiefs. Rochfort was very lucky to get as far as Waimarino and the upper Whanganui. He was unable to penetrate into the interior past the upper Whanganui. Wahanui, with active patrols over the last six months, clearly expected something of the sort, and was determined to require further negotiations. If Bryce wanted to go ahead with the next stages of the railway, he would have to negotiate further.

### **3.6 The agreement for an external boundary survey for the Rohe Potae, 1883**

In late 1883, Bryce does appear to have re-entered negotiations with Wahanui. For example, in late September or early October 1883, Bryce wrote a draft letter to Wahanui telling him the time had come when decisions had to be made on matters they had spoken about on several occasions.<sup>344</sup> These further negotiations took place in late November - early December 1883, signalling another stage in the Rohe Potae compact. This time negotiations appear to have centred on the petition request for protection of the Rohe Potae district, by the legal fixing and recognition of an external boundary. This had been an important part of the 1883 Rohe Potae petition and it had not been addressed by Government when it had made some legislative reforms in 1883. The Government may have thought that this boundary protection was no longer necessary with the reforms. However, by late 1883, Bryce appears to have accepted that progress with the railway would be stalled unless some form of legal, external boundary could be agreed.

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<sup>344</sup> NO 83/3200, MA series 13/43a, ANZ

The actual details of these negotiations over the outer boundary appear to have been poorly recorded and what survives appears at times contradictory, perhaps reflecting the different perceptions involved. In hindsight, a major issue was what kind of boundary was being negotiated. It seems that being obliged to enter negotiations, Bryce was determined to treat the boundary as effectively that of a block of largely Ngati Maniapoto land (with possibly some other iwi interests along the borders) to be taken to the Land Court for investigation like any other block. The first step in this process was of course a preliminary survey, but eventually the Court investigation would follow. Although the interior iwi had been totally opposed to the Land Court and insisted on making title determinations themselves, to be legally confirmed, Bryce seems to have believed or acted as though his reforms were sufficient to have changed their minds.

As previously noted, those reforms meant that pre-investigation deals (except by the Crown) were now illegal and the local Native Committees would 'assist' the Court, perhaps by streamlining inquiries over iwi, hapu and individual interests. Otherwise the Court would operate as usual. Bryce also seems to have been confident that although the petitioners were clearly opposed to selling their land, this opposition would effectively melt away, once their interests were individualised by the Court, and individuals had full powers to dispose of their own interests, regardless of hapu or chiefly sanction.

The interior iwi, on the other hand, still seemed to be seeking the kind of legally recognised outer boundary for the whole Rohe Potae district that they had been seeking in the petition. This was to protect the district and their traditional authority over it, regardless of which iwi held customary interests in it. They did not want the Land Court as it currently was, to operate within the district, and instead wanted outside 'interference' stopped, so they could manage title decisions and the land themselves. This included retaining collective control over the land and its management, presumably through the now legally recognised Native committees. They still wanted to protect the district from sales and they wanted protection from the pressures and undermining of customary authority that they believed led to these sales. They wanted the Land Court to have only minimal, if any, involvement in their land. This would be perhaps to 'confirm' their decisions and to give legal protection to their external boundary.

The surviving official documentation of these negotiations over the external boundary is very sparse and correspondence registers indicate that even at the time much of the detail of what was discussed and explained was never officially recorded anyway. This outline has relied

heavily on surviving documentation, correspondence register entries, where associated documents have not survived, and contemporary newspaper reports.

It seems that in November 1883, Bryce wrote a draft letter to Wahanui, informing him he had arrived in the district to meet the chiefs (as they were expecting) and he was ‘arranging matters so that business may be done in a satisfactory manner’. He asked Wahanui and Taonui to come to Kihikihi for discussions, explaining he wanted a ‘quiet business talk’ which was ‘more likely to prove satisfactory than a large public meeting’.<sup>345</sup> As well as these private talks, a more public meeting was held from 30 November to 1 December 1883 at Rewi Maniapoto’s house at Kihikihi, where public reporting seems to have been allowed. Reports in the *Waikato Times* and *New Zealand Herald* of this meeting are nearly identical and very closely follow the Government interpretation of what was being agreed. However, a close reading of the reports highlights some apparent contradictions, while, as will be explained, later reports reveal they provided only a partial view of the proceedings.

The *Waikato Times* report of the first day, interpreted the meeting, as did the Government, as being essentially between the Government and Ngati Maniapoto chiefs. The report itself was headed ‘Meeting at Kihikihi between Mr Bryce and the Ngatimaniapotos’.<sup>346</sup> The paper’s account of the meeting also closely followed the preferred Government view. It reported Bryce as outlining a brief summary of previous events, where the government had received a number of applications for a Land Court hearing for parts of the district and had then received the 1883 petition, making certain complaints, which he thought ‘had something in them’. He described these complaints as concerning the Land Court and the trouble caused by speculators and companies. He acknowledged that Maori had also requested more power to inquire into claims.<sup>347</sup>

Bryce was reported as claiming that ‘as far as possible’ the wishes of the petition had been carried out. The Native Land Court had been improved and simplified, lawyers and agents were excluded, and Native committees had been given means to inquire into titles. Bryce also promised that when a Native Committee was required in the district, they would have no trouble getting one; ‘All difficulties are now removed’. He also reminded the chiefs that the

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<sup>345</sup> draft letter 19 November 1883, MA series 13/93, ANZ

<sup>346</sup> *Waikato Times*, 1 December 1883

<sup>347</sup> *Waikato Times*, 1 December 1883

Government also now provided money for surveys and there were heavy penalties for pre-investigation dealings.<sup>348</sup>

Bryce claimed he had kept his word and now the meeting, as representative of Ngati Maniapoto, should send in a Ngati Maniapoto application for the ‘whole of your territory’. In addition, Bryce advised them not to sell all their land, but to sell a small part only and invest the proceeds. He advised them to lease large blocks and keep sufficient to live on. He also promised to send two judges to the district, for two years if necessary, to move from place to place. Finally, Bryce warned that if they did not send in an application, he could not hold the Court back any longer. There were reasonable requests to have land investigated in the district, and he could not delay them much more.<sup>349</sup>

A search of surviving records shows that, in November 1883, presumably in preparation for this meeting, the Assistant Surveyor General, S P Smith, had forwarded a number of Land Court applications that seemed relevant to the district, to Bryce’s private secretary, Butler. Even so, Percy Smith noted they were very rough as to boundaries, as little was known about them.<sup>350</sup> The extant copies of these applications appear to date from 1881 to 1883, indicating the Government had been collecting them and putting them aside for some time, perhaps until it was thought the Court could realistically operate in the district.<sup>351</sup> Presumably it was these applications that Bryce now insisted he could no longer delay. Bryce was also reported as explaining that, with regard to the explorations for roads and railways, a search was being made for the best routes. He also spoke about the trig surveys the Government wanted for the district. He explained he had ordered one in 1882, but had then ordered it stopped at the request of Wahanui and Taonui, because they believed it was not properly understood by local communities.<sup>352</sup>

The *New Zealand Herald* and the *Waikato Times* both reported that the chiefs at the meeting, including Wahanui, ‘agreed’ with Bryce.<sup>353</sup> The implication was that they now agreed to having the Native Land Court brought into the Rohe Potae. The *New Zealand Herald* heading

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<sup>348</sup> *Waikato Times*, 1 December 1883

<sup>349</sup> *Waikato Times*, 1 December 1883

<sup>350</sup> NO 84/102, S P Smith letter 16 November 1883, MA series 13/93

<sup>351</sup> copies of applications, 1881-83, MA series 13/93, and applications such as for the ‘Kawautahi’ block of June 1883, LS-W 46/4 appln no 497, ANZ

<sup>352</sup> *Waikato Times*, 1 December 1883

<sup>353</sup> *Waikato Times*, *New Zealand Herald*, 1 December 1883

was in fact, ‘The Native Minister and the Kingites, they agree to apply to the Land Court’.<sup>354</sup> However, the reports reveal that in their statements, the chiefs actually appeared to focus almost entirely on the proposed outer boundary survey for the district. Wahanui was reported as stating he wanted one external survey only. Further subdivision surveys could be made only after the outer boundary survey was finished. He stated, ‘Let the survey be an external one. That is all’. Rewi Maniapoto was reported as speaking in a similar manner, saying an outside survey could be made and after that was determined, ‘sub-division surveys can go on afterwards’.<sup>355</sup> With regard to costs of the boundary survey, Wahanui was reported as telling Bryce that he would take care of the costs and if he needed assistance with this, he would ask. Bryce claimed he had offered to pay the costs of the survey to prevent the chiefs falling into the hands of speculators, but if they paid themselves then ‘so much the better’.<sup>356</sup> It seems from this, that what the chiefs were actually concerned with was getting a protected boundary for the district.

Other chiefs were reported as speaking in support of the agreement. For example, the chief Hopa Te Rangianini was reported as stating that he now supported Wahanui’s policy of the whole district working together. Otherwise he would have applied separately for the sake of his children. Wahanui also spoke in support of the district acting as one and asked Bryce to ignore the separate application Ngati Hikairo had apparently already made. He wanted one survey of the whole district. Taonui was also reported as asking for ‘one survey sub-division’ with tribal boundaries arranged first. No other survey should take place unless authorised by Maori and a committee would arrange these matters.<sup>357</sup> The chiefs appeared unanimous that they wanted one protected district, after which they could settle internal matters themselves. They also preferred to have a Maori committee arrange such matters. There was no mention of the Land Court itself in these reported remarks, just a distinct preference for Native committees, once the boundary was settled and protected.

What the chiefs also seemed to be agreeing to was one joint application to survey their outer boundary. This was at first more surprising, given their often-stated opposition to the Land Court. It was known that applications for survey of a block were generally the first step in the Land Court process. This agreement to apply for a boundary survey was also apparently what

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<sup>354</sup> *New Zealand Herald*, 1 December 1883

<sup>355</sup> *Waikato Times* 1 December 1883

<sup>356</sup> *Waikato Times* 1 December 1883

<sup>357</sup> *Waikato Times*, 1 December 1883

led the newspapers and the Government to claim that the chiefs had agreed to invite the Native Land Court in, as though the Rohe Potae were any other block to be investigated by the Court. This raised the issue of why chiefs who were so adamantly opposed to the Land Court would agree to make an application for survey, when this was widely supposed to inevitably result in a Land Court investigation.

The answer seems to have been that the chiefs were persuaded that the only way they could legally protect their outer boundary at this time, was to apply to have a survey made of it. This is indicated by reports that Bryce acknowledged that it had been suggested that the petition itself was sufficient application for an external boundary, but he had rejected this. He explained it was just a document ‘drawing public attention to the desire of the Natives to have a fixed boundary [but] Application must be made in form for the Court’. Later, Bryce was also reported as saying the boundary ‘must’ be defined by formal application.<sup>358</sup> It seems that the chiefs had been persuaded that there was no other legal way they could gain a legally recognised and therefore protected external boundary other than by making a ‘formal’ application for a survey.

Presumably they believed that a survey alone need not inevitably bring the Land Court into the district, it would merely confirm the outer boundary. Or possibly they were persuaded that in any case, the Government would delay any investigation as they had been asking, until the Land Court was adequately reformed. Bryce had indicated the Government was already delaying action on previous applications. In the meantime, they may have assumed that the newly strengthened Native committees (as the Government claimed) could begin work to settle the internal divisions, which the reformed Land Court could then presumably ‘confirm’.

This was not the same as willingly ‘inviting’ the current Land Court process, which they had identified as so harmful, although the Government and the newspapers might have assumed that the end result would be little different. The chiefs were also relying to a large extent on the good faith of the Government that their wishes to act jointly and not to have the Court divide them would be respected. They may also have felt they had little choice if they wanted to protect their outer boundary.

Even so, there are indications the chiefs were still cautious. Bryce was clearly very keen to have the chiefs sign the formal application for survey he had brought with him as soon as

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<sup>358</sup> *Waikato Times*, 1 December 1883

possible. He advised the people at the meeting to ‘apply for yourselves’ and then forms of application in blank could be sent to other tribes; ‘No doubt after hearing of today’s proceedings all will agree’.<sup>359</sup> He also urged that there was no need for all the people to sign and that a few names would be sufficient. The names he suggested were Wahanui, Rewi, Taonui, Wharo and Hopa Te Rangianini, all of whom appeared to be from Ngati Maniapoto.<sup>360</sup> This was not the only indication that Bryce wanted the application to appear to be a Ngati Maniapoto one, concerning largely Ngati Maniapoto territory and effectively ignoring the other iwi of the alliance and 1883 petition who were also seeking a jointly protected district. For example, Bryce was reported as saying his understanding was that the tribal boundary would be fixed first and after that there would be subdivisions for the ‘different hapus of Ngatimaniapotos’. Later, Bryce was also reported as noting they were discussing ‘the boundary of the Ngatimaniapoto’.<sup>361</sup> At this time, it was common for Pakeha to generically label all the interior people as ‘Maniapoto’ or ‘Waikato’ so this was not necessarily suspect, but even so the chiefs refused to be hurried and, in spite of Bryce’s urging, the chiefs were reported as deciding to discuss the matter further and reply the following day.<sup>362</sup>

The reports of the meeting reveal that, as with the petition itself, the chiefs and communities were still being beset in their discussions by a variety of advisors, including other Pakeha. The reports note, for example, that W H Grace was present at the meeting, and he had also urged the chiefs to make the survey application while they still had old people who knew the boundaries and before the ‘hawks’ currently flying around them descended.<sup>363</sup> The Grace family had intermarried with Ngati Tuwharetoa by this time and were influential advisors to the Taupo chiefs on matters to do with the settler government. The Grace family also actively supported government policy over opening the district. The newspaper reports of the meeting later acknowledged that William Grace had played an important role in persuading the chiefs to sign the next day. They reported he possessed a great deal of influence with them and he used persuasion and argument ‘to assist Mr Bryce in opening up the country’.<sup>364</sup> This

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<sup>359</sup> *Waikato Times*, 1 December 1883

<sup>360</sup> *Waikato Times*, 1 December 1883

<sup>361</sup> *Waikato Times*, 1 December 1883

<sup>362</sup> *Waikato Times, New Zealand Herald*, 1 December 1883

<sup>363</sup> *Waikato Times*, 1 December 1883

<sup>364</sup> *Waikato Times*, 4 December 1883

apparently included talking with the chiefs that night, helping persuade them to sign the application the next day.<sup>365</sup>

Reports of the next day's negotiations reveal some quite different aspects of the meeting. The *Waikato Times* reported that after a long private meeting between Bryce and the chiefs on the next morning (1 December) the application was finally signed.<sup>366</sup> John Ormsby (of Ngati Maniapoto and later chairman of the Kawhia Native Committee) read out the reasons for the signing. In brief these were that the chiefs were satisfied with Bryce's proposals and the new Land Act (presumably the Native Land Laws Amendment Act 1883). Mr Grace then read out the boundaries, encompassing the whole King Country. The *Waikato Times* report then went on to explain that 'thirty leading chiefs representing the Ngatimaniapoto, Ngatiraukawa, Ngatihikairo and Ngatituwharetoa tribes allowed their names to be inserted in the body of the form', signifying that 'on behalf of these tribes', the survey could go ahead.<sup>367</sup> This was quite different to the appearance Bryce had been seeking to convey of a largely Ngati Maniapoto application and indicates how strongly the chiefs favoured a joint allied approach at this time, presumably in an effort to avoid the damaging divisiveness that usually accompanied efforts to deal with land. Even though representatives of the iwi alliance had inserted their names in the body of the document, as the newspapers noted, the chiefs Bryce had nominated actually signed at the foot of it as he had advised. Technically, this meant that the document was actually regarded as being 'signed' by the Ngati Maniapoto chiefs. This enabled the Government to describe the application as a 'Ngati Maniapoto' one, even though the clear intention of the chiefs appears to have been that it should be representative of the whole alliance. The *New Zealand Herald* report of the second day of the meeting was similar, but briefer. It also noted that Bryce was 'closeted with the Natives' for a long time in the morning, after which the application for survey was signed. It also reported that thirty of the signatures 'representing four tribes' were inserted in the body of the application.<sup>368</sup>

These reports indicate that contrary to the apparent attempts of Bryce and the newspapers to convey the meeting and application for survey as a Ngati Maniapoto action, this meeting was in fact attended by leadership of the interior alliance representing those communities who had supported the original 1883 petition and its demands which were essentially similar to

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<sup>365</sup> *New Zealand Herald*, 3 December 1883

<sup>366</sup> *Waikato Times* 4 December 1883

<sup>367</sup> *Waikato Times*, 4 December 1883.

<sup>368</sup> *New Zealand Herald*, 3 December 1883

Kingitanga objectives. Rather than being a ‘Ngati Maniapoto’ application, it was supported by those communities of interior iwi who supported the alliance and it was part of the attempts of the alliance to have the petition requests implemented, in this case protection and recognition of the outer boundary of the Rohe Potae.

Newspaper reports did note that Bryce acknowledged the determination of the meeting to have Native Committees, saying he would take steps to assist with this. However, the reports still overwhelmingly anticipated that the Native Land Court would take a dominant role in any land investigations. Bryce was also reported as advising the chiefs that in order to fix their outer boundary, it was ‘necessary to fix trig stations first’.<sup>369</sup> This seems to have been a way of ensuring the long awaited trig surveys would also go ahead in the district.

The newspaper reports of this time do not mention upper Whanganui involvement in this meeting, consistent with their downplaying of an alliance role. However, a report by the government agent, Wilkinson, does mention upper Whanganui participation. He reported that at a large public meeting in Kihikihi, it had been agreed to send an application to the Court for the investigation of the large King Country district of almost 3,500,000 acres. Wilkinson also noted that

This large block however does not wholly belong to Ngatimaniapoto. They admit that the Whanganui, Ngatiraukawa and Ngatituwharetoa have claims to portions of it and representatives of each of these tribes were present at the meeting and signed the application to Court as representing their people.<sup>370</sup>

Wilkinson also reported another matter omitted by the newspapers. This was that the chiefs had made a proviso that no prospecting for gold should be allowed until after their title was decided, or as he put it, the land had passed the Court.<sup>371</sup>

Bryce was evidently very pleased with the meeting and he remained insistent in spite of the evidence of an alliance agreement, that it was both a Ngati Maniapoto meeting and survey application. He telegraphed Rolleston on the same day to report the ‘very satisfactory’

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<sup>369</sup> *Waikato Times*, 4 December 1883

<sup>370</sup> *AJHR* 1884 sess II C-1

<sup>371</sup> *AJHR* 1884, G-1 p 9

meeting of 1 December, with nearly all the principal men of the ‘Ngatimaniapoto tribe’. He also reported that they had applied that day to the Land Court for a ‘survey and investigation of the land known as the King Country’.<sup>372</sup>

The newspapers were jubilant about what was described as Bryce’s achievement in having the application signed, perhaps also revealing the true intent of the Government over the agreement. The *New Zealand Herald* noted that ‘when once the application is sent in there can be no drawing back. The necessary surveys are made, the Court decides who are the owners, and then issues certificates of title to those who are found to be entitled. Arrangements can then be made to sell or lease, and no doubt such will be made.’<sup>373</sup> Nevertheless, the papers also noted that all those involved in signing the application ‘exhibit a disposition not to sell their land’.<sup>374</sup>

The *Herald* later noted that, although a number of applications had already been formally lodged, Bryce had taken no action over them. It was assumed that he recognised there was some risk in beginning any survey without the ‘express and public sanction’ of all the great chiefs and landowners. The paper noted that if a survey had begun on any less formal authority, there would have been ‘great trouble’. Now, however, it would be almost impossible for any Maori to interfere.<sup>375</sup> Both papers celebrated the application as the end of the ‘Kingite difficulty’. They also noted that Bryce had not found it necessary to even talk with Tawhiao and his people. ‘Tawhiao and his people have not been taken into account, and evidently Mr Bryce has not thought it necessary to trouble himself about them’.<sup>376</sup>

It seems clear from this that the agreement for the survey of the outer boundary of the Rohe Potae was made on very different understandings, and these would have important implications for future developments. The interior iwi alliance, including significant communities of upper Whanganui people who had interests in what would become Waimarino block lands, believed they had at last gained Government recognition of and legal protection for their remaining district still held by customary authority. Once this outer boundary survey was made there could be no more secretive Native Land Court applications to undermine and upset the holding of land by this collective hapu and iwi authority as had

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<sup>372</sup> Bryce to Rolleston, telegram 1 December 1883, MA series 13/93, NO 83/3749 attached to NO 84/132, ANZ

<sup>373</sup> *New Zealand Herald* 1 December 1883

<sup>374</sup> *New Zealand Herald*, 3 December 1883

<sup>375</sup> *New Zealand Herald*, 3 December 1883

<sup>376</sup> *New Zealand Herald*, 3 December 1883

been happening around the edges of the district for some time. This was a very important part of the requests made in the 1883 petition as it would give them time to seek adequate reforms of the Land Court and to settle internal divisions among themselves in an open manner free of the secrecy and divisiveness of the current Land Court and purchasing system. Later, in 1889, Ngati Maniapoto explained that they expected that when the external boundary was surveyed there would be one Court hearing to settle the ownership of the whole district. After that they would make internal determinations themselves.<sup>377</sup> In 1884, when speaking to the legislative council, Wahanui also explained that he did not entirely rule out a reformed Native Land Court for the future. However, he did not want the Land Court to have jurisdiction over the district 'at present'. Instead he wanted Native Committees to be empowered to undertake all dealings and transactions within the proclaimed district.<sup>378</sup>

The chiefs also expected the survey to protect all the remaining customary lands of the whole interior alliance. It was not intended to be a 'Ngati Maniapoto' application to survey (and claim) a large area where it was known other iwi had interests. John Ormsby later explained that they had discussed ways of protecting the whole district and limiting the Native Land Court from operating within it. To overcome potential problems with minor applications and surveys, Bryce had suggested that each tribe should send in an application for the whole block. They had considered this and finally agreed.<sup>379</sup> This was presumably intended to avoid the disruption of conflicting internal claims that would inevitably undermine their unity.

The Government may have found the opportunity to survey such a large amount of previously inaccessible territory very useful. However, otherwise it seemed determined to ignore anything amounting to a pan-iwi approach or alliance. On the contrary, as will be seen, it appears to have been recognised that it was in the Government interest to encourage individual iwi to act independently of the alliance. This would not only help destroy the credibility of the concept of pan-tribal movements such as the Kingitanga, (as the newspapers recognised) but (as was also recognised) it would allow the Government and the Land Court to deal with (or pick off) iwi and hapu separately and individually. There could be no 'drawing back' from the process for them and the current process was still geared to undermining their authority and facilitating exactly what the petitioners had feared, loss of their land. The issue now appeared to be how far the Government would honour its apparent

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<sup>377</sup> Ward 'Whanganui ki Maniapoto' p 42

<sup>378</sup> *NZPD* 1884 vol 50 p 427

<sup>379</sup> Ward, 'Whanganui ki Maniapoto', p 42

undertaking to the chiefs that the survey would indeed protect the external boundary and give the district the time it sought to ensure adequate reforms were implemented. In the meantime, the outer survey had to be made.

### **3.7 The external survey and other surveys in the Rohe Potae, 1884**

Following the application for the survey in December 1883, the chiefs met almost immediately with government officials to discuss the details of how the outer boundary survey would be made. This meeting apparently took place on 19 December 1883, with the Assistant Surveyor General, S Percy Smith, representing the Government.<sup>380</sup> The chiefs were evidently concerned about government surveyors doing this work, rather than hiring their own surveyors, but they were eventually persuaded to agree. Percy Smith reported the meeting was held before the ‘assembled tribes’ indicating that this meeting was also attended by representatives of the interior alliance.<sup>381</sup>

This meeting was accompanied by an exchange of letters. After the original written agreement over the Hursthouse exploration, this seems to be the only other formally written and signed agreement forming part of the Rohe Potae compact. The original of this does survive but it was printed. The letter from the chiefs, as translated, agreed that the Government would make an accurate survey of the external boundary of ‘our block’ in order that a Crown grant may ‘issue to us, our tribes and our hapus for the price as arranged by you, which would not exceed £1,600’. The letter went on, ‘this is our decided word: this agreement must not be altered by any other arrangement or by any future Government’. The letter was signed by Wahanui, Taonui, Rewi Maniapoto, Ngahuru Te Rangikaiwhiria, Te Herekieke and Te Pikikotuku.<sup>382</sup> Wahanui, Taonui and Rewi Maniapoto were Ngati Maniapoto chiefs. Te Herekieke and Te Pikikotuku both appear to have had Ngati Tuwharetoa and upper Whanganui connections. Both these latter chiefs were later involved with the Waimarino block lands.

Percy Smith replied with a letter also dated 19 December 1883. It was addressed to Wahanui Taonui and Rewi Maniapoto only, and referred to ‘the arrangements made by us in the presence of the people’. The letter agreed that Government surveyors would make an accurate

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<sup>380</sup> Letter 19 December 1883, S Percy Smith to Surveyor General, *AJHR* 1885 G-9, p 1

<sup>381</sup> Percy Smith to Surveyor General 3 July 1885 *AJHR* 1885 G-9 p 1

<sup>382</sup> letter 19 December 1883, *AJHR* 1885 G-9 p 2

survey of the lines of the external boundary of ‘your block’, in order that a Crown grant would issue to ‘you and your tribes’. It was also agreed that the survey cost would not exceed £1,600, or at least the amount the chiefs would have to repay the Government would not exceed £1,600. It was also agreed ‘as a definite word’ that ‘neither the Government nor any other Government can make any other arrangements in the future. The terms of this document apply to the external boundaries only’. This letter was signed by Percy Smith (Te Mete) Chief Surveyor.<sup>383</sup>

The chiefs may well have been confident that this written exchange of letters met the Pakeha requirement of written evidence of the solemn agreement or compact they had already reached verbally with Bryce at Kihikihi regarding the survey and protection of their outer boundary as part of the wider Rohe Potae compact. The wording of the letters, apparently binding present and future Governments, also appeared more solemn than appeared necessary for an agreement over costs. However, technically the letters were no more than the written agreement legally required over the payment of survey fees for Government survey work. As noted in chapter 2, legislative provisions by this time required that applicants for survey and Government surveyors make an agreement about how the survey would be paid for. Whatever the understanding of the chiefs, the Government could insist the letters had no greater significance than an agreement over fees.

The Government also continued to act as though the external survey largely concerned a Ngati Maniapoto ‘claim’. It was eventually successful in promoting this view, but only after considerable effort in the next few years. In the short term the Government also benefited from being able to undertake a survey of such a large area. Once the survey was underway and seemed unstoppable, however, the Government promoted the idea of a Ngati Maniapoto claim with more vigour. This can be seen in the views of the surveyor Percy Smith, who was originally involved with the survey agreement. He was in no doubt that the agreement involved more than just Ngati Maniapoto lands as he made clear in correspondence in 1888, when it was time to collect the agreed survey moneys from iwi. By this time, large blocks including Tauponuiatia and Waimarino had been carved out of the original area, assisting the Government aim of reducing the Rohe Potae to virtually Ngati Maniapoto territory alone, a perspective actively promoted by Government land purchase officials.

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<sup>383</sup> *AJHR* 1885 G-9 p2

This reduction of the original block naturally caused some complications for Percy Smith when he went to collect the original survey fees, as he noted in a memo to the Surveyor General in 1888.<sup>384</sup> He reported that he had met with some of the chiefs on 13 April 1888, and was trying to apportion the fee between Ngati Tuwharetoa and Ngati Maniapoto, given that the Tauponuiatia block had now been cut out. The discussions included Ngati Maniapoto chiefs and some Ngati Tuwharetoa chiefs were also present, including Tureti [Te Heuheu], Te Herekieke, Hitiri and others. Percy Smith was quite convinced that it was only fair that the new Tauponuiatia block should bear a portion of the original £1600 fee in proportion to its area. He had calculated that the Ngati Maniapoto people should pay £992 4s 8d (which they had paid that day) and that the Ngati Tuwharetoa people should pay £607 15s 4d. He reported that Ngati Maniapoto had agreed to this, while he claimed Tureti alone had demurred on the grounds that the Taupo people had received no benefit from it.<sup>385</sup>

Percy Smith acknowledged that the head of the Land Purchase Department (TW Lewis) disagreed with him on this. However, Percy Smith felt such an apportioning was ‘true and just’ and he also worried that if the whole amount was charged to Ngati Maniapoto, then Ngati Raukawa and possibly Ngati Mahuta would also want their lands excluded. He was concerned that if this was conceded, other hapu in the ‘potae’ would also want an exemption.<sup>386</sup> From a surveyor’s point of view such a splintering would obviously complicate survey work, but from the land purchase view such a splintering and loss of unity was precisely what was desired. Presumably this was the cause of the difference of opinion between Percy Smith and Lewis.

Percy Smith reported that he had explained to Ngati Tuwharetoa that the Rohe Potae or what was now known as the Aotea block survey had indirectly assisted them, as they were able to use the topographical information collected to complete the sketch plan for the Tauponuiatia Native Land Court hearing. Otherwise they would have had to pay much more for a survey plan. (Presumably the topographical information gathered was equally useful for the sketch plan for the Waimarino block hearing in 1886). He reminded the Surveyor General that the chiefs Te Herekieke, Ngakuru and Pikikotuku, who were all connected with Ngati

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<sup>384</sup> Memo Percy Smith to Surveyor General 16 April 1888, SG 6162/160, loose copy in MA-MLP 7/3 p 106, ANZ

<sup>385</sup> Memo Percy Smith to Surveyor General 16 April 1888, SG 6162/160, loose copy in MA-MLP 7/3 p 106, ANZ

<sup>386</sup> Memo Percy Smith to Surveyor General 16 April 1888, SG 6162/160, loose copy in MA-MLP 7/3 p 106, ANZ

Tuwharetoa, were all parties to the original agreement made in 1883 when the Aotea survey was arranged. Hitiri Paerata, also closely connected with Ngati Tuwharetoa, had also signed the application for hearing for the Aotea block.<sup>387</sup> This suggests that officials were well aware at the time that the agreements to apply for the survey and to cover the cost of the survey were made with others, rather than just Ngati Maniapoto. Percy Smith's reference to the application for hearing instead of for survey also reveals just how little practical difference there really was between the two.

Although the outer boundary survey required a special agreement as the chiefs would be paying the costs of it, Bryce had also indicated that triangulation surveys were 'necessary' for this survey to be completed. This effectively gave the Government the opportunity to begin these types of survey as Hursthouse had originally attempted but Bryce had been obliged to cancel earlier in the negotiations. These surveys were not directly linked to surveys for Land Court investigations, being records of more general topographical information, and Maori were not generally charged for them. However, it was well known by this time that they nevertheless provided important information that could be used to compile the sketch plans necessary for Court investigations. This was particularly important when surveys that were more directly linked to Land Court cases were likely to be subject to obstruction, as the Government must have been well aware.

This kind of trig survey also seems to have been commenced in the district from December 1883, under the umbrella of the agreed boundary survey. The external boundary survey, which seems to have been the slowest survey of all to be completed, was begun in January 1884. As a result of the agreement to recognise the outer boundary, the exploratory survey for the central route of the Main Trunk railway, was also re-commenced and was reported as complete by Rochfort by February 1884.<sup>388</sup> In addition to these surveys, the Government also began to press ahead with a number of roads in the Rohe Potae, including a road from Raglan to Aotea and a major road from Kawhia to Alexandra, under Hursthouse of the Survey Department.<sup>389</sup> This work was presumably also carried on as a result of the negotiated agreement between the chiefs and the Government and their expectation of a reformed system of land management.

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<sup>387</sup> Memo, Percy Smith to Surveyor General, 16 April 1888, SG 6162/160, loose copy in MA-MLP 7/3 p 106, ANZ

<sup>388</sup> Rochfort report appendix 5 February 1884, *AJHR* 1884 sess I D-5 p 5

<sup>389</sup> *AJHR* 1884 G-1 p 8

As the Government no doubt hoped, and as a result of what the chiefs believed had been achieved, the influential alliance leaders began to much more actively assist with the surveys. For example, on 26 December 1883, after the agreement for the external survey had been reached, Wahanui promised Bryce that he would personally travel to Mokau and to Waimiha to explain the railway exploration to the local communities.<sup>390</sup> Nevertheless, the rapidity with which work started and the extensive spread of the surveys throughout the district quickly began to cause considerable confusion and alarm, even among those who supported Wahanui and the alliance. Not surprisingly, the surveyors continued to meet with pockets of obstruction from local communities concerned at their presence and they relied very heavily on Wahanui and other alliance chiefs to ‘smooth’ their way. This was not easy with the number and variety of surveys underway, and the difficulty in explaining what they were all for. Later, at a meeting at Kihikihi in 1885, Wahanui referred to the difficulties of that time. He explained that they had not been consulted about the erection of trig stations and the consequence was that the people became unsettled, ‘as one brother could not advise the other or tell the other anything about it’.<sup>391</sup>

It also seems that some surveyors were also prospecting for gold, or their parties were infiltrated by gold seekers posing as surveyors. For example, in 1884, the chief Paiaka wrote to the Government, reporting the Tuhua peoples had agreed to the railway survey and that they and Ngati Maniapoto were helping Europeans who were looking for a good line. However, they had found one surveyor who was looking for a road and for gold. They were concerned about this dual work and asked for such men to be sent back. Bryce was not particularly worried about this, even though no gold prospectors had been one of the conditions of the earlier agreement. He noted on this letter that the chiefs would know the proper people as they were carrying letters from him and in any case it would be good for Maori if gold was discovered. Nevertheless, he thought there was no gold to be found and therefore no need to be concerned about it.<sup>392</sup>

Although illegal, gold seekers continued to enter the Tuhua area from lower Whanganui in contravention of the chiefs’ wishes. In April 1884, Wahanui apparently asked the Government to stop Whanganui gold prospectors going to Tuhua.<sup>393</sup> The next month, the government

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<sup>390</sup> letter Wahanui to Bryce, 26 December 1883, NO 84/158, MA series 13/43b, ANZ

<sup>391</sup> AJHR 1885 G-1 p 13

<sup>392</sup> NO 84/195 letter Paiaka to Bryce 15 January 1884 and Bryce annotation 25 January 1884, MA series 13/43b, ANZ

<sup>393</sup> MA correspondence register entry NO 84/1386 letter from Wahanui 26 April 1884, ANZ

agent Wilkinson reported the capture of a party caught prospecting in the Tuhua ranges who were brought to Alexandra. He noted that only a few years ago they might have expected to have lost their lives, and put the change down to the good relations that had now been built up with the Whanganui and Tuhua districts, not least as a result of the government pardon of the local chiefs Ngatai and others for the killing of Moffatt. Wilkinson exhorted the Government to take 'special care' with this to ensure that Maori as well as Europeans gained benefits from the opening of the district.<sup>394</sup>

There was also concern that the Government focus seemed to be much more on the long awaited trig surveys and railway exploration, rather than the agreed external boundary survey, which appeared to be going much more slowly. For example, in March 1884, Rau Taramoa wrote to Bryce, explaining the surveys were causing problems. He wrote that Wahanui was concerned that while large sums of money were being spent on internal surveys, and roads in the district were also being built rapidly, his work, the exterior boundary was not being pushed on. Bryce instructed that a reply was to note that the writer was mistaken as the external boundary survey was nearly complete.<sup>395</sup>

There was also significant continuing opposition in the district from those who still resisted any kind of survey or Government intervention, including some of the followers of Tawhiao.<sup>396</sup> This was lessened somewhat when Tawhiao pronounced himself to be in favour of a protective outer boundary at least for the district.<sup>397</sup> Tawhiao and his supporters then went on to promote a petition and visit to the British Queen to seek the implementation of a separately recognised Maori district and an inquiry into the confiscation of Maori land before further development took place.<sup>398</sup>

It does seem that the immediate Government focus was indeed on the trig and railway surveys rather than the protective external boundary, although this had been the main focus of iwi concern. For example, the official survey report for the 1883-84 period reveals a major concern was the 'long-delayed' triangulation of the King country.<sup>399</sup> This report noted that since the December 1883 meeting with the chiefs, their objections, which had been the

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<sup>394</sup> *AJHR* 1884 G-1 p 10

<sup>395</sup> translation of letter from Rau Taramoa 16 March 1884, and Bryce instructions 22 April 1884, NO 84/1254, MA series 13/93, ANZ.

<sup>396</sup> Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea block) 1840-1920* p 35

<sup>397</sup> Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea block) 1840-1920* p 36.

<sup>398</sup> For example, Wilkinson report May 1884, *AJHR 1884 G-1* p p11-12

<sup>399</sup> *AJHR* 1884, sess II, C-1, appendix 2, p 25, report of S Percy Smith

‘barrier’ to this work, had been removed. As a consequence, ‘a very large area of country has been brought under the ruling process of major triangulation’.<sup>400</sup> This was of course, far more intrusive over the whole district than simply fixing an outer boundary.

When the external boundary was mentioned in this report, it was in connection with the anticipated Native Land Court investigation. Under the heading, *Native Land Court Surveys*, the report noted that the December 1883 meeting had agreed to an external survey of the boundary of the Aotea block ‘the greater part of the so-called King country’. This work was started in January 1884, by F H Edgecumbe and W C Spencer and when it was complete, a plan could be made ‘to enable the Court to deal with this large block’.<sup>401</sup>

The attached report of Lawrence Cussen, in charge of the triangulation surveys for the district, also revealed the focus of his work. He reported that the triangulation work had started almost immediately, in the last week of December 1883. Forty-three trig stations had been erected covering 2,500,000 acres. Major and minor triangulations were being carried out at the same time, and topographical sketches were being made ‘as the work proceeds’. Some of the heavy bush work clearing stations had been let to Maori, helping undermine opposition from other Maori. The work had met with some Maori obstruction, the most troublesome being from those who were ‘distrustful of the objects of the trig. Survey and the ultimate intentions of the Government with regard to their land’ or those who wanted their land surveyed differently. In order to undermine expected opposition as much as possible, they had moved to Taupo and begun working outwards from there. With the assistance of the chiefs Te Heuheu and Matuahū, they intended to survey as much as possible before they had to meet the expected strongest opposition.<sup>402</sup>

Cussen reported that one place they met with ‘serious and troublesome opposition’ was at Tuhua. Cussen reported that communities there were concerned that the Government would take land to pay for the surveys, the maps made would be used to investigate title, taxation would follow, and the Government would ‘lock up’ their lands until it could secure them all for itself. In addition, there was concern that the ‘big chiefs’ were managing everything.<sup>403</sup> These concerns appear to have been based on the experience of land dealing in the 1870s, including the Government preference to make deals with selected chiefs, which were then

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<sup>400</sup> *AJHR* 1884, sess II, C-1, appendix 2, p 25, report of S Percy Smith

<sup>401</sup> *AJHR* 1884, sess II, C-1, appendix 2, p 27, report of S Percy Smith

<sup>402</sup> *AJHR* 1884, sess II, C-1, appendix 2, p 29, report of L Cussen to Assistant Surveyor-General

<sup>403</sup> *AJHR* 1884, sess II, C-1, appendix 2, p 30, report of L Cussen

treated as binding the people of the area. Cussen reported that the Tuhua people had formed their own local committee to manage their affairs, the chairman being Te Hiahia. They refused to have trig stations on their land and refused to assist the survey in any way. They were apparently being advised by Kingi te Herekieke of Ngati Tuwharetoa on this. Cussen had approached Wahanui and Taonui for help and Wahanui had visited, met the people and ‘succeeded in arranging matters and the work was allowed to go on again’. Cussen noted that Wahanui and Taonui had consistently helped with the survey work, and had appointed men to take them all over the Tuhua country.<sup>404</sup> In apparent confirmation of this, the Government had also received a letter from some Tuhua chiefs of Waimiha in April 1884, stating there was no longer any evil between them and the Government and they would assist with the works the Government had begun in this ‘powhita’. This was possibly a contraction of porowhita or circle, presumably referring to the external boundary.<sup>405</sup> These chiefs appeared to be willing to assist because they believed the outside boundary was now being recognised and protected.

As surveyors continued to do, Cussen went on to report on the state of the district for future settlement purposes, evidently expecting the acquisition of at least some of the district for settlement. Apart from in a few localities, he reported that much of the land was poor and not generally suited for agricultural purposes although there were areas of valuable timber. He thought in most cases any agricultural holdings would need to be of 1000 acres and upwards, although ‘here and there’ a small farmer might find enough good land to settle on.<sup>406</sup>

Although there were some concerns with the way the Government was conducting surveys, the iwi alliance leaders appear to have generally stuck to their decision to assist with them. In the meantime they appear to have begun to focus their efforts on actively promoting the formation and operation of legally recognised Native Committees. This was apparently in anticipation of these committees beginning to undertake the major work of deciding internal divisions and of managing land. Wilkinson reported that he had conducted elections for the newly recognised Native committees in the district in March 1884. He described Ngati Maniapoto as being especially interested in these and he acknowledged that they had been careful to choose members from the different districts within the boundaries.<sup>407</sup> This was presumably an attempt to ensure all interests were represented.

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<sup>404</sup> *AJHR* 1884, sess II, C-1, appendix 2, p 30, report of L Cussen

<sup>405</sup> Himona, Ngaparu, Kieke of Waimiha to Bryce, 20 April 1884, NO 84/1753, MA series 13/43b, ANZ

<sup>406</sup> *AJHR* 1884, sess II, C-1, appendix 2, p 31, report of L Cussen

<sup>407</sup> Wilkinson report May 1884 *AJHR* 1884, G-1 p 11

The alliance chiefs were also continuing to call meetings with all sections of the alliance to enable collective discussions over the issues they still wanted the Government to address. This included discussion of their preference for Native committees instead of the Court and the continued unsatisfactory state of Maori land legislation. For example, in April 1884, Wahanui appears to have called a general meeting, including with upper Whanganui people, to discuss matters of concern he was also discussing with Bryce.<sup>408</sup> One result of these meetings was to seek to withdraw all Court applications in favour of Native committees. For example, in June 1884, Wilkinson reported a recent meeting of Ngati Maniapoto, where it was decided that all applications would be withdrawn in favour of the Native Committee dealing with the district first.<sup>409</sup>

Willkinson noted the committees were anxious to begin work as soon as possible. He also reported that ‘Their great wish is to be allowed to decide upon, or rather hold, a preliminary investigation of their own claims to the large block that is now being surveyed, upon which they would make a recommendation to the Native Land Court’.<sup>410</sup> Nevertheless, Wilkinson believed the exclusion of the Waikatos (presumably meaning Tawhiao’s supporters, who at this time refused to participate) would undermine these efforts. He also reported that he had doubts about the committee being the ‘proper tribunal’ to adjudicate on the lands ‘even in a preliminary form’ especially as the Waikato and Ngati Haua were not represented on the committee.<sup>411</sup>

In fact, what Wilkinson was referring to, were difficulties largely created by the Government. The previous unofficial committees had reflected local communities and their interests. However, the new committee system the Government had created had deliberately been required to represent very large districts, largely equivalent to those of the Land Court. When it came to land interests, these large districts almost inevitably contained groups with conflicting interests or who lacked any common interests at all. For example, most of the Rohe Potae and the lower Whanganui and Manawatu districts were covered by just two committees, the Kawhia and Whanganui Native committees. There was no separate recognition of districts within this, such as the Tuhua district, even though they had been running their own committees previously. This clumsy representation, as Wilkinson realised,

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<sup>408</sup> telegram 26 April 1884 84/1301 MA series 13/93 ANZ

<sup>409</sup> Telegram, Wilkinson to Under Secretary, 4 June 1884, MA series 13/93, ANZ

<sup>410</sup> Wilkinson report May 1884 *AJHR* 1884, G-1 p 11

<sup>411</sup> Wilkinson report May 1884, *AJHR* 1884 G-1 p 11

was almost bound to undermine trust in the committees being established under the new system.

Wilkinson, like other officials, saw this as a reason for rejecting the committees, but it did not seem to occur to him that many more Maori felt alienated from the Court system, which was even less representative of their interests. Even with the difficulties with the surveys and the new system of committees, the majority of the alliance leadership still seemed confident that such difficulties could be resolved with better legislation and they appear to have decided to send Wahanui to Wellington as their representative to discuss this further with the new Government.

### **3.8 Wahanui's visit to Wellington 1884**

By mid-1884, the alliance leadership had a new Government ministry to deal with. The major concerns of the alliance at this time appear to have been to seek a commitment from the new Ministry to the agreements already reached and the process of negotiation already underway and to remind it that while agreements had been reached over exploring the best route for the railway, they still had not reached agreement over the final railway construction over whichever route was chosen. As part of that final agreement they wanted further reform of the legislation governing the administration of Maori land so that once they determined ownership within their district, they could continue to manage their lands more effectively.

Their concerns to keep management of their lands once ownership was decided reflected a widespread concern not only within their district, but within Maori communities generally at this time. This is illustrated by a letter sent to Bryce in May 1884, from a number of interior chiefs with lands inside the external boundary that was still being surveyed and which they expected the Court would shortly adjudicate on. They told Bryce they did not want their lands placed under the Reserves Act or similar. What they wanted was that 'we ourselves should have the control of our land' so they could reserve them, lease them or do what they wanted with them and not have government officials dealing with them. They also reminded the Government that they had only agreed to the survey of a suitable line for the railway. When that was fixed, then they wanted more discussions over matters such as the land required for

the railway and payment for it. Bryce annotated the letter that the matters would be discussed at the proper time.<sup>412</sup>

Once Wahanui arrived in Wellington, his requests to the Government for reforms in the legislation relevant to Maori land title investigation and management seem to have been closely followed by other Maori communities, even those communities the Government traditionally perceived as being most cooperative to it and least supportive of the Kingitanga. The new Ministry seems to have been well aware that its treatment of Wahanui and his concerns was of wider Maori interest and might help persuade Maori communities generally that it was committed to consultation, negotiation and policies that would benefit both races. In contrast, the Government seemed eager to portray leaders such as Tawhiao, who were refusing to negotiate without concessions, as backward looking and isolationist. Tawhiao was at this time preparing to visit and petition the British Queen, including for a separate district for the Rohe Potae.

On his way to Wellington, Wahanui appears to have visited Wanganui first, holding discussions with Bryce's private secretary Butler, before travelling on to Wellington in May 1884, at about the same time as Tawhiao was preparing to visit England.<sup>413</sup> Wahanui spent a considerable time in Wellington, from May until late November 1884. During this time he sought to familiarise himself with existing and proposed legislation and to influence the Government over legislative reforms the alliance sought.<sup>414</sup> His efforts were closely followed by Maori communities around the country, as the issue of Maori management of their lands was a major concern at this time. His presentation of the alliance concerns about existing legislation also appears to have received widespread Maori support, including from Whanganui communities and their leaders. For example, a petition signed by Te Keepa and others, dated October 1884, asked the House of Representatives to have Wahanui speak to them to explain 'the wants and desires' of his people in respect of the 'many Bills' now before Parliament, seriously affecting the Maori people.<sup>415</sup>

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<sup>412</sup> letter Rangituatea and 5 others to Bryce, 20 May 1884 ,NO 84/2382 and annotation 30 July 1884, MA series 13/43b, ANZ

<sup>413</sup> MA correspondence registers, notes of Wahanui travels 84/1758, 84/1770, 84/1792 May 1884, register of correspondence re Tawhiao's proposed visit to England, for example 84/2306 May 1884 and accounts of visit NO 84/3056

<sup>414</sup> For example, MA correspondence register entry NO 84/2725 5 September 1884 W J Butler forwarding Acts etc, requested by Wahanui, ANZ

<sup>415</sup> *NZPD* 1884, p 555 , appendix, copy of petition in relation to Native Land Settlement Bill, 13 October 1884 from Meiha Keepa Rangihwinui, Atanatiu te Kairangi and 18 others.

Prior to speaking to the House, Wahanui held a number of discussions with what became the new ministry after the 1884 elections. This was headed by Stout and Vogel, with a new Native Minister, John Ballance. A translated extract from a letter from Wahanui dated 26 September 1884 at Wellington, and addressed to the Native Minister, refers to discussions they had recently held. Wahanui noted that although the Minister's replies to his concerns appeared satisfactory, he wanted the Minister to write to him with a clear statement of his intentions so there would be no misunderstanding in future. Wahanui wanted clear replies about his request that the Native Land Court 'should not deal with any lands within the exterior boundary of the territory owned by me and my four tribes' so they could have time to 'frame a law satisfactory to both races, and to secure the repeal of the bad laws that are now in force'.<sup>416</sup> The Government does not appear to have made the clear response Wahanui was seeking. Lewis advised the Native Minister that 'your general reply is I think sufficient in this case'.<sup>417</sup>

Wahanui spoke to the House of Representatives on 1 November 1884 and to the Legislative Council on 6 November 1884, outlining his people's concerns. These were consistent with those concerns outlined in the 1883 petition and in subsequent meetings. In speaking to the House of Representatives, Wahanui explained that he had visited Parliament to explain his views and to find out about the legislation the House was considering. He asked for his 'tribe' to be allowed sole administration of their lands and asked that the Native Land Court should not be brought in over them. Instead, he wanted legislation to help his people administer their lands. He explained that he had already suggested some ideas to the Native Minister in this respect, who said they were 'good'.

Wahanui was speaking at the time the House of Representatives was considering a proposed new Native Land Settlement Bill. This legislation appears to have originally included measures for streamlining Maori land administration to facilitate settlement. As a Committee of the House was just finishing considering the various alternative routes for the main trunk line at this time, the Government also appears to have found it convenient to add measures into the Bill designed to temporarily prevent private dealing in land along the preferred railway route. The Committee reported to the House recommending the central route for the Main Trunk line on 9 October 1884.<sup>418</sup> On the same day the House granted Ballance leave to

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<sup>416</sup> extract from letter 26 September 1884, Wahanui to Native Minister, MA series 13/93, ANZ

<sup>417</sup> annotation on file 6 October 1884, NO 84/2929 MA series 13/93, ANZ

<sup>418</sup> *Journal of the House of Representatives*, 1884, pp 148-9

bring in a Bill to temporarily prevent private dealings in Maori land within a defined district.<sup>419</sup> Ballance appears to have done this by adding the measures prohibiting private dealing to the existing Native Land Settlement measure. This was also introduced and had its first reading on the same day, 9 October 1884.<sup>420</sup> This urgency was presumably to prevent any private dealing, once the central route was confirmed.

Wahanui appears to have been most concerned with the land administration proposals of the original Bill and spoke to the House just before it was due to be debated on its second reading. The administration part of the Bill apparently proposed a kind of prototype to the later Maori land administration system introduced in 1900, where Maori would be encouraged to place their land under government administration to avoid difficulties such as with multiple title and have it managed effectively for settlement. These proposals were widely opposed by Maori who did not want to lose their authority over land to government officials. Wahanui asked the new Ministry not to support these measures. He described the Bill as having ‘sharp teeth’ and with a sting in its tail. He believed the teeth would swallow the people and the sting would destroy the land.<sup>421</sup>

Wahanui explained that what he wanted could be regarded as being similar to having a watch repaired. He reminded the House that if his watch was broken and required repair he would take it to a watchmaker and have it fixed, according to his instructions. When it was fixed it would be returned, the repairs paid for, and ‘then it is mine to do what I please with’. He wanted the same situation to apply with their land. Presumably this meant he was asking Parliament to fix the laws relating to Maori land administration, after which Maori wanted to be able to manage their own land themselves. Wahanui asked the House not to ‘be carried away with a desire to obtain lands, but rather let the House consider that which is just and right’.<sup>422</sup> He noted that Tawhiao had been to England because he was concerned that legislation passed by this House would injuriously affect his land, but he had been told to come back to New Zealand. Therefore Wahanui asked for just laws from the House and careful administration of them. He also wanted amendments to the Bill being considered for

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<sup>419</sup> *Journal of the House of Representatives*, 1884, p 149

<sup>420</sup> *Journal of the House of Representatives*, 1884, p xliii

<sup>421</sup> NZPD 1884 p 555, Appendix Wahanui address to House. 1 November 1884.

<sup>422</sup> NZPD 1884 p 556, Appendix Wahanui address to House. 1 November 1884

the same reason. He also asked for authority over their lands to be vested in their committees, and that the ‘great evil’ of the sale of liquor should be barred from the district.<sup>423</sup>

Following Wahanui’s speech, Ballance spoke to the second reading of the Native Lands Settlement Bill. Ballance’s comments and views as he stated them at this time are described in some detail, because they appear to highlight the main policies of the new Ministry with regard to Maori land. They are likely to be representative of the views he is likely to have expressed to Wahanui in their otherwise private discussions of this time and were therefore what Wahanui based his trust in the Government on. They also appear to be significant in the light of events just a few years later, in connection with the hearing and purchase of the Waimarino block which, as will be seen, occurred with Ballance’s active involvement and approval.

Ballance began his reply by praising Wahanui for appearing to support legislation that would benefit Maori, but would not be hostile to colonists.<sup>424</sup> He believed that Wahanui’s criticisms of the proposed legislation were more the result of unfamiliarity with the provisions ‘than from anything contained in them’. In fact, Ballance claimed that the provisions ‘when thoroughly understood’ were intended to protect the best interests of Maori. Ballance acknowledged that Wahanui appeared to be calling for Maori to have power to deal with their own lands and he seemed supportive of the movement for full ‘self-government’ of their lands through Native committees, although he believed this movement was ‘in its infancy’. Ballance did confirm that in response to requests, the ‘prohibitive clauses’ of liquor licensing would be introduced throughout the King country.<sup>425</sup>

Ballance went on to explain the principles of the proposed Bill. The first principle was to absolutely prohibit, within a defined territory, any dealing in Maori lands by private individuals. Ballance explained that at first this defined area was meant to extend only a certain distance from the actual railway route. However, it was then decided that to do justice to the Colony and to Maori, all land served and benefited by the railway should be included. Ballance claimed that in discussing this with Wahanui, he believed that Wahanui was also in favour of banning private dealing from the whole of the Waikato, including his lands. He

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<sup>423</sup> *NZPD* 1884 p 556, Appendix, Wahanui address to House. 1 November 1884

<sup>424</sup> *NZPD* 1884 vol 50 p 312

<sup>425</sup> *NZPD* 1884 vol 50 p 312

therefore believed he had Wahanui's agreement to ban private dealing in Maori land in the whole area covered by the proposed Bill.<sup>426</sup>

According to Ballance, the second principle of the Bill was to give Maori the opportunity to bring their lands under Government administration and enable the Government, through a Board with elected Maori representation, to be an agent in dealing with Maori land. Ballance acknowledged Wahanui might be critical of this, but claimed it would be a voluntary decision by Maori. Ballance believed the greater number of chiefs of lower Whanganui would be willing to do this and, while he acknowledged this was not true of the interior, he believed this was simply a matter of the Government gaining their confidence. Ballance also noted that the Bill gave full powers to the Native Land Court to give effect to the wishes of Maori owners by adjudicating on lands at the request of a tribe, hapu or individual and the Court would also have full power to vest lands in a tribe, hapu or individual.<sup>427</sup> This appeared to be a concession to Maori who wished to be recognised as being able to continue collective dealing, ownership and management of their land.

Ballance went on to outline what he understood to be the two major views of the time concerning Maori land administration. Ballance identified one view as that of what he called 'free-traders' in Maori land. He explained that these people supported the Native Land Court being given all possible powers to cut out individual rights, and individual Maori owners being given powers to deal with their land. This enabled Europeans to purchase small pieces from a block from particular individuals, 'until gradually they shall have acquired the freehold of the whole block'. If the object was to simply alienate lands from Maori to private individuals, through Crown grants, then Ballance believed 'no better plan than that could possibly be adopted'. If 'we are to get the lands out of the hands of the Native holders, we must give the Native Land Court large powers of cutting out individual rights and ascertaining individual titles'.

However, Ballance claimed he was not convinced this view represented good policy. He told the House that it was connected with 'a great deal that was wrong in our dealings with the Native people'. Instead, Ballance claimed that the object of policies should not be to divide and conquer the Maori people, or wrest from them their land 'without their full and intelligent consent'. Maori should be enabled to 'consider the matter fully and clearly, and with

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<sup>426</sup> *NZPD* 1884 vol 50 p 312-3

<sup>427</sup> *NZPD* 1884 vol 50 p 313

knowledge of all the circumstances' so they could deal with their land for their own benefit and not for the benefit of private dealers and speculators.<sup>428</sup>

Ballance also outlined the alternative view, which he described as a 'tribal' policy. He explained that the advocates of this policy wished to see large powers vested in the tribe. They argued the tribes or hapu should be incorporated, and the landowners should have the power of dealing with their land as a corporation, tribe or hapu. Ballance thought this was the 'right direction' from a Maori view. It gave power of dealing in land to the united intelligence of the tribe in council. He believed that this consensus of the tribe or hapu was more likely to be 'right and sound' than the opinion of an individual chief, who no matter how able, might have been pressed at his weakest moment. He did not believe these chiefs should be put in a situation where they were liable to temptation and might be wrongly persuaded to alienate or part with their property.<sup>429</sup> In terms of reserved Maori land, Ballance indicated he was firmly opposed to the indiscriminate removal of restrictions on the alienation of reserves, especially when there was still no firm policy on ensuring Maori retained enough land to live on.<sup>430</sup>

Ballance claimed he had seen no proposal for Maori land administration from either view that he believed should be entirely adopted. However, he did favour the tribal policy advocates as being closer to sound policy than the others. Ballance also acknowledged that Wahanui had shown a lack of confidence in the Native Land Court. Ballance claimed that he agreed there was much that was unsatisfactory with the Court. However, he insisted that no Court could ever completely satisfy the Maori people because it always had two parties before it, one of whom must lose. Ballance also understood that a Court determining individual property rights could never satisfy Maori who held land communally. He understood Maori insisted on their rights to land, but did not claim such rights were exclusive.

Ballance further claimed that while the Native Land Court had problems, it had not broken down. He believed that with 'a few amendments' it would be the best tribunal for the present time and it had to stay. He acknowledged that Native Committees were being put forward as a better alternative, but he believed these were subject to conflicts of interest and might not fairly consider the views of a minority. He insisted that any Court had to remain above suspicion, intimidation or bribery (presumably implying this was a problem with Native

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<sup>428</sup> *NZPD* 1884 vol 50 pp 314-5

<sup>429</sup> *NZPD* 1884 vol 50, p 315

<sup>430</sup> *NZPD* 1884 vol 50 p 314

committees). However, he did agree that Native Committees could be given ‘slightly larger powers’ and with these could perform very useful functions. In fact, ‘They might act as a Court of first instance, allowing the Native Land Court to act as a Court of Appeal’. Ballance informed the House that he believed legislative reform should move in that direction.<sup>431</sup>

In the same speech, Ballance then went on to refer in more detail to the lands covered in the schedule to the Bill, as being prohibited from private dealings, for which he claimed to have the consent of ‘Wahanui, Kemp and the Natives in the lower part of Wanganui’.<sup>432</sup> He explained that the scheduled lands served by the central route of the main trunk railway within this designated area were estimated to contain over four million acres, the vast majority of which had not passed through the Land Court. These lands were much the same district as the 1883 petition but extended considerably further south into Whanganui district lands surrounding the railway route. (see map 4 the railway alienation area and railway route)

Of these lands, Ballance estimated that only 3360 acres, in a belt two chains wide was estimated to be actually required for the central route of the main trunk railway. He believed that there would be no difficulty acquiring this land for the railway and Maori were likely to actually offer it to the Government. He claimed that Wahanui had indicated this and Maori of the lower Wanganui district also seemed agreeable. He acknowledged that it had been suggested that Maori should give ‘large concessions’ of land in recognition of the value given to their land by the railway, and he said the Government would welcome this. However, Ballance insisted he utterly rejected ‘anything in the nature of coercion’.<sup>433</sup>

Ballance then went on to explain that he understood that Wahanui and his people wanted to discuss the Bill further, especially the proposed machinery clauses concerning the land administration proposals. Therefore he had decided that it might be better if the machinery clauses were excluded and held over to be improved in a later session. This effectively gutted the original Bill and left just the prohibitive clauses inserted to prevent private dealing over lands surrounding the railway within the defined schedule.<sup>434</sup>

Wi Pere also spoke to the Bill generally supporting many of Wahanui’s views. He told the House that Maori wanted a ‘just law’ passed for the administration of their lands to replace

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<sup>431</sup> *NZPD* 1884 vol 50 pp 315-6

<sup>432</sup> *NZPD* 1884, vol 50 p 316

<sup>433</sup> *NZPD* 1884, vol 50, p 316

<sup>434</sup> *NZPD* 1884 vol 50 p 316

the current laws that Maori found unsatisfactory. He objected to some of the provisions in the current bill and in summary explained that Maori wanted a new Native land law, a reform of the Land Court and authority for Native Committees under the control of owners to manage blocks of land. He pointed out that Maori would not give absolute powers to their own committees to sell or lease their lands without the owners' consent, let alone the boards the government was proposing in the new Bill.<sup>435</sup> He did want some kind of board to manage the land to overcome the problems created by having many individual owners, but he did not want this board to take absolute authority over the land. Instead, the Government should be content with taxes and revenue raised from the land and the greatest part of the administration of the lands 'should rest with the Natives'.<sup>436</sup>

With regard to Wahanui's district, which Wi Pere acknowledged was in a different position to Maori land in other parts of New Zealand (that is, it was still a district that was almost entirely customary land), he also seemed to agree that it should be protected. He agreed that it was necessary, at present, to stop the Court, and stop leasing and selling. Afterwards 'when a good law has been passed' with the approval of the people, then 'it will be time to go further'. Let a fence be placed round his land, and, if the gate is to be opened to let any one in ... let it be done by the owner of the soil, let him open the gate himself'.<sup>437</sup>

On 5 November 1884, when the Land Settlement Bill was returned from the select committee, the House agreed to change the name of the Bill to the Native Land Alienation Restriction Bill 1884, acknowledging those measures were now all that it contained.<sup>438</sup> Wi Pere attempted to add an amendment to the effect that in every district under the Native Committees Act 1883, there should be a local corporate board of five persons, three of them appointed by the Native Committee and two by the Government, to manage all the lands and other matters entrusted to it by Maori of the district. This was rejected by the House.<sup>439</sup> Ballance successfully proposed that the title of the Bill be amended to an Act to temporarily prevent dealings in Native Lands by private persons within a defined district in the North Island.<sup>440</sup> The Bill was then read a third time and forwarded to the Legislative Council for approval.<sup>441</sup>

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<sup>435</sup> *NZPD* 1884 vol 50 p 317

<sup>436</sup> *NZPD* 1884 vol 50 pp 318-9

<sup>437</sup> *NZPD* 1884 vol 50 p 318

<sup>438</sup> *Journal of the House of Representatives*, 1884, p 261

<sup>439</sup> *Journal of the House of Representatives*, 1884, p 262

<sup>440</sup> *Journal of the House of Representatives*, 1884 p 263

<sup>441</sup> *Journal of the House of Representatives*, 1884 p 263

On 6 November 1884, Wahanui was given the opportunity to address the Legislative Council. He told the Council he had two main objects. The first was that the Rohe Potae district should have full control and power over their own lands, subject to the authority of the Governor. These were still customary lands and while there were now some improvements to the amended Native Land Alienation Restriction Bill, one of the sharp teeth still remained. That is, he did not want the Land Court to have jurisdiction over the district covered by the Bill for the present. ‘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’.<sup>442</sup> He added that he did not oppose the Government, but wanted to work with it to deal satisfactorily with the district.

Secondly, Wahanui explained that he wanted the Native Committees empowered so that ‘all dealings and transactions’ within the proclaimed district should be left in the hands of the committees. Thirdly and finally, Wahanui asked for laws that were carefully framed for the protection of both races and for Maori to be treated the same as Europeans so they could live amicably together in future.<sup>443</sup>

Wahanui did not appear to be unduly concerned about the measures banning private land dealing in the district. It is not clear how these were explained to him, but it seems possible that he was not overly concerned at this time, because he understood the focus was on banning the dealing rather than providing the Crown with a monopoly on purchasing. As previously noted, there was little or no Crown purchasing in the district to be concerned about by now. The Wanganui Land Purchase Office had effectively been disbanded since 1883. From 1883, the Government had also passed measures outlawing secret pre-investigation private deals and in 1884, Ballance had stopped all Government purchasing. There were also Ballance’s clear statements that he rejected any kind of coercion, and favoured consultation with full and intelligent consent, enabling Maori to consider matters ‘fully and clearly, and with knowledge of all the circumstances’ to enable them to deal with their land for their own benefit. Further, Ballance had indicated he was already in discussions which he anticipated would produce an amicable agreement over land required for the actual railway line. This may have been what Wahanui understood the Crown exemption for itself was for. The only

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<sup>442</sup> *NZPD* 1884 vol 50 p 427

<sup>443</sup> *NZPD* 1884 vol 50 p 427

remaining problem may have seemed the activities of private purchasers and this was what the Bill was apparently aimed at.

Wahanui appears to have also viewed the proclaimed district as very similar (as it was) to the protected Rohe Potae, almost as though it was a confirmation of the protection offered by the boundary survey. Whether or not the schedule was explained to him in this way is not clear. However, it does seem that Wahanui was confident that any future negotiations with the Crown would be open, and at the same high level as had been established in the preceding years. He knew the Crown was already well aware of the district preference not to sell land although there was considerable interest in leasing. Presumably the temporary nature of the restrictions as emphasised by Ballance, indicated that the focus was more on protecting negotiations over the belt of land required for the actual railway route. This would be much easier for Maori communities and the Crown to manage, if private dealing was temporarily kept out.

Wahanui was not alone in this view. It was also promoted by the Government when the Bill was being considered. For example, when P A Buckley moved the second reading of the Bill in the Legislative Council, he claimed that the object of the Bill was to restrict private dealing. This would protect the Maori and public interest, but would not prevent the Government dealing as might be required in conjunction with the railway. 'It may be found necessary, in constructing the railway, for the Government to acquire land through which the railway may pass. With that object only in view this Bill has been introduced'.<sup>444</sup>

The same view appears to have been shared by the majority of Legislative Council members who spoke on the Bill. These included Mantell, who explained he understood the Government just intended to acquire a strip of land two chains wide for the railway route.<sup>445</sup> McLean also understood the Bill was of a temporary nature 'merely reserving the land through which the line passes and that at a future time we shall have legislation in order to settle the country through which the railway will run'. Although he acknowledged the powers afforded the Government covered a wide area, 'I do not feel at all alarmed that the members of this Assembly will ever again tolerate the Government going, as in former days, largely into the purchase of Native lands'.<sup>446</sup> Richmond also expressed the hope that the Government would

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<sup>444</sup> *NZPD* 1884 vol 50 p 431

<sup>445</sup> *NZPD* 1884 vol 50 p 433

<sup>446</sup> *NZPD* 1884 vol 50 p 434

not seek to buy much land under the powers in the Bill, only those required for the railway.<sup>447</sup> A number of the members including McLean did, however, seem to expect that when the Government dealt over these lands required for the railway, it would obtain significant concessions in recognition of the rise in value the railway would bring to nearby Maori lands.<sup>448</sup>

More cynical members, such as Dr Pollen, noted that the Bill did not in fact only give the Government power to deal in land required for the railway, but for all land within the schedule. He also reminded the Council, that whatever past misdoings private individuals had engaged in when dealing with Maori land, ‘they have been equalled if not exceeded by the misdoings of Government agents’.<sup>449</sup> He therefore asked for an amendment to restrain the Government in dealing with Maori land in the district. Waterhouse also complained that no penalties appeared to have been imposed for continued private dealing as provided for in the 1883 Act and this might also occur with this Bill making penalties for private dealing effectively become a dead letter.<sup>450</sup> Reeves was also very critical of past Government dealing in Native land. He proposed an amendment to ‘stop at once all dealings with Native lands’ to force the Government to bring down a more complete and ‘worthy’ law for Maori land which could be supported by both Houses and the public.<sup>451</sup>

On the same day (6 November 1884) that the Legislative Council was considering the Native Land Alienation Restriction Bill, the Government also introduced the Railways Authorisation Bill in the House of Representatives. This Bill provided for the authorisation of a number of railway lines, including the central route of the North Island Main Trunk line. The Bill was described as specifying this line ‘as particularly as it is considered wise to specify it at present’. The description was from a point at or near Marton to Te Awamutu, via Murimotu, Taumarunui and the Ongaruhe valley.<sup>452</sup> This Bill was passed and sent to the Legislative Council on 7 November, where it was passed without amendment.<sup>453</sup>

The House of Representatives received notice of the proposed Legislative Council amendments to the Native Land Alienation Restriction Bill on 7 November 1884. It has not

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<sup>447</sup> *NZPD* 1884 vol 50 p 436

<sup>448</sup> For example, McLean p 434, *NZPD* 1884 vol 50

<sup>449</sup> *NZPD* 1884 vol 50 p 431

<sup>450</sup> *NZPD* 1884 vol 50 pp 436-7

<sup>451</sup> *NZPD* 1884 vol 50 pp 432-3

<sup>452</sup> *NZPD* 1884 vol 50 p 443

<sup>453</sup> *NZPD* 1884 vol 50 pp 464

been possible in the time available to discover the exact wording of these proposed amendments. However, from the later debates and the response to the proposals it seems they followed the general tenor of the concerns expressed above and referred to restricting Government powers of purchasing and a larger role for Native committees when deals were being negotiated.

In response, the House of Representatives appointed a committee made up of Stout, Bryce, Ballance and Bradshaw, to prepare reasons as to why the proposed Council amendments were not agreed with.<sup>454</sup> This committee prepared and forwarded these reasons to the Legislative Council on 8 November 1884. These were that the power of the Crown to purchase could not be restricted except by a specific Act which had to be reserved for Her Majesty's consent, that the proposed restriction was 'not justified by experience', and if any restriction was merited there was no reason to suppose that 'Native Committees 'have 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'.<sup>455</sup>

In proposing the Council not insist on the amendments, Buckley explained that the amendments would 'endanger the whole object of the Bill'.<sup>456</sup> Some Council members were critical of this response. However, majority opinion appeared to follow that outlined by Pollen. He indicated that rather than intending to be a protection for Maori, the proposed amendments had actually been intended to help not hinder the government. The intention had been to help defuse Maori opposition. It was believed there was a risk that if it Maori felt the government was ignoring their concerns, they might reform land leagues and refuse to deal with the land required for the railway. Pollen explained that the prospect of the railway having to be pushed through 'at the point of a bayonet' was something the amendments were attempting to avoid.<sup>457</sup> In the end, the Legislative Council agreed to pass the Bill without the proposed amendments.<sup>458</sup> The restriction on private (but not Crown) dealing over the larger district remained, although Wahanui and most Members of Parliament (openly at least) believed the Crown interest was restricted to lands actually required for the railway route.

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<sup>454</sup> *Journal of House of Representatives*, 1884, p xliii

<sup>455</sup> *NZPD* 1884 vol 50 p 486

<sup>456</sup> *NZPD* 1884 vol 50 p 487

<sup>457</sup> *NZPD* 1884 vol 50 pp 487-8

<sup>458</sup> *Journal of House of Representatives*, 1884, p 297

### 3.9 Preparations for the construction of the central railway route

As described, Wahanui spent some months in Wellington from mid to late 1884, discussing legislative reform with the Government and commenting on legislation being passed to prepare for the railway. He does not seem to have considered this legislation as necessarily harmful to Maori interests in the district and as a result he appears to have returned to the district prepared to participate in negotiations on the final agreement for the construction of the railway.

On his return to the Rohe Potae in late 1884, Wahanui appears to have immediately begun holding a series of meetings with Ngati Maniapoto and members of other interior iwi, to explain his understandings of the recent legislation and Government policies concerning the railway and the interior district. He also seems to have intended to put Government proposals to these meetings to have them discussed and agreed, as he later explained to a meeting at Kihikihi in 1885.<sup>459</sup> He appears to have become convinced by this time that he had built a constructive relationship with the Government and this offered the best chance of achieving protection for and continued Maori authority over the district.

By this time, his continuing negotiations with the Government seem to have turned to discussions over the actual building of the railway line, including how land required for the railway might be acquired, how much land would be involved and whether and how this might be paid for. As previously noted, the Government already had public works provisions for compulsorily taking the necessary land, it appears to have accepted that any unilateral attempt to apply these would provoke considerable resistance. Instead, the Government appears to have been willing to negotiate with Wahanui and allied chiefs over general principles for acquiring land for the railway route.

Wahanui appears to have still been acting as a representative of the alliance and set about holding meetings with each tribal section of the alliance. He met and discussed matters with his own Ngati Maniapoto people and he also called meetings of the other interior iwi sections supporting the alliance, although who these were, was at times reported differently, especially over whether Ngati Hikairo was included. When he spoke to a meeting at Kihikihi in early February 1885, Wahanui explained that he had not been able to see all the various people,

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<sup>459</sup> *AJHR* 1885 G-1 p 21

only Ngati Maniapoto and Ngati Raukawa by that time.<sup>460</sup> It seems that while some chiefs from upper Whanganui and Ngati Tuwharetoa had attended these meetings, no large meetings of their sections had yet been held in the relatively few weeks until February, since Wahanui had returned from Wellington.

However, even while Wahanui was conducting his meetings, it seems clear that the apparently imminent prospect of railway construction was causing considerable disquiet in the interior. District concerns were heightened by the Government apparently going ahead with preparations for building the railway even though it still had to gain final agreement from iwi for this and while negotiations over the land required for the route were still ongoing. The Government actually appears to have treated the authorising legislation of late 1884 as providing the real go-ahead with building the railway. The central route exploration appears to have been rapidly completed, and more detailed surveys begun for the actual building of the line. Officials also began making decisions over land required for associated services such as railway stations and platelayers' cottages. Work also seems to have started on preparing tender documents for contracts for building the line in sections, from both the northern and southern ends. All this took place by early 1885, so that by February tenders were almost ready for contracts for building the first sections of the line.

A public works report explained that immediately after the central route was chosen by Parliament, instructions were given to permanently locate the line so construction work could begin. This meant that by February 1885, sufficient work had been completed to enable tenders to be ready to call for work with initial contracts for 15 miles at the northern end and 13 miles at the southern end.<sup>461</sup> Reports by Blackett and Rochfort of January 1885, and attached instructions of December 1884, also indicate that work was going ahead preparing for line construction and required platelayers cottages, which in the meantime could be used for engineers' offices.<sup>462</sup>

The Government, through Willkinson, also began to discuss the possibility of Maori gaining some work on the contracts for building the railway. This was suggested by Willkinson as assisting interior Maori with much-needed cash, encouraging their support for the railway and removing the temptation for them to receive secret advances for their land.<sup>463</sup> He also began

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<sup>460</sup> *AJHR* 1885 G-1 p 21

<sup>461</sup> *AJHR* 1886 D-1 Public Works statement 25 August 1885 p 4

<sup>462</sup> NO 84/3703, MA series 13/43a, ANZ

<sup>463</sup> NO 84/ 3557, MA series 13/43b, ANZ

holding discussions with chiefs, including Taonui and Wahanui, in January 1885, over possibly employing Maori on building some of the sections.<sup>464</sup>

This rapid burst of preparatory work without much in the way of consultation appears to have caused considerable alarm in the Rohe Potae district. The alliance had jointly agreed to exploratory surveys, but had not as yet agreed to any actual building of the railway or any of the issues associated with this such as acquiring the necessary land and how this would be done and paid for. The Government seems to have felt able to go ahead because it had already begun discussions on these matters with Wahanui in Wellington, but it had not allowed enough time for Wahanui to keep the other interior iwi fully informed on his return, let alone to discuss matters and reach any agreement. This only seems to have contributed to suspicion that the Government was neglecting other communities in favour of Wahanui alone. It seems apparent from official correspondence registers, that from about the time Wahanui first arrived in Wellington, the Government began making payments to him and began building him a house.<sup>465</sup> It is not clear how or whether this influenced Wahanui in his commitment to working with the Government. As with Te Keepa earlier, he may have viewed this as no more than Government recognition of his mana and the expenses he faced in acting as representative of the interior people. However, this was a long standing Government tactic in attempting to influence chiefs, as can be seen when the Government stopped the pension for Rewi Maniapoto, when he appeared to rejoin Tawhiao.<sup>466</sup> It could also be used to create concern among other chiefs that the recipient was receiving special attention. Whether or not this assistance was noted and resented in the interior, it does seem that the Government's apparent attempt to deal only with Wahanui and to possibly isolate him in Wellington was not well received.

The new Government's failure to consult properly caused disaffection even within Ngati Maniapoto. For example, the Ngati Maniapoto chief Taonui complained in early December 1884, that he and his people were concerned that the Government appeared to be going ahead with building the North Island Main Trunk railway without first consulting them. He reminded the Government that when Wahanui had agreed to the survey for the best route of the railway, the Government had also promised that when the route was found, it would come back and discuss the railway further with them before building it. As the Government did not

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<sup>464</sup> NO 85/65, MA series 13/43a, ANZ

<sup>465</sup> For example register entries, 84/2709, 84/3072, 84/3208, 84/3699, 84/3792

<sup>466</sup> For example, register entry 84/3504 W H Grace and others, that Rewi Maniapoto's pension be restored.

appear to be keeping this promise made by Bryce, they now disapproved entirely of the railway work.<sup>467</sup>

This file was annotated with a note asking Wilkinson to go and talk with Taonui about this. He was to tell Taonui that Ballance did not know of Bryce's promise on this and was surprised because he understood all Maori of the district supported the railway, including Taonui.<sup>468</sup> Given that Ballance had inherited W J Butler as his private secretary, and Butler had been closely involved in the negotiations, this seems unlikely. Nevertheless, it gave Ballance the opportunity to recover from his failure to consult and his mistake in believing the Government's own propaganda that it was dealing only with Ngati Maniapoto who were completely under the influence of Wahanui.

Wilkinson reported back on his conversation with Taonui, explaining that Taonui and his people were not opposed to the railway itself, but they wanted to be consulted before any building of it went ahead. Wilkinson also noted that he thought Wahanui's long absence from the district had increased disquiet and possibly some anxiety and jealousy.<sup>469</sup> Wilkinson reported on a later meeting, that Taonui and others had complained again about the rush with Government arrangements over the railway. They still had not held adequate discussions with Wahanui over his reporting back on Government policies concerning the people and land. They felt that, in the meantime, the Government was moving too fast and they were constantly being asked to agree to some new action regarding the railway, while the Government seemed to be ignoring them by not consulting beforehand. There was no ill feeling or desire to obstruct the railway, but Wilkinson acknowledged that 'the Natives evidently want to be taken more into the Govt. confidence'.<sup>470</sup>

Wilkinson explained that he had assured the chiefs that while the Government was necessarily involved in making arrangements for the railway work, the building work itself had not yet started and would not for several weeks. It was intended that before that happened, Ballance would probably come and discuss matters with them. Wilkinson also reported that Wahanui had asked for a few days to discuss matters with his people and gain their agreement. Taonui

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<sup>467</sup> letter 3 December 1884, NO 84/3668, MA series 13/43a, ANZ

<sup>468</sup> letter 3 December 1884 and annotation, NO 84/3668, MA series 13/43a, ANZ

<sup>469</sup> report 19 December 1884, NO 84/3697, MA series 13/43a, ANZ

<sup>470</sup> NO 85/65, MA series 13/43a, ANZ

had also assured him that when the ‘proper time’ arrived he was sure the young men would be glad of work on the railway line.<sup>471</sup>

Wilkinson’s explanations confirmed that Ballance and the new Government would have to continue negotiations and consultation in the district if they wished the railway to go ahead. By this time, discussions were also beginning to move on to what land might be required for the railway route. Wahanui and many other interior leaders appear to have believed that this was still a matter of negotiation and agreement between the Government and the interior people. The earlier Parliamentary debates had indicated that Government members were expecting some concessions over this, possibly even gifts of land, although the Government had denied any threat of coercion. It is not entirely clear how this was explained to Maori. The Government appeared at times to suggest that the clause in the Alienation Restriction Act 1884, enabling the Crown to deal with Maori over land in the district, provided for land taking. This was not technically correct as the 1884 Act provided no land taking powers. However, the Act did provide for dealing between Crown and Maori and reference to it did avoid open discussion of the public works provisions available with their more compulsory features.

It seems that although the Government might technically resort to public works taking powers to acquire title to the land required, this may not have been well understood in the Rohe Potae where it was most unlikely communities would have accepted the Government had any such rights to impinge on their customary authority over their land. Rather than claim these compulsory powers as of right, the Government was quick to emphasise that full compensation would be paid for any land required for the railway. The proposed acquisition was therefore explained more in the nature of a deal involving payment. The Government also appears to have agreed to discuss terms and conditions with the interior leadership, lending the process more an air of consultation than compulsion. Government officials also appear to have been more than usually sensitive when conducting survey work for the railway that might threaten valuable mahinga kai. For example, official documents show surveyors were careful to consider possible harm to important eel weirs along the proposed railway route.<sup>472</sup>

It was not long before discussions turned to the possible implications of the Government assurance that the land required for the railway route would adequately be paid for (that is

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<sup>471</sup> NO 85/65 MA series 13/43a, ANZ

<sup>472</sup> Letter 13 January 1885, attached to NO 85/65, MA series 13/43a, ANZ

compensation would be made). This raised the issue of how compensation would be decided and who would get it. At this time, in general, the Native Land Court determined compensation to be paid along with those owners it would be paid to. This immediately raised the further issue of whether the imminent construction of the railway, and the requirement to pay compensation for land taken for it, would bring the Land Court inside the external boundary even earlier than anticipated and what implication any Court findings on this might have for determinations of ownership of land in the rest of the district.

It is noticeable at this time that correspondence between the Government and interior communities does not appear concerned with lands outside the railway route. It seems to have been accepted that the Government was only interested in lands required for the actual route and associated services such as stations and workers' cottages, and this was also the inference the Government had given to Parliament. However, there was considerable concern over what the implications might be for land adjoining that acquired for the route, especially in terms of ownership. These concerns are apparent from early December 1884, when preparation for the route began in earnest. For example, a letter of 9 December 1884, from Henare Tikini and others of Kihikihi referred to the question of compensation for land required for railway. The letter asked for clarification of whether it was intended to pay compensation immediately or later. An annotation on this by Native Department Under Secretary T W Lewis, of 23 December 1884, recommended the writer be advised that the Government intended to pay Maori found to be owners for all the land taken for the Main Trunk railway. However, the payment could not of course be made until the owners were decided. This reply was approved by Ballance on 24 December 1884.<sup>473</sup>

Wilkinson also reported by telegram of 20 December 1884, that in a recent meeting with him, Taonui had asked how many chains would be needed for the railway and whether the Government intended to pay for it. Wilkinson explained that he had suggested that the question of payment should stand over until Taonui had a chance to discuss this with Wahanui (indicating that Ballance and Wahanui had already discussed it ) or until Ballance visited the district to explain.<sup>474</sup> Ballance appears to have accepted that he would need to visit a number of Maori districts in the North Island at this time, not only to conduct railway negotiations but also to discuss and explain wider Government proposals for reformed Maori

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<sup>473</sup> Letter 9 December 1884, NO 84/3686, MA series 13/43a, ANZ

<sup>474</sup> NO 84/3698, MA series 13/43a, ANZ

land legislation. In terms of the railway negotiations, Ballance began his trip with districts where communities had interests in lands the central route of the railway would traverse, including the Whanganui and Rohe Potae districts.

### **3.10 The agreement to build the Main Trunk railway, 1885**

Ballance began his tour of Maori districts in early 1885, with a series of visits along the Whanganui River, beginning at Ranana on 7 January 1885.<sup>475</sup> At this time, Ballance was concerned to discuss, as noted, wider issues of land settlement policies and proposed legislative reform, as well as the prospect of the construction of the Main Trunk railway. This section however, focuses on the railway discussions as part of the continuing Rohe Potae negotiations. The discussions of the wider issues, in terms of their relevance to what would become Waimarino lands, will be described in following chapters.

In terms of the Main Trunk railway, Ballance explained at the Ranana meeting that the Government would not ask for any of the land required for the railway route.<sup>476</sup> If any owners were willing to gift the two chains wide required, the Government would receive the gift with thanks. Otherwise, it intended to treat Maori owners just as they would Europeans. If land was required and the people wanted payment, the Government would pay. It did not intend to take a single acre without paying a fair price for it. In addition, the only land the Government wanted 'is just sufficient for the railway to run upon – two chains, or three or four chains, or it sometimes may be a little more when it has to pass through cuttings, &c'.<sup>477</sup>

Ballance reiterated that the Government would treat Maori owners the same as European owners. 'The land will be taken under the Act, and, when the title is ascertained, the value of the land will be found out by arbitration, and the moneys paid to the owners'.<sup>478</sup> Although Ballance was not clear about 'the Act' he was referring to, it does not seem to have been the Native Land Alienation Restriction Act 1883, which gave no powers for land taking. He presumably meant the relevant Public Works Act, although he did not make this clear. The Public Works Act 1882 and 1883 amendments did not actually treat Maori and European owners the same for public works lands takings, as has been noted in other reports.<sup>479</sup>

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<sup>475</sup> For example, MA correspondence register entries, NO 84/3594, NO 84/3651

<sup>476</sup> *AJHR* 1885 G-1, p 4

<sup>477</sup> *AJHR* 1885 G-1 p 4

<sup>478</sup> *AJHR* 1885 G-1 p 4

<sup>479</sup> Marr, *Public Works Takings of Maori Land*, pp 107-111

Ballance also explained that the Government was willing to offer Maori the opportunity to work some of the contracts on the railway line. He was clear that construction work on the railway had already begun; ‘The railway has been commenced at Te Awamutu and at Marton, and it is also the intention of the Government to commence at Manganui a te Ao’.<sup>480</sup>

Ballance then went on to a series of meetings in the Rohe Potae. According to the printed record, these included a meeting at Kihikihi on 3 February 1885, with Te Kooti and his followers; a meeting with ‘the Natives’ at Kihikihi on 4 February 1885, and a meeting with Tawhiao at Whatiwhatihoe on 6 February 1885.<sup>481</sup> The meeting with ‘the Natives’ on 4 February 1885, was with Wahanui, Taonui and other Rohe Potae chiefs, many from the interior alliance, although this was not noted in the official printed record of the meeting. For example, one of the chiefs recorded as speaking was ‘Hitiri te Pairata’, presumably the same Hitiri Paerata, noted previously to have Ngati Tuwharetoa connections.<sup>482</sup> This suggests that the meeting was actually attended by a more representative group than officially recognised.

Ballance greeted the meeting as chiefs and people of the ‘Waikato’.<sup>483</sup> He also referred to remarks spoken earlier that do not appear to be recorded, indicating that the official record was no more than a summary of the meeting. He explained he was there to consult over matters such as the railway, the Land Court, and land. He referred to the claims that Bryce had promised that he would explore for a railway route only and then would return to consult when a route was chosen. He explained he had looked for this promise in his departmental records but could not find it. Nevertheless, when he heard the chiefs say that promises had been made he felt it was his ‘duty’ to make good all promises and to consult over the railway, roads and lands.<sup>484</sup> It was these statements from Ballance that appear to have convinced the chiefs that he was committed to continuing and upholding the Rohe Potae compact.

The meeting then went on to discuss the history of the negotiations and to place this meeting within that context. The chief Wahanui outlined the main events leading up to the present discussions. He referred first to the original establishment of the Kingitanga aukati in an attempt to ‘hold on to the land ...to preserve the land and the people, and to keep the tikanga’. He claimed this had been agreed by the majority of the people and having done this they then

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<sup>480</sup> *AJHR* 1885 G-1 p 4

<sup>481</sup> *AJHR* 1885 G-1 pp 10, 12, and p 24

<sup>482</sup> *AJHR* 1885 G-1, p 12

<sup>483</sup> *AJHR* 1885 G-1, p 13

<sup>484</sup> *AJHR* 1885 G-1 p 13

went on to negotiate with the government over matters within the district. However, there was division and fighting and the old policy ‘broke up’. Everyone divided, some following European ways, there was no recognition of relationships and everyone worked for themselves. Wahanui explained that Maori were also to blame for this, and that everyone had been more or less tainted or wounded by that system until Bryce’s time. Wahanui claimed that Bryce had made a ‘compact with me’, which was signed. This was that a search for the railway would be made and if a suitable line was found Bryce would return and discuss it further. Wahanui explained 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’.<sup>485</sup>

Wahanui seemed to be referring back to the first stage of the compact when he had agreed to the Hursthouse exploration in March 1883. No signed document has been found regarding this agreement although it is possible it has been lost by fire along with most nineteenth century Maori Affairs Department correspondence. However, as noted earlier, the newspaper reports of the time did cover a meeting between Bryce and Wahanui and others of 16 March 1883. At that time it was reported that Bryce had explained to the chiefs that Hursthouse was only exploring a route for the railway before any actual surveys, or railway line work, began. Bryce was also reported as promising they would have plenty of time to discuss the matter further, before any actual surveys began. After this, the chiefs agreed to the initial exploration and they were reported as having signed a written agreement to this effect.<sup>486</sup>

Wahanui stated that in return he had told Bryce that having agreed to what Bryce wanted, they now wanted Bryce and his Government to support the petition they were sending to Parliament.<sup>487</sup> This was apparently a reference to the 1883 Rohe Potae petition, presented to Parliament in June 1883, as previously described. Wahanui went on to explain that then they were not consulted over the trig stations causing considerable concern in the district. Wahanui explained that then he had been ‘sent to Wellington by the people’. When he arrived in Wellington he had discussed matters with Ballance. The main issues concerned; the external boundary line, the request to ‘leave us to sanction making of the railway-line’, gold prospecting without their authority, the power of Maori committees ‘to conduct matters for the Maori people’, liquor control, no Native Land Court activity in the district without their

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<sup>485</sup> *AJHR* 1885 G-1 pp 13-14

<sup>486</sup> *Waikato Times*, 17 March 1883

<sup>487</sup> *AJHR* 1885 G-1 p 14

sanction and a request that Europeans should refrain from interfering with Maori lands, but leave Maori to manage them themselves. Wahanui went on to say that those attending the meeting should now make their views on these matters clear, such as whether they agreed to the railway or not. He then left it to Willkinson and 'his' Ngati Maniapoto people to speak to Ballance further.<sup>488</sup>

This was apparently a reference to the legally recognised Ngati Maniapoto or Kawhia Native Committee as the next speaker to comment was John Ormsby, who was also the chairman of that committee. Ormsby went on to discuss general matters of concern to his committee and the district. They wanted to hear Ballance's views on these issues before they went on to discuss the railway construction in detail and decided whether or not to agree to it. Ormsby stated that as he had been encouraged to speak openly, he would. He referred to the Rohe Potae petition that 'set forth everything that the Maoris were afraid of would do them harm, and also what they desired should be done to benefit them'. He confirmed the two things Maori were most afraid of. One was to do with their land, and indirectly therefore the Land Court and roads. They were afraid of the Court because they had never yet seen anything good come from its work. When blocks of land passed the Court they did not remain in Maori hands but passed to Europeans. With roads, as soon as a road was made, a Roads Board was created and then the Rating Act was enforced. Even if lands had not passed the Court and even if they had not used them for years, the rates would go on accumulating and if they were used, rates would be demanded. Once lands passed the Court they could use lands to make money to pay rates but they were afraid of the Court.

Ormsby explained that with the petition, they had also asked the Government for new laws which would be beneficial to Maori, as they wanted to manage their own lands. He explained how this was prevented by the current Land Court system. At present, anyone could apply to the Native Land Court over a block of land whether they had rights in it or not. If they were strong and pressed a fictitious claim, the Court would judge in their favour. Those appearing in Court were also backed by the Government and companies, 'because the Government is a purchaser of land the same as the companies are'. The advance payments on land also strengthened the claims of those they are backing. The Court 'is merely a machine by which the lands are transferred by the Native owners to either the companies or the Government'.

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<sup>488</sup> *AJHR* 1885 G-1 p 14

Ormsby acknowledged that the legislation may not have been intended to be evil, but he claimed that had been the result.<sup>489</sup>

Ormsby went on to ask for a new Government policy from this meeting. He claimed two matters had been granted out of the 1883 petition. One was to keep the companies from dealing in their lands. The other was giving the Native committees power. However, Ormsby had found that the power given the committees had not been to the extent they expected. 'It was only a shadow when we came to take hold of it to work it - it was not substantial'. He asked for more powers for the committees to enable them to force disputants to bring their cases to the committee and he wanted the committee put in place of the Native Land Court. Ormsby also disagreed with the system of individualising titles as Europeans wanted. He wanted title granted in favour of hapu because that was the way land was customarily divided. Each hapu could then appoint their own committee and that committee (representing each hapu) could manage land and decide whether it should be rented or sold.<sup>490</sup>

Ormsby also objected to claims that it was 'proper' that the Government should purchase Maori land. He objected to this because it would create a monopoly that shut Maori out of the market. However, they did want the Government to prevent others from interfering with their management of their lands. If that was done there would be no trouble and if everything was done through hapu and through committees or boards, then no individual could go to the Government and ask for advances on their land once a road was put through.<sup>491</sup>

Ormsby was also critical of the low numbers of Maori members in Parliament. He asked for the number of Maori members to be calculated on a population basis, as was done for European members. He noted that at present there was one European member for every five thousand people while there was a Maori member for every ten thousand of their population. He claimed that the few Maori members in the House had effectively no power over the legislation passed. Ormsby wanted any legislation affecting Maori in particular to be circulated amongst Maori for consultation. He pointed out that although there were calls for one law for Maori and Europeans this had never been the case. For example, Maori often had their lands placed under the Public Trustee, while European owners could deal with their

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<sup>489</sup> *AJHR* 1885 G-1 p 14

<sup>490</sup> *AJHR* 1885 G-1 p 15

<sup>491</sup> *AJHR* 1885 G-1 p 15

lands as they liked. Trust Commissioners had also been given powers to authorise sales and leases but he claimed this work should be done by hapu.<sup>492</sup>

Ormsby also referred to gold prospecting in the district, which he described as ‘overrun’ by prospectors. He believed they were being encouraged by Europeans and possibly also by the Government. The prospectors claimed they had the permission of owners, but Ormsby asked them how they knew who the owners were. On the other hand, when Maori asked to be able to have authority within their own boundaries, Europeans always said they could not be sure they were the real owners. Ormsby stated that when an individual Maori agreed to gold prospecting on his land, he was not the only one who had the right to agree or not to that. Therefore, he asked the Government to prevent gold prospecting on Maori land. Maori did not want to stop prospecting altogether but they wanted it done ‘in a proper way, by the proper powers’. With regard to liquor in the Rohe Potae or King Country, Ormsby noted that the petition stated the boundaries where they wanted liquor restricted. However, when the Government made a proclamation, there was a gap in it and ‘the portion we were most anxious about was left out’. He wanted this corrected.<sup>493</sup>

In summary, Ormsby stated that they objected to the Native Land Court and did not want it. They were afraid of the roads and railway in case they were rated in connection with them, and they asked for increased powers for Native committees, including that disputants would be required to appear before them. They also wanted title to be made in favour of hapu, not individuals, with a committee to represent each hapu. They also wanted their boards or committees to conduct all matters regarding sales or leases, not the Government or private Europeans, and they wanted the boards or committees to be independent of the Government or companies. They wanted all prospecting for any minerals to be delayed until matters were settled, and they wanted the numbers of Maori Members in Parliament increased to equal the representation held by Europeans. They also wanted all legislation affecting Maori to be circulated among Maori communities beforehand and the licensing district boundaries corrected. Ormsby assured Ballance that if these requests were implemented, then good would result.<sup>494</sup>

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<sup>492</sup> *AJHR* 1885 G-1 p 15

<sup>493</sup> *AJHR* 1885 G-1 p 15

<sup>494</sup> *AJHR* 1885 G-1 p 15

Ormsby's comments were a detailed and clear response to the wider proposals the Government was then considering. The district was still strongly opposed to the present, largely unreformed Land Court system. They believed the present Land Court system would almost inevitably result in them losing land and they rejected the individualisation of titles under the Court system. They preferred to have title granted to hapu and to manage their land through their Native committees. They were concerned about the way these committees had been legally recognised and the powers given to them under the 1883 legislation. They wanted hapu-based committees that more closely reflected traditional authority and interests, while still allowing effective management of their land, and if necessary, sales and leases. They welcomed the exclusion of private individuals and companies from interfering in the district. They also welcomed Government protection and assistance, but they objected to any Government monopoly in purchasing Maori land generally. Ormsby was followed by a number of chiefs stating their opinions. Some such as Hopa te Rangianini seemed more favourable to the Court and the railway. Others, such as Taonui and Te Hauraki appeared to support Ormsby. A number also complained that the railway was being pushed forward too fast.<sup>495</sup>

In replying to these concerns, Ballance agreed that Wahanui had covered many of the issues they had discussed in Wellington. He claimed the trig stations had 'nothing whatever to do with the title to the land', but then went on to admit they enabled land to be surveyed and 'titles to be made out when the time has come for that purpose'. He went on to state that the Bill brought forward 'to deal with the Native lands on either side of the railway' had been referred to Wahanui for his opinion. He had objected to some parts and the Government had agreed to withdraw them until Maori had been able to consider the whole question. He explained that the Act as finally passed dealt with four and a half million acres of land from Wanganui to Te Awamutu. It prevented private dealings in land to prevent speculators enriching themselves from the proposed route of the railway. This meant that the land could not be touched by private individuals, or until Maori wanted it dealt with.<sup>496</sup>

Ballance went on to respond to Ormsby's points. With regard to the Land Court, he disagreed 'slightly' with Ormsby as, while he agreed that 'sometimes' the Court might make mistakes, the Native committees might also make errors.<sup>497</sup> In fact, Ormsby had not complained of odd

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<sup>495</sup> *AJHR* 1885 G-1 p 16

<sup>496</sup> *AJHR* 1885 G-1 p 16

<sup>497</sup> *AJHR* 1885 G-1 p 17

mistakes by the Court, but the whole Court system that he believed effectively dispossessed Maori of their land. Later, Ballance said he was willing to 'freely admit' that, in the past, blocks of land used to go through Court and Maori saw very little of the proceeds, or the land either. However, he claimed that the recent reforms had 'removed many of the evils'.<sup>498</sup> Ballance stated that he would not 'force' the Native Land Court on to the people, 'but if the people ask for the Native Land Court why should it be refused?' Ballance referred to a recent petition of 'important chiefs and people and landowners' for the Native Land Court to adjudicate their title. He asked why they should not have the Court, as it was 'a matter entirely for themselves'.<sup>499</sup>

As will be seen, this comment appeared to highlight what had become a critical part of Government policy by then. In the face of strong and consistent district opposition to the Native Land Court, the Government would not 'force' it in. However, if any individuals or groups were to 'ask' for it, by applying for a Court investigation, then the Government did not feel it could refuse. It was effectively rejecting requests for protecting collective hapu and district authority, in favour of encouraging individuals and groups to act 'for themselves'.<sup>500</sup> The importance of encouraging and collecting any applications for Court hearings for any part of the district was clear. These would be regarded as requests for the Native Land Court (in preference to Native committees) to become active in the district, regardless of the wishes of the communities expressed at these meetings.

Ballance went on to assure the meeting that there would also be reforms regarding the action of private persons in the Native Land Court. He explained that he had given instructions, that when an application for a survey was made, a copy should be sent to the Chairman of the Native Committee. Letters would also be sent to 'principal chiefs, so that all may know what is going on'. He also claimed he was considering possible legislative change to 'prevent abuses from occurring again'.<sup>501</sup> A copy of this instruction has not been found, but Ballance seems to have been making an unequivocal guarantee that the principal chiefs and Native committees would be informed when any application was made to the Court. It was of course, up to the Government to decide who these 'principal chiefs' might be. Nevertheless, this

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<sup>498</sup> *AJHR* 1885 G-1 p 19

<sup>499</sup> *AJHR* 1885 G-1 p 17

<sup>500</sup> *AJHR* 1885 G-1 p 17

<sup>501</sup> *AJHR* 1885 G-1 p 17

undertaking seems to have been important when considering later events in the Waimarino block.

With regard to roads and the railway, Ballance stated that Maori should feel the same as Europeans. Nothing was more desirable than having roads and railways through their land to increase its value. There were now large blocks of land of really no value because they had no access. He estimated that such land would not at present be worth more than 'three or four shillings an acre' while with rail or roads through them they would be worth as many pounds per acre. However, as he understood it, the objection was not so much to the road and rail but to the rating of land as a result. He assured the meeting that he objected to the Rating Act as much as Ormsby or anyone. He thought it was unfair to rate land that was not being used. He pointed out that it was over to the Government to proclaim Maori land subject to rating and it could refrain from doing so. Ballance did not think any of the land along the railway route or along roads leading to the railway should be proclaimed under the Rating Act. When it was leased, sold, or under cultivation, then it could be rated.<sup>502</sup>

Ballance also spoke about Native committees. At this meeting he was much more supportive of these committees than he had appeared to be in the 1883 debates described earlier. He told the meeting that Native committees might render 'great service' in administering the law among Maori. He wanted to 'encourage them in every possible way' and he intended to have an amendment next session to the Committees Act enabling the committees to adjudicate on cases up to a certain amount among their own people. He also proposed to give the committees 'the same power as a Court' so that parties were obliged to submit their cases to them. In addition, they might have some source of revenue such as dog tax and their chairmen might be paid 'a small sum'. With regard to the committees and the Land Court, Ballance proposed giving the committees larger powers to prepare cases for the Land Court 'so that all cases will come before the Native Committee in the first instance, and then go on to the Native Land Court, which will finally deal with the matter'.<sup>503</sup> Later, Ballance also seemed to support allowing the Native committees powers to hear at least civil cases to a certain level.<sup>504</sup> Ormsby responded to this by questioning whether the committees established to deal with land would also be able to cope with trying civil and criminal cases. He seemed to want a

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<sup>502</sup> *AJHR* 1885 G-1 p 17

<sup>503</sup> *AJHR* 1885 G-1 p 17

<sup>504</sup> *AJHR* 1885 G-1 p 20

more extensive system of committees. Nevertheless he supported the principle of Maori handling their own cases and proposed such matters be dealt with by a 'Maori magistrate'.<sup>505</sup>

Ballance stated that he had little to say about the request to vest title in hapu rather than individuals. He felt that 'great abuses' had arisen from vesting land in a limited number of owners 'to the exclusion of others'.<sup>506</sup> He was presumably referring to the old 'ten owner' rule, where he accepted abuses had occurred. However, that system had never practically granted title to hapu and it had also been criticised as undermining hapu authority. As Ormsby had noted, hapu management had actually served Maori for centuries in collectively managing their land. Nor was there any evidence that hapu title would necessarily 'exclude' anyone. However, as Ormsby also appeared to admit, it would need modification such as the creation of managing committees to operate effectively in the modern economy. This need not be that dissimilar to Ballance's admission that committees were needed to manage land on behalf of the many hundreds of individual owners. However, Ballance does not appear to have been willing to seriously consider this.

Ballance went on to explain the same proposals for committees and boards as he had earlier proposed to the Whanganui meeting, stating this would mean 'the fullest power, therefore, will be given to the people themselves through their local Committees, and no reason will be allowed to prevent or precipitate the action of the Committees'.<sup>507</sup> Ballance did agree that all legislation affecting Maori should be circulated among the 'principal chiefs and landowners of the Island'.<sup>508</sup> With regard to gold prospectors, Ballance offered to do the same as at Whanganui where he had delegated his power to permit prospecting to the chairman of the Native Committee.<sup>509</sup> Ballance also agreed to support proposals to have the number of Maori members determined by population as with Pakeha and he promised to rectify errors in the licensing district.<sup>510</sup>

With regard to Government purchasing of Maori land, Ballance stated 'I am not anxious that the Government should purchase land'.<sup>511</sup> Instead Ballance noted the Government had made large advances on some of the lands now under proclamation and would be 'satisfied' if they

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<sup>505</sup> *AJHR* 1885 G-1 p 20

<sup>506</sup> *AJHR* 1885 G-1 p 17

<sup>507</sup> *AJHR* 1885 G-1 pp 17-18

<sup>508</sup> *AJHR* 1885 G-1 p 17

<sup>509</sup> *AJHR* 1885 G-1 p 18

<sup>510</sup> *AJHR* 1885 G-1 p 18

<sup>511</sup> *AJHR* 1885 G-1 p 18

could get ‘that money back’. This presumably included those Waimarino lands where advances had been paid in the 1870s. Ballance claimed that the legislation he intended to introduce would ‘prevent the necessity of the Government acquiring lands’. The Government’s main aim was to settle the country and if Maori were to do that by leasing their land, then the Government would assist and ‘not otherwise interfere’.<sup>512</sup> These promises and assurances seem to be in stark contrast with the preparations the Government was actually making by this time to begin extensive purchasing as will be explained in more detail in the following chapter.

Some of Ballance’s claims were also acknowledged. For example, Ormsby admitted his committee as it now stood needed reform before it could act in place of the Court. However, he still wanted a reformed and improved committee to act instead of the Court. He also welcomed Ballance’s promises of reform and extended powers for committees. Ormsby also acknowledged that some chiefs of the district had sent in applications to the Court. However, he explained that this was because, at the time, they believed they had no alternative. However, once the committee had been elected ‘it was considered’ that the applications should now be recalled and the Native Committee left to deal with the land.<sup>513</sup>

Ormsby also agreed with Ballance that block committees could be formed from owners to manage the land, although he still appeared to support hapu title, and committees acting for hapu. Ormsby also welcomed Ballance’s offer to give the committee delegated authority to permit gold prospecting. He also agreed that Maori objected to rates rather than roads. In response, Ballance later promised that if Ormsby wrote to him asking for the Rating Act not to be applied over lands where the railway and roads to the railway passed, he would agree and the reply would be officially recorded and would be ‘binding on future governments’.<sup>514</sup>

This kind of promise is likely to have further encouraged those at the meeting to believe that it was continuing the solemn Rohe Potae compact agreements and undertakings. Ormsby also appears to have welcomed other promises from Ballance, including increasing the Maori members in the House of Representatives and rectifying the licensing district boundaries.<sup>515</sup> He concluded by asking for a written and signed record ‘so that we can keep it and show it to

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<sup>512</sup> *AJHR* 1885 G-1 p 18

<sup>513</sup> *AJHR* 1885 G-1 p 18

<sup>514</sup> *AJHR* 1885 G-1 p 19

<sup>515</sup> *AJHR* 1885 G-1 pp 19-20

future Governments'.<sup>516</sup> This also confirms the view that both Ballance and Ormsby were deliberately placing their discussions within the understanding of a solemn compact between the interior people and the Government. They both also seemed to recognise and accept that this compact would continue to be kept alive and negotiations would continue. This seems implicit in their references to future actions such as Ballance's request for letters to keep as an official record 'binding' on future Governments and Ormsby's apparent anticipation of further discussions on matters where Government policy was still unclear, such as the future role and powers of proposed new boards.<sup>517</sup>

At this point Ballance seemed to believe that all important matters had been discussed but he was urged to stay on another day (5 February 1885) to discuss further important issues. Wahanui began the next day's meeting by referring to his visit to Wellington where he explained that he had told Ballance that he could not give immediate answers on all the matters they discussed but needed to put them to the people for their decision. He explained that since returning he had not been able to see all the people, only Ngati Maniapoto and Ngati Raukawa. He acknowledged that some Whanganui people were present at this meeting but not Tuwharetoa. He explained to Ballance that he still needed to see all these people and 'after those people have been seen by me then the final settlement will take place'.<sup>518</sup> He did not want Ballance to view this consultation as opposition to the railway line but he felt such consultation was necessary even if 'they may not pay any attention to what I say'. This was because, as Wahanui consistently acknowledged, the country and timber and other things through which the line would pass 'are all in the vicinity of the land owned by these people'.<sup>519</sup> This was supported by Taonui who explained that they did not want any further work on the railway line until they could see all the people, discuss the matter fully and then 'we will finally conclude the arrangements regarding the railway'.<sup>520</sup>

Wahanui and Taonui were supported in this request by a number of other chiefs claiming to represent other iwi interests within the external boundary. One chief, Pineaha, explained that he belonged to Ngati Raukawa 'one of the tribes that has land within the boundary'. He supported the request of Wahanui and Taonui over the railway so that 'we, the four tribes

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<sup>516</sup> *AJHR* 1885 G-1 p 19

<sup>517</sup> *AJHR* 1885 G-1 pp 19-20

<sup>518</sup> *AJHR* 1885 G-1 p 21

<sup>519</sup> *AJHR* 1885 G-1 p 21

<sup>520</sup> *AJHR* 1885 G-1 p 22

should be allowed to settle the matter regarding this railway'.<sup>521</sup> The chief Te Herekiele explained that he managed matters 'for the Whanganui end of the block'. He also supported Wahanui's request for Ballance to leave for a short time to allow them to consider matters in connection with the railway. 'It would not be right for us who are assembled in this house to settle the matter in the absence of the others; but, if it is left till there is a universal acquiescence from the whole of the four tribes, there will be no trouble afterwards'.<sup>522</sup>

Another chief Kingi Hori, also explained later in the day that he was from 'one of the four tribes who have ownership in this land – Ngatimaniapoto, Ngatiraukawa, Ngatituwharetoa and Whanganui'. He did not explain which one, but as he asked for any applications for surveys in the Taupo district to be disallowed he may have had links to Ngati Tuwharetoa. He explained to Ballance that the four tribes were trying to make friends and therefore his management should be proper. The tribes were trying to deal with matters according to European custom. He supported Wahanui's request to delay building the line so that the matters could be discussed properly by the four tribes.<sup>523</sup>

Ormsby spoke further on behalf of the 'elderly people' who had asked for the railway to be delayed. He explained that the people wanted to discuss further amongst themselves to settle such matters as how much land they would give up for the railway, how much for station sites, and other matters concerning the building of the railway line. They accepted there were many people along the route who might have different views and they would like the opportunity to discuss it fully, reach decisions and then return with their answers for Ballance.<sup>524</sup> Manga (Rewi Maniapoto) also spoke later about the need to discuss the railway further among the various communities, echoing Wilkinson's earlier remarks that the absence of leaders from the district had caused some disquiet. Manga believed that there was some concern within the boundary about the railway as 'Wahanui has estranged himself by going to the Parliament, to Wellington' and 'Tawhiao was estranged by going to England'.<sup>525</sup>

In referring to the 'four tribes' or the alliance, the chiefs were acknowledging that the interior alliance was still important and functioning and that consultation with all members was vital before any final decision on the railway could be given. Hori Kingi also seemed to be

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<sup>521</sup> *AJHR* 1885 G-1 p 22

<sup>522</sup> *AJHR* 1885 G-1 p 22

<sup>523</sup> *AJHR* 1885 G-1 p 23

<sup>524</sup> *AJHR* 1885 G-1 p 22

<sup>525</sup> *AJHR* 1885 G-1 p 24

acknowledging that the alliance was an attempt to deal with Europeans more on their own terms. This was in contradiction to the Government's consistent refusal to acknowledge the existence or importance of the alliance. Wahanui and Taonui's acknowledgement of other interests within the external boundary also appeared to contradict concerns that Ngati Maniapoto was laying claim to the whole Rohe Potae.

In response, Ballance replied that he welcomed discussions among the people but he understood the questions had already been thoroughly discussed from one end of the railway line to the other. He believed that Wahanui, Taonui and others already supported the railway from speeches they had made and letters they had written. He understood that Ngatai (Te Mamaku) represented the people of the upper parts of the Whanganui River and was one of those they wished to discuss matter with. However, Ballance claimed that he understood from Ngatai himself that he already supported the railway. Ballance also acknowledged that Herekieke of Whanganui had also asked for time, but again Ballance claimed he had met his son at Wanganui and Ranana, who was also in favour of the railway. At this time, Ballance seemed concerned only to gain the support of selected influential chiefs. He seemed not to understand that the chiefs wanted to discuss the matters with their communities as well. He clearly also regarded the agreement as a formality. He explained that there had already been considerable preparations for the route and Parliament had approved it. However, there were about three weeks before the engineers would be ready to call for tenders and that would 'of course, give ample time now to consult those Natives who are not present'. Ballance explained the Government wanted the railway preparations pushed ahead with all speed so there was no delay in building it. He believed that Parliament and the people of the interior also wanted this.<sup>526</sup>

Ballance's reply is illuminating in the way it seems to reflect the views of the Government generally and Ballance himself over the interior alliance. Ballance and his Government continued to seem unable or unwilling to recognise the alliance or to accept that it was a legitimate means of expressing the wishes and authority of at least sections of the interior in dealing with the Government. Instead, the Government continued to prefer to deal separately with various chiefs and privately as far as possible. This undercut district wishes to consult openly and as widely as possible. Ballance also seemed unwilling to admit that the final decision over the railway lay with the interior people or that they might retain some

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<sup>526</sup> *AJHR* 1885 G-1 p 22

significant say with regard to its development and construction. He noted that Parliament had already decided on the best route and the engineers would be calling for tenders within a few weeks. The implication was that the final ‘decision’ was expected to be no more than a formality. Although the chiefs had been at pains to distinguish between their general support for the railway and their concern that they still be consulted on matters to do with it and retain some management over how it was developed, Ballance appeared determined to view them as either unconditionally supporting the railway (and therefore Government policies generally) with no particular rights of continuing participation in decision making, or opposing it. He appears to have made no allowance that they could support the idea of a railway generally but still retain concerns and a wish to be involved over how it was developed through their land.

The mention of the chiefs Te Herekieke and Ngatai in connection with the Whanganui part of the alliance appears to be the first direct mention of those chiefs being accepted as the alliance representatives for upper Whanganui people. They have both been mentioned previously in this report. Te Herekieke was presumably Tureti or Kingi Te Herekieke, a chief with both Ngati Tuwharetoa and upper Whanganui connections.<sup>527</sup> He had fought for the Kingitanga in the wars but had not supported Pai Marire and had opposed Te Kooti. As previously described, he was one of the signatories to the external boundary survey agreement and he had been identified by Cussen as advising the Tuhua people when they were pulling down survey trig stations. He was later accepted as one of the owners in what would become the Waimarino block.

Ngatai te Mamaku has also been previously mentioned. He was a recognised and influential chief of the upper Whanganui district, as his older brother Topine aged. He appears to have had connections with Ngati Haua-te Rangi and with Ngati Maniapoto, Te Ati Awa and Te Ati Haunui-a-Paparangi. His older brother Topine’s wife, Hera Matahinewau, was also the sister of Te Kere Ngataierua, the tohunga and prophet who was also very influential among Ngati Tuwharetoa and upper Whanganui people at this time.<sup>528</sup> While Topine, had in later years been criticised for agreeing to deal with the government over lands in the Opatu, Kirikau and Retaruke blocks, Ngatai was regarded as remaining a staunch supporter of Kingite objectives. He had also been involved in the Kingitanga-authorized killing of Moffatt, for which he was later pardoned as part of government efforts to repair relations with the Tuhua people. As

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<sup>527</sup> Oliver, Steven ‘Te Herekieke ?-1861, *Dictionary of New Zealand Biography*, vol 1 (1769-1869) 1990.

<sup>528</sup> Young David, ‘Te Mamaku, Hemi Topine ?-1887’ *Dictionary of New Zealand Biography*, vol 1(1769-1869) 1990

previously noted, Ngatai had offered Rochfort protection when he reached Taumarunui, although he made it clear Rochfort could go no further. By this time, and when the Waimarino block was being investigated in 1886, Ngatai was acknowledged as one of the most influential chiefs of the upper Whanganui area, as will be described in the following chapters on the creation and purchase of the block. Topine was still regarded as having considerable status, but by this time he was a very old man. He was believed to be around 100 years old by 1886, when the Waimarino block was investigated. A year later, in 1887, Topine died at Tawata (Tawhata) in the Waimarino block where Te Kere and his followers would also settle.<sup>529</sup>

Those attending the meeting seemed to believe that they had made considerable progress with Ballance and that his promises and assurances were sufficiently sincere to enable discussion to turn to the detail of the proposed Main Trunk railway construction. With regard to the actual land required for the railway, Ballance explained that the engineers had determined what land would be required for the railway route. This was one chain in width except where cuttings were required where two chains width might be needed. With stations generally five acres was required, or if the stations were likely to have a large settlement, ten acres for each station. He explained that the Government proposed dealing with Maori over this ‘precisely as we should deal with Europeans. The law is the same in both cases’. In fact, whether deliberately or not, Ballance misled the meeting over this. As previously noted, public works provisions by then did not apply equally to Maori and European land and, especially, customary Maori land.<sup>530</sup>

Ballance further explained that on taking the land, the Government would pay for it. This would happen when the ‘owners are found and the title determined’. The matter would go to arbitration and when payment was made would depend entirely on ‘yourselves – that is to say, when you are prepared to go and prove your title to the land’.<sup>531</sup> Although Ballance managed to avoid mentioning the Land Court directly, at this time the Court was the institution for deciding ownership of land taken from Maori and for the ‘arbitration’ of compensation awards for customary Maori land taken for public works purposes. Ballance also claimed that the Government would make no distinction between Europeans and Maori in terms of compensation payments. This again was misleading. Crown granted Maori land, because it

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<sup>529</sup> Young, David, ‘Te Mamaku, Hemi Topine, ?-1887’ *DNZB*

<sup>530</sup> Marr, *Public Works Takings*, p 107

<sup>531</sup> *AJHR* 1885 G-1 p 23

was held in multiple title, was generally treated as automatically less valuable than European land. Customary Maori land was generally treated as even less valuable. It could also be argued that where it was responsible for determining compensation, the Land Court had less expertise in this than the normal compensation court. Ballance reiterated that the Government only wanted the land required for the railway and roads and that it would pay a fair price for it. He presumed that a previous speaker, who had said he would never let go of his land was referring to his land generally, not that required for the railway. In that case, he claimed, neither did the Government wish his land to go.<sup>532</sup>

Discussion then turned to important mahinga kai and resources that might be lost as a result of the railway construction. Ballance claimed that if bush was destroyed ‘so much the better’ as then Maori would be paid for it. The railway would also make their other timber more accessible for sale. Several speakers then pointed out they did not just wish to sell timber. The chief Hopa te Rangianini said he had a swamp where he obtained eels, which were his principal food in summer. He had heard that in England railways were taken over viaducts and asked that one be built over his swamp instead of filling it in.<sup>533</sup> Another chief, Aporo Taratutu, explained that some of the forests were very large and while they were willing to sell some timber, such as matai for sleepers, they wanted to keep trees such as kahikatea because in summer the berries were used for food.<sup>534</sup>

Ballance agreed with Hopa that ‘watercourses should not be interfered with’ but seemed confident that the engineer would take care of that as bridges and culverts were anyway needed for the line. In the case of traditional foods such as berries, Ballance assured the meeting that the railway ‘will be worth all the berries in the world, and the eels too’.<sup>535</sup> Ballance also promised that contracts for Maori labour on the railway would be allowed so that ‘a large amount of the money for the construction of the line will go amongst the Native people directly’.<sup>536</sup>

The meeting also discussed roads in the district. Wahanui had explained earlier that they wanted further discussions on the road from Kawhia, which they wished to go from Kopua into Alexandra for the present and not come across the Waipa until they had time to consider

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<sup>532</sup> *AJHR* 1885 G-1 p 23

<sup>533</sup> *AJHR* 1885 G-1 p 23

<sup>534</sup> *AJHR* 1885 G-1 p 23

<sup>535</sup> *AJHR* 1885 G-1 p 24

<sup>536</sup> *AJHR* 1885 G-1 p 24

it further and hold more discussions about it.<sup>537</sup> Ormsby also stated that they wanted the road made from Kopua to Alexandria – about four miles, which would open valuable land and would not cost much to build.<sup>538</sup> Ballance replied that if that was the case he could not see why it should not be done. He explained he had also given instructions for the road from Kawhia to be widened into a cart road and he believed this was supported by Maori.

Wahanui ended the meeting by referring to the three weeks Ballance had given them to discuss the railway construction. He was evidently concerned that if they did not respond in the time given, the Government might withdraw the other promises and assurances made such as for the committees, as he felt had happened with previous governments. He made it clear that if agreement was not reached within three weeks the agreements at this meeting would be taken as the settlement.<sup>539</sup>

The other promises and undertakings made by Ballance at the meeting, therefore, appear to have been critically important in persuading the chiefs to accept the railway construction as well as the time limits on their decision making. They were also critical to continuing chiefly assistance while the final stages of preparing for the railway construction were completed. It would have been far more difficult for the surveyors and engineers if they met with determined obstruction at this time.

They chiefs appear to have believed they had achieved a large degree of commitment from Ballance to the protection of the Rohe Potae district from the outside pressures they were so concerned about. The Government had banned private dealing in land, and although the Government was still able to deal, Ballance had confirmed that it was only interested in acquiring land for the actual railway route, associated services, such as stations and linking roads. The Government had also shown a willingness to negotiate over this so it could be properly managed. Otherwise, the Government seemed supportive of the district desire to hold on to their other land themselves, as long as they were willing to lease areas of it for settlement. This was something the interior communities were keen to do anyway, as long as they retained control and legislation was improved to allow them to better manage this.

Ballance's commitment to meet their concerns about the Land Court and the Native committees was less clear. The leadership still seemed determined to have Native Committees

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<sup>537</sup> *AJHR* 1885 G-1 p 21

<sup>538</sup> *AJHR* 1885 G-1 p 23

<sup>539</sup> *AJHR* 1885 G-1 p 24

effectively manage the district, including for ownership and land use. They had agreed the current Native Committees were not adequate for this but wanted promised reforms and increased powers for the committees to rectify this. The Government seemed more determined to keep a role for the Land Court but claimed it had already been improved and importantly, Ballance seemed willing to introduce further significant reforms. He had also assured the chiefs that he would not 'force' the Court on the district. In addition, he had agreed to a strengthened role for the committees, even to having them as the primary agency for title determination, with the Land Court more an appeal and confirming authority. This was significant and seemed to bring the district and the Government much closer, especially as Ballance had also promised that all applications to the Court would be forwarded to the committee and principal chiefs for their information, apparently ending the previous secret and private system of applications that had helped marginalise the committees. The status of the committees might further be raised with the Government promise to delegate powers to issue permits for gold prospecting to the committees.

Another major achievement appeared to be Ballance's undertaking that land in the vicinity of the railway and linking roads would not be proclaimed subject to rating. This was a major potential pressure for the district that could have been used as a debt to force land into the Court and to be subsequently sold. Ballance's promise to exclude the lands through which the railway and linking roads ran from rating must have been a major relief to the district leadership.

The issues concerning the details of how land would be acquired for the railway route also seemed to be largely resolved. In most cases one chain width would be required along with land for stations. In addition, Ballance seemed to have made some assurances that care would be taken with watercourses and associated resources in building the railway. Ballance appears to have slid over the major issue of whether Maori would be forced into the Court to gain compensation for land taken for the route and the implications this might have for ownership of nearby lands. It was possible the leadership may have assumed that arbitration and determination of ownership might still take place through the Native Committee if it was sufficiently reformed. The leadership does not appear to have been particularly concerned about the compulsory nature of the proposed land takings, probably because they felt they had been consulted and the 'taking' was therefore more a technicality.

There were also other concessions the leadership may well have felt boded well for the future, including Ballance's promise to support having Maori members of Parliament proportionate

to their population and that legislation affecting Maori should be circulated in Maori districts. Of even more critical importance, it seemed that Ballance had agreed to commit his Government to continuing with the Rohe Potae compact understandings and with the system of direct negotiations and consultation over matters of concern between the district leadership and the Government.

The meeting also had Ballance's assurances that the railway would provide the district with substantial benefits. These ranged from cash payments for contract work for building the railway, to payments for timber and other resources for the railway and the expected increase in value of lands and resources such as timber made more accessible by the railway. Ballance indicated that at this time, inaccessible land was worth around three or four shillings an acre while he claimed that once railways and roads went in the same land would be worth three or four pounds per acre.<sup>540</sup> The increase in value would also be worth more than all their berries and eels. Ballance's estimates are instructive when compared with later prices paid for the Waimarino block. His estimated increase in value also relied on Maori retaining the land long enough for the rail and roads to be built and therefore raise the value of the lands.

The main issue where the leadership and Ballance had made little progress seems to have been over Government recognition of the authority of the 'four tribes' or the alliance to negotiate on behalf of the interior with the government. Those chiefs present at the meeting appeared determined to recognise this alliance and its processes, while Ballance seemed just as determined not to acknowledge it. Ballance's refusal is important as it indicated the wider Government refusal to acknowledge any attempts by Maori to establish modern united representation that might negotiate with Government on a more equal basis. The Government appeared determined to see the end of any effective successor to the Kingitanga or anything like it. The later refusal of the Government to effectively implement a system of hapu based title or to effectively reform the official Native committee system can probably also be seen as a refusal to recognise systems of collective Maori authority.

After the February Kihikihi meeting, it appears that the interior leadership immediately went about consulting with the various interior iwi over the railway. The official records of this are sparse. However, there is some evidence of this process. For example, on 13 February 1885, the Government received a letter from Whiti Patato and 58 of Ngati Raukawa of Te Waotu.

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<sup>540</sup> *AJHR* 1885 G-1 p 17

This (in translation) referred to the railway question, which the Kihikihi meeting had agreed should be left to the four tribes within the boundary of purely Maori land to manage. The letter on behalf of the ‘great tribe of Ngati Raukawa’ explained that they had met at Te Waotu and had decided that the railway would be allowed. However, they were leaving the arrangements and final decision to a further meeting at Kihikihi. The letter claimed to be from the Ngati Raukawa committee and all the tribe.<sup>541</sup>

The Government also received a letter from Ngatai te Mamaku of Taumarunui, of 15 February 1885, reporting that Ngati Maniapoto had not yet reached a decision on the railway.<sup>542</sup> Presumably this referred to a separate Ngati Maniapoto meeting. There is no official record of meetings by other iwi although there is no reason why they should have informed the Government of their activities at this stage. It does seem that the leadership engaged in meetings at this time (presumably in an effort to stay within the three week deadline) and on 19 February 1885, Wilkinson reported that Wahanui had sent messages out to the various iwi convening a meeting at Kihikihi for 24 February where the railway question would finally be decided.<sup>543</sup>

The large hui to make the final decision does appear to have begun on 24 February 1885. Wilkinson reported this and that it had then been adjourned for further discussion while he had decided not to attend. His reasoning was that, without him, the chiefs such as Wahanui might ‘try harder’ to persuade the meeting.<sup>544</sup> However, it seems more likely that he felt it would be more diplomatic to have no Government presence at the occasion. The final decision by the iwi alliance to support the railway appears to have been made on 27 February 1885. Wilkinson sent a telegram immediately with the news that the railway had been agreed to with certain conditions. A further telegram the following day reported that the conditions were an agreement for one chain wide to be taken and paid for and fenced both sides to protect stock.<sup>545</sup> John Ormsby also telegraphed Ballance on 27 February 1885, regarding the meeting at Kihikihi that day. He informed Ballance that they had consented to the railway with the line to be one chain wide, paid for and fenced on both sides. He reported the meeting had included representatives of Maniapoto, Raukawa, Tuwharetoa and Hikairo.<sup>546</sup> This was

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<sup>541</sup> NLP 85/379, MA series 13/43a, ANZ

<sup>542</sup> NO 85/405, MA series 13/43a, ANZ

<sup>543</sup> NO 85/570, MA series 13/43a and MA correspondence register entry 85/570, ANZ

<sup>544</sup> Wilkinson telegram 25 February 1885, NO 85/404, MA series 13/43a, ANZ

<sup>545</sup> Wilkinson telegrams of 27 and 28 February 1885, NO 85/692, MA series 13/43a, ANZ

<sup>546</sup> Ormsby telegram, 27 February 1885, NO 85/692, MA series 13/43a, ANZ

the presumably the Ngati Hikairo of Kawhia who had earlier joined in support of the 1883 petition.

This was supported by another chief, Te Rangituatea, who had also attended the early February meeting with Ballance. He reported on 28 February 1885, that a decision had been made by the Ngati Maniapoto, Ngati Hikairo, Ngati Raukawa and Whanganui tribes. He claimed that only Ngati Tuwharetoa was unrepresented.<sup>547</sup> More research is required on the apparent discrepancies over which iwi were represented by the decision making. It seems possible that some of the confusion arose over the constant references to the original 'four' tribes although by now there were five sections involved. It is also possible that there was some confusion over the often close connections held by many chiefs of the interior. The chief, Te Herekieke, for example, was variously referred to as both upper Whanganui and Ngati Tuwharetoa.

The more detailed report on the meeting came from Wahanui who wrote to Ballance on 4 March 1885. He forwarded greetings from the 'four tribes' interested in the land. He informed Ballance that they had met and agreed to allow the railway to proceed. They would allow one chain wide to be taken, while the issue of additional land required and land for stations was deferred until Ballance's next visit to them. Wahanui also informed Ballance that he would like to be involved in turning the first sod and asked him to keep gold prospectors out of the district.<sup>548</sup>

Even though Ballance had acted as though the final agreement was a formality, it still seems to have been considered significant by the Government. The support, or at least lack of determined opposition by the communities who supported the alliance leadership was still likely to have been important as final preparations for beginning the construction of the railway were completed. For example, the chief Te Kurukaanga of Te Papatupu village at Manganui a te Ao (the chief Te Kuru, whom Rochfort had earlier identified as causing him so much trouble) wrote to the Government on 10 February 1885 assuring it there would be no trouble with the railway and that he was already helping Rochfort.<sup>549</sup> It seems significant that the Government did not make any formal moves regarding the taking of land for the railway until after the final agreement with the alliance leadership had been obtained.

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<sup>547</sup> Te Rangituatea letter 28 February 1885, NLP 85/966, MA series 13/43a, ANZ

<sup>548</sup> Wahanui letter 4 March 1885, NO 85/968, MA series 13/43a, ANZ

<sup>549</sup> summary of letter 10 February 1885 from file cover 85/404, MA series 13/43a ANZ (letter itself appears to be lost)

Nevertheless, following the agreement, the Government moved rapidly. Just a few weeks later, in April 1885, the first steps were taken to transfer the required land for the railway into Crown ownership and to begin the construction of the railway. The relevant legislation at this time was the Public Works Act 1882. This process required compliance with the provisions that related specifically to Maori land (sections 23-25 of the Act) and also those that concerned railways (Part VI). On 2 April 1885, the Governor signed an order in council under section 24, enabling construction work to begin through Maori lands along the railway from a point on the right bank of the Puniu River to a point at the intersection of the railway line from Foxton to New Plymouth, a distance of some 210 miles and a width of 300 links.<sup>550</sup> On the same day, the Governor also signed three proclamations under section 130 of the Act, which defined some 30 miles of the railway's middle line, enabling construction of a number of sections of the North Island Main Trunk railway to begin, in accordance with the provisions of Part VI of the Act.<sup>551</sup>

These notices marked the beginning of the actual construction of the central route of the North Island Main Trunk railway. The order enabling construction referred to a 300 link (3 chain) width. This compared with the one chain width the alliance had agreed could be taken. It is not clear how much or when all the Maori land in the Rohe Potae required for the railway was technically taken. The actual land takings appear to have occurred as sections of the railway line were built and the exact amount of land required was known (see the Waikune Prison chapter of this report). The extent of Government recognition of the qualifications in the agreement requiring that land taken should be paid for and that the track should be fenced on both sides, is also unclear. These technically fell into the category of compensation once the land was taken, but it is not clear that the Government applied the terms generally over Rohe Potae lands as was expected. It is far from clear what compensation, if any, was eventually paid and under what terms. More information on this is likely to be revealed in the report currently being prepared on public works takings in the Whanganui district by Philip Cleaver. It does seem clear that alliance leaders expected ongoing negotiations over any additional land that might be required over and above the agreed one chain width. They also appear to have expected further negotiations over the compensation to be paid. However, the Government appears to have regarded the proclamations as ending any further general negotiations.

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<sup>550</sup> *NZ Gazette*, 1885 no 21, 9 April 1885, notice dated 2 April pp 407-8.

<sup>551</sup> *NZ Gazette*, 1885 no 21, 9 April 1885, notices dated 2 April 1885 pp 401-2

Very shortly afterwards, on 15 April 1885, the first sod was turned for the Main Trunk railway.<sup>552</sup> At the opening ceremony, Wahanui named the railway Turongo after an important ancestor in the district and stated that one chain wide only belonged to the railway. He declared this would not affect land beyond that amount as everyone knew the name of their piece. Taonui also spoke, noting they still wanted to talk to Ballance further about managing the construction of the railway and what was below the surface of the line, the land on either side and the land required for the stations.<sup>553</sup>

### **3.11 Conclusion**

After the New Zealand wars, successive settler governments were committed to promoting extensive settlement and public works development in the North Island and the acquisition of large areas of Maori land for this, including in the Whanganui district. The initial 1870s system of Maori land purchasing was recognised as having created some difficulties for both the Government and Whanganui Maori communities. The purchasing appeared to be too slow, costly and uncertain for Government requirements, while Maori communities complained of the loss of large areas of land, marginalisation from economic developments and benefits and the impact of the Land Court process. The development of a major new public works project through the North Island, the Main Trunk railway, was the catalyst for an important series of negotiations in the early 1880s between the Government and Maori of the North Island interior over the railway and issues concerned with the title and management of Maori land.

What became known as the Rohe Potae negotiations or ‘compact’ took place from 1882 to 1885. These negotiations were conducted between the Government and significant sections of the Rohe Potae leadership, representing an alliance of interior interests, including communities from the upper Whanganui area who had interests in lands in what would become the northern part of the Waimarino block. The negotiations began with talks with the entire Kingitanga leadership in 1882, but stalled on Tawhiao’s insistence on a separate self-governing district. They made further progress when the Government identified a ‘progressive’ group among the leadership who were more willing to make concessions and enter negotiations while they had the advantage of the government need to build the railway.

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<sup>552</sup> *AJHR* 1885 D-6 report on turning of first sod for North Island Main Trunk Railway.

<sup>553</sup> *AJHR* 1885 D-6 pp 4-5

The Government passed a series of measures intended to convince this group that they would not be subject to confiscation or other penalties for resistance during the wars. This alliance also tended to represent those interior communities who had become increasingly convinced that the Kingitanga boycott of the Native Land Court could not succeed and urgency was required to protect their lands from the land Court and purchasing. The alliance was led by a number of Ngati Maniapoto chiefs, chosen by the alliance communities to represent the alliance as a whole in negotiations. Although the Government later preferred to treat the negotiations as being limited to Ngati Maniapoto, these chiefs had close links to other communities of the interior including those of upper Whanganui and they made careful attempts to consult those member communities during the negotiations. Their ability to represent these communities and ensure their cooperation also helped the Government gain cooperation for the railway through such a diverse district.

The Rohe Potae negotiations took place in a series of stages, closely linked with the various stages required leading up to the construction of the railway. At each of these stages, from the initial explorations, through surveys and selection of the route and the final agreement to have the land required and to build the railway, the interior alliance insisted on concessions from the Government for protection and recognition of the district, and for general legislative improvements and reforms so that Maori could effectively participate in title determination, and retain significant authority over their land.

The first major concession from the alliance was the agreement to allow exploration of the railway route in March 1883. This first exploration was for a western route, largely through Ngati Maniapoto-controlled lands from Alexandra to the West Coast. This was only achieved through the intervention of alliance chiefs in allowing the surveyors to go through the district and as part of this the Native Minister Bryce agreed to only conduct the railway exploration and call off other types of survey in the district. Having shown that they could ensure exploratory surveys could proceed, the alliance chiefs organised the 1883 Rohe Potae petition to Parliament, setting out their concerns and their wish to have their district recognised and protected. This petition was sent in by representatives of four main iwi groups with interests in the interior; Ngati Maniapoto, Ngati Raukawa, Ngati Tuwharetoa and Whanganui iwi. After a series of hui seeking further support in the interior, these four iwi were later joined by a fifth, Ngati Hikairo of the Kawhia area.

The Government passed some significant provisions designed to show a serious commitment to addressing some of the concerns of the petition. This included greater recognition of Native

committees in the Native Committees Act 1883 and a prohibition on advances prior to Land Court investigations in the Native Land laws Amendment Act 1883. The Government also seemed willing to consult further over the land required for the railway rather than relying on compulsory public works provisions. As a result of these reforms, the Government appears to have felt able to continue railway explorations, this time for the central route, through upper Whanganui lands. The Government took the precaution of gaining cooperative Whanganui leadership support for this but the surveyor involved ran into trouble when he reached the upper Whanganui Manganui a te Ao district, which also formed the southern edge of what were to become Waimarino lands. This confirmed the independence of these communities and their strong support for Kingitanga policies. The Government was again obliged to negotiate with the alliance leadership in order to complete the exploration for the central railway route.

This time the alliance chiefs were concerned to press for negotiations for the protection of their district as requested in the 1883 petition but not yet addressed by the Government. After a series of negotiations in late 1883, the Government appears to have persuaded the chiefs that the best and only way of achieving legal recognition of their district was to apply for a survey of their external boundary. They appear to have been persuaded that although technically this was the first stage of introducing the Land Court, they could obtain immediate protection by applying for an external survey of their whole district which would effectively keep competing block applications out. They could then take time to negotiate further about a more acceptable form of title investigation either by a reformed Land Court or some alternative such as some form of Native committee inquiry. Although the Government was still very much in favour of a Land Court investigation at this stage, it also seemed willing to at least give the impression to chiefs that it would consider quite substantial reforms to both the Court and the powers of Native committees.

Nevertheless, official documents and contemporary newspaper reports indicate that there may have been some significant differences between the understandings of chiefs as encouraged by the Government, and actual Government intentions. The only written documentation of the agreement is also a survey agreement between the Government and the chiefs. This is written in very solemn sounding language which may have confirmed to chiefs that their understanding for a protected district was being confirmed. However, in practice, it was no more than a standard agreement for the payment of survey costs. Although government survey officials recognised the agreement was made with a number of iwi representatives as the alliance intended, the Government also later insisted the agreement only concerned a

Ngati Maniapoto claim. The Government also appears to have used the external survey agreement as an opportunity to implement a number of different types of survey in the district. This raises issues of Government good faith in this part of the negotiations.

Even though there were some differences between Government and alliance understandings and interpretations at this stage, it seems the Government continued to benefit from alliance understandings that the Government was committed to protecting recognising and protecting their district until agreed reforms were implemented. In particular, the alliance willingness to treat this apparent commitment as a form of solemn 'compact' binding the parties involved, led to significant assistance to the Government in smoothing the way for preparations for the railway, even when serious concerns were raised. Without the continued alliance commitment to its understanding of the negotiations, even in the face of these concerns, it is very doubtful whether the Government could have made much, if any, progress.

The alliance also sought to continue negotiations with the Government over legislative reforms and these initial negotiations obliged the Government to agree to wider consultations with North Island Maori communities generally. Once again, the Government appeared willing to treat the alliance concerns seriously while preparations and negotiations for the Main Trunk railway continued. Wahanui was given the opportunity to speak to Parliament about Maori concerns in 1884, and at this time, the Government claimed to be committed to protecting Maori interests and to reform of the Land Court. The Government also claimed to be only interested in acquiring the actual land required for the railway route, some 3360 acres in a belt along the railway route and then only by negotiation. It was in this context that Wahanui appeared to have no difficulties with the 1884 legislation granting the Crown a monopoly in dealing with railway area lands.

The Government followed this up with a tour of Maori districts in the North Island in early 1885. This appears to have been an attempt to confirm the Government commitment to consultation with Maori generally over legislation likely to affect them. During meetings in the Whanganui and King Country districts, Ballance claimed the Government was committed to significant reforms and strengthening Native committees, even though he insisted the Native Land Court was still the best means of determining title. He also promised that the Land Court would not be forced on the district although he had a responsibility to allow those who wanted it to take advantage of it. Ballance also claimed that he was not in favour of extensive government purchasing of Maori land and if Maori preferred to lease, the government would not interfere.

It seems clear from the meeting that although the Government was reluctant to admit it, the agreement of the alliance was still considered necessary before the railway could be built. Although the Government had compulsory provisions it was also careful to seek district agreement first and to explain the provisions as a means of acquiring the land for which full compensation would be made. Ballance also claimed the railway would bring substantial benefits to Maori communities, including contract work for building it and the impact it would have on raising land values and bringing economic development to the interior. The Government was also reluctant to admit it was still dealing with an alliance of communities over the railway, although this was made clear to Ballance and he was left in no doubt that all members of the alliance would need to meet and consider the matter before any agreement to the railway could be promised.

After a series of separate hui, alliance representatives met at a large hui on 27 February 1885 and agreed that the Government could have land one chain wide along the route of the railway to be paid for and fenced on both sides. Any further land required would be subject to further negotiation. Although the Government later insisted such an agreement was a formality it was careful to wait for this agreement before making the necessary legal proclamations to begin building the railway in April 1885. Shortly afterwards on 15 April 1885, the first sod was turned for the construction of the railway.

The Government had managed to achieve its objectives of rapid exploration, survey and selection of the preferred route and agreement over the land required for the construction of the Main Trunk railway. The negotiations from the first exploration until the final agreement took just two years. This rapid progress for a route extending through such varied communities of interest and through communities strongly supportive of the Kingitanga policies and very suspicious of survey and associated activities relied to a large extent on the cooperation and influence of alliance leaders who believed they had firm understandings and agreements with the Government. These understandings included the Government recognition and protection of the Rohe Potae district, including a protective external boundary survey paid for by the alliance communities. At a wider level this also included recognition and acceptance of the need for reforms in land legislation and the Land Court, increased participation of Maori (through Native committees) in title determination and land management and the principle of continued negotiations and consultation with Maori communities generally over matters (including legislation) affecting their land. Within the

Rohe Potae there was also an understanding that title determination and purchasing would not go ahead without further negotiations over reforms required.

These negotiations had also been closely watched by Maori communities generally and many of the reforms and understandings agreed, including consultation over legislation, commitment to the protection of Maori interests and a greater role for Native committees were seen as achieving important progress in establishing a new form of relationship between the Government and Maori communities. By early 1885, therefore, it seemed that the Government had embraced a system of direct good faith negotiation, consultation and proposed legislative reform that promised significant cooperation between settler and Maori communities over economic developments for mutual benefit. This would enable the Government to more effectively implement land settlement and economic policies while enabling Maori to participate more effectively in economic developments.

Issues remained, however, of how far the Government was fundamentally committed to this system of negotiation and consultation once the immediate objective of building the Main Trunk railway had been achieved. In a number of cases the Government view of the negotiations appeared to differ significantly from those of the alliance leadership. The Government also seemed reluctant to continue negotiations when alternatives seemed possible and its reforms in many cases turned out to be significantly less effective than claimed. It is also not clear how serious the Government was in its claims to strengthen Native committees and reform the Land Court. Finally, the Government seemed most reluctant to recognise the fact of the alliance even though it benefited considerably in being able to negotiate district wide agreements with it. While the Government gained considerable benefits from the alliance interpretation of the negotiation understandings it remained to be seen what implications the Government view would have for later developments in Waimarino lands.

## **Chapter 4 The Government withdrawal from the Rohe Potae negotiations**

### **4.1 Introduction**

The February 1885 agreement for the construction of the central railway route appears to have effectively ended the Government willingness to remain involved in this level of negotiation and consultation with the leadership of the Rohe Potae alliance or ‘four tribes’. It soon became apparent that once the Government had achieved final agreement and cooperation for building the railway, it began to extract itself from dealing with the alliance and became more active in promoting its preference for dealing with separate iwi and hapu groups.

There were further meetings between Ballance and the alliance chiefs through 1885, and for most of this time, the alliance appeared convinced of continued Government good faith and commitment to negotiations over the managed opening of the railway area with significant Maori participation. As a result, the alliance continued to cooperate with the Government while it completed preparations for building the railway. The Government also began a campaign to convince wider Maori communities to cooperate with it over its land settlement policies, claiming there were now sufficient reforms and protections and commitment to consultation to enable Maori communities to have confidence in it. A significant part of this campaign was a tour of North Island districts by Ballance to explain and seek support for legislative proposals and policies for Maori land. This began with a series of visits along the Whanganui River and then into the King Country where the railway was also a major topic. The Government also extended this consultation to other Maori districts of the North Island during 1885 and 1886, especially among communities where the Government seemed most likely to win Maori cooperation and trust. Wahanui and the alliance chiefs also continued to discuss possible reforms with the Government during 1885 and 1886 and it seemed as though the Government had accepted the need for future consultation and genuine protection of Maori interests.

However, there were also indications during this time that, once the railway agreement seemed assured, the Government wanted to withdraw from genuine negotiations with the alliance leadership and to implement development and land settlement programmes in a manner that seemed most likely to promote Government and settler interests even if this cut across Maori views. This raised issues of how far the Government was prepared to go to adopt strategies and policies that would undercut and undermine the assurances and

understandings reached in the negotiations and with wider consultations with Maori communities.

As the railway construction appeared more likely, the Government appears to have developed policies of extensive land purchasing in the railway area. In support of this, it pursued strategies to isolate and undermine the Kingitanga and the alliance leadership, while engaging in consultation and promises of further reform to win the cooperation of Maori communities that might be more likely to trust in its new policies. The Government also pursued strategies designed to ensure the Land Court could operate within the railway district, to facilitate its land purchase policies.

The success of these strategies would have a major impact on the recognised and ‘protected’ external Rohe Potae boundary, and on the strongly held wish of many communities of the district to retain the management and ownership of their land when it was opened up to developments such as the railway. The pressures led to the weakening of the alliance and by 1890, the Rohe Potae compact had largely become a compact with Ngati Maniapoto, as the Government preferred. The recognised Aotea Rohe Potae also became reduced by Land Court actions from the late 1880s, to largely the same lands as what was to become the Aotea block, or Ngati Maniapoto lands. In the process, one of the direct results of these strategies was the creation of the Waimarino block.

#### **4.2 Government attempts to win Maori cooperation**

As the Government began developing land settlement policies in conjunction with the railway development, Ballance made a concerted effort to persuade Maori communities in the North Island to trust in and cooperate with his Government. This effectively broadened Government involvement in direct negotiations with the Rohe Potae alliance leadership, to discussions and consultation over promised reforms with Maori communities generally. It seemed that the success of the Rohe Potae negotiations may have convinced the Government that consultation and negotiation with Maori leadership over proposed settlement might be preferable to the earlier policies of the 1870s.

The campaign of wider consultation began in earnest with Ballance’s tour of North Island districts in early 1885. This tour has already been referred to in the previous chapter, in connection with the meetings along the Whanganui River and at Kihikihi in early February 1885, over the railway agreement. However, as noted, these meetings discussed wider issues

as well, especially proposals for legislative reform for the administration of Maori land. They also gave Ballance, and those Maori attending the meetings, an opportunity to discuss Government policies and their likely impact on Maori.

Ballance began his tour along the Whanganui River and it seems he was concerned to convince those attending these meetings that his proposed legislative reforms and his settlement policies would bring them considerable benefit. He was well aware that many of the chiefs attending these meetings would also have interests and influence into the upper Whanganui and railway district. It seems from the reports of these meetings that those who attended were those considered most likely to be receptive to cooperation with the Government and who had for various reasons, distanced themselves from pan-tribal movements such as the Kingitanga, and Te Whiti and his followers. Ballance seems to have believed his best chance of convincing Maori of his sincerity in his promises to improve the Land Court, give a more significant role to Native Committees and substantially reform Maori land legislation, lay among these people. In this context, his success in convincing them of Government good will, protection, and commitment to consultation, might also result in persuading them to trust the Land Court and 'the law' in the expectation that reforms would enable them to retain significant authority while gaining increased economic opportunity.

Ballance began his visit along the Whanganui River with a meeting at Ranana on 7 January 1885, at the invitation of Te Keepa (Major Kemp).<sup>554</sup> This meeting was described as involving 'the whole of the Whanganui people' and began with Te Keepa expressing support for the Government and the Queen on behalf of all those present. Te Keepa also referred to the possibility of land sales, although he preferred that any land sold should be in small blocks. He also wanted it sold to private individuals to bring prosperity to the district. He did not want the previous practice to continue, of companies and speculators acquiring large blocks of land, leaving Maori landless.<sup>555</sup>

The meeting was clearly influenced by the Rohe Potae negotiations and the concessions the Government had appeared to make with these. It was chaired by Paori Kurimate, the chairman of the Whanganui Native Committee, who explained the eight principal subjects they wanted the Government to consider and Parliament to sanction. They first wanted Parliament to confirm the 'exterior boundary' of the Whanganui people. This had been described to the

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<sup>554</sup> Foi example, MA correspondence register entries, NO 84/3594, NO 84/3651

<sup>555</sup> *AJHR* 1885 G-1 p 1

Government by their Native committee in 1880 and was further described in a document they were now submitting to the Government. No record has been found of what this boundary was. However, it does seem clear the meeting wanted similar protection for their district and management by Native committee.

The meeting also wanted the legally recognised Whanganui Native Committee to be confined to the Whanganui district only. The Whanganui Native Committee district as proclaimed at this time, reflecting Government policy, covered not just what was regarded as the Whanganui district, but also some nearby areas such as Otaki and the meeting wanted this revised to just include Whanganui. With regard to development in the district, the people had agreed to a steamer on the river, although they wanted issues with respect to it dealt with by their Native committees. They also wanted their committees to deal with ‘surveys of land belonging to the people’, any sales or leases of such land, and any surveys within the exterior boundary. They would also deal with the question of the railway, where it ran through Maori customary land.<sup>556</sup> Although there was just one legally recognised committee in the district at this time, the reference to ‘committees’ indicates that a number of smaller Native committees, probably pre-dating the official system, may have still been operating in the wider Whanganui area.

These requests from the Whanganui people were very similar in their objectives to those of the Rohe Potae alliance revealing how united all sections of Maori views appear to have become by this time on these issues. The main point of difference appears to have been that expressed by Te Keepa, that they were not totally opposed to land sales, although the preference was for any sales to be in small blocks to private individuals, not the large-scale purchases that were more likely to leave Maori landless. This meeting seemed to indicate a widespread desire right along the central route of the railway for a remarkably similar system of protection and management of land by Maori themselves through their committees.

A similar desire appears to have existed in the Taupo district. After the Whanganui meetings, the Government received a congratulatory letter from the chief Matuahu Te Wharerangi expressing satisfaction with Ballance’s policy and asking for similar rights of management of roads and the external boundary that was being allowed to Kemp and his party. Matuahu similarly wanted the ‘mana’ over Taupo left with himself and Te Heuheu.<sup>557</sup>

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<sup>556</sup> *AJHR* 1885 G-1 p 2

<sup>557</sup> MA correspondence register entry NLP 85/281, letter 27 January 1885, ANZ.

In response, Ballance explained to the Ranana meeting that the Government was anxious to build good relationships with Maori and believed the best way of achieving this was meeting with the people and taking them into its confidence. He explained that the Government could assist Maori in enacting and administering laws that were for the benefit of both races. He agreed with Te Keepa that the lands should be administered and ‘disposed of’ for the benefits of the owners. He also agreed that they should be ‘disposed of’ so the greatest number of people could live on them, and use them and they would not be locked up in the hands of a few.<sup>558</sup>

Ballance interpreted the requests for an external boundary for Whanganui and for the Whanganui Native committee to cover only Whanganui lands as really ‘one subject’. That is, that the recognised Whanganui Committee district should only include Whanganui lands.<sup>559</sup> This had been an issue of contention with Maori when Native Committee districts were set up under the 1883 legislation. Instead of reflecting natural communities, officials had decided it would be more ‘convenient’ if the committee districts were the same as resident magistrate districts or some already defined boundaries, although Native Officers could be asked to advise within this of tribal, hapu and settlement distinctions. Bryce had also indicated a preference for larger, fewer districts, no more than six or seven for the whole North Island.<sup>560</sup> This had created problems for Committees obliged to cover districts with several unrelated or even competing interests. At Ranana, Ballance promised to have a revised Whanganui district established, with Whanganui input into the final boundaries.<sup>561</sup> He gave no indication that he recognised the meeting had requested anything more than a revision of the existing committee boundaries.

Ballance also explained that the Government would need to carefully consider the remaining requests concerning the powers of the Native committees.<sup>562</sup> He thought the committees might do ‘a great deal of good’ in ascertaining title to land. He also acknowledged that the Land Court had resulted in ‘great loss and inconvenience’ to Maori.<sup>563</sup> However, he clearly also saw a primary role for a reformed Native Land Court. For example, he acknowledged that it would be ‘wiser’ to have the Court move around and hold sittings on lands where title

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<sup>558</sup> *AJHR* 1885 G-1 p 2

<sup>559</sup> *AJHR* 1885 G-1 p 2

<sup>560</sup> NO 83/3194 correspondence and note by Bryce 27 September 1883, MA series 23/13a, ANZ

<sup>561</sup> *AJHR* 1885 G-1 p 2

<sup>562</sup> *AJHR* 1885 G-1 p 2

<sup>563</sup> *AJHR* 1885 G-1 p 3

was being investigated. He also wanted the relationship between the committees and the Court made as clear as possible. In cases where committee members might be interested in an area of land, he wanted an appeal to a body with no interest in the question of title. Therefore, ‘after the Committee has ascertained the title, there should always be an appeal to the Land Court’.<sup>564</sup> It would also be necessary ‘of course’ for the Court to give legal sanction to the decisions of the Committee. The Land Court would ‘ultimately’ decide the question of title.<sup>565</sup>

This echoed what Ballance had earlier stated in Parliament in late 1884, and what he may well have discussed with Wahanui. He seems to have accepted that Native committees would be the ‘primary’ stage of title investigation with the Land Court as an ‘ultimate’ appeal body and an authority for giving ‘legal sanction’ to Committee decisions. This of course assumed that the committees would necessarily know of all applications for investigations, as they would be the first stage of title determination. This appeared further confirmed by Ballance at later meetings he held in February 1885. For example, he assured the Thames Native Committee on 12 February 1885, that copies of all survey applications intended for the Native Land Court should also go to the Native Committee, ‘so that no case will be brought secretly before the Court without the Committee knowing’.<sup>566</sup>

Ballance welcomed the meeting’s confirmation that the river people would ‘assist’ with the steamer. He noted this would require work on the ‘rapids’ to allow the steamer up and down. However, he assured the meeting that steamers would materially benefit them, making it easier and cheaper to get up and down the river and to transport their produce.<sup>567</sup> With regard to the land surveys, Ballance agreed the committee should have ‘large control’ of them but asked whether it could pay for them. He explained that because the Government would have to assist with this, it would require security that the cost would be repaid when the land was ‘disposed of’.<sup>568</sup>

Ballance also treated the issue of sales and leases of land as one subject. He explained that the Government had included all the land likely to be increased in value by the railway under recent legislation. This included the whole King country along the Wanganui River and through Lake Taupo and Rangitikei, around 4,500,000 acres. Within this area no private

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<sup>564</sup> *AJHR* 1885 G-1 p 3

<sup>565</sup> *AJHR* 1885 G-1 p 3

<sup>566</sup> Ministers Letterbook 1885, MA series 30/3, notes of meetings 1885, p 27, ANZ

<sup>567</sup> *AJHR* 1885 G-1 p 3

<sup>568</sup> *AJHR* 1885 G-1 p 3

individual could touch the land; ‘The Bill does no more than that it saves the land to the owners’.<sup>569</sup> It was ‘absolutely the property of the Maoris, and more so than it was before’.<sup>570</sup> Ballance also explained that the Government proposed that when the title to a block was ascertained, the owners of that particular block would have power to deal with it. Ballance explained that ‘much harm’ had been caused by some people being put in the title who then exercised rights for all. He referred to the cases where ten people were put in the grant but exercised rights for at times hundreds of other owners.<sup>571</sup> Ballance was apparently referring to the old ‘ten owner rule’ effectively abolished in 1873.

Ballance went on to explain his legislative proposals for reforming the administration of Maori land. It was intended that the possibly hundreds of owners in a block would be able to elect a committee for two year periods and all dealings in land would be managed by this committee. In order that the land could be sold and ‘disposed of’ for the interests of both races, the Government proposed a board for a large district consisting of three persons. One would be a Government appointee; the others would be elected or nominated. Ballance explained that it might ‘be best’ if one of these was elected by the General Committee, that was the District Committee for Wanganui, and one by the people directly.<sup>572</sup> The majority of the Board members would make decisions where there was any disagreement. Ballance claimed that this meant that the management power would really rest with the Maori people and their representatives.<sup>573</sup>

Ballance explained that the board would have the power to lease or sell land when the committee wished it to, but not before then. The land would be sold or leased as Crown lands were, in small blocks. Where it was fit for grazing it would be ‘sold’ in small runs, where it was suitable for growing in small farms, and where a township was required, in sections. The proceeds would then go to the owners. With roads and surveys, the committee would decide what costs were required for these and they would be paid for out of the first proceeds.<sup>574</sup>

This proposed system appears to have been very similar to the measures first included and then removed from what became the Native Land Alienation Restriction Act 1884. The Government had indicated at the time that it would consult further with Maori over them

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<sup>569</sup> *AJHR* 1885 G-1 p 3

<sup>570</sup> *AJHR* 1885 G-1 p 3

<sup>571</sup> *AJHR* 1885 G-1 p 3

<sup>572</sup> *AJHR* 1885 G-1 p 4

<sup>573</sup> *AJHR* 1885 G-1 p 4

<sup>574</sup> *AJHR* 1885 G-1 pp 3-4

before going ahead and this meeting appears to have been part of that commitment. There had been Maori concerns that these proposals seemed to place too much control of lands under Government officials and the proposed boards which were designed to facilitate the effective 'disposal' of land in the interests of settlement. They also seemed to be intended to replace traditional hapu and chiefly authority with new elected bodies made up of individual owners. However, Ballance was eager to explain that the proposed boards would operate in the interests of the owners, who effectively would retain 'power' over them.

Ballance also indicated that he preferred leasing to land sales in 'disposing' of land for settlement. He claimed that the Government was leasing reserves set aside for Te Whiti and his people on the West Coast and these were bringing in rentals that now allowed Titokowaru and his people to have 'parties all over the country'.<sup>575</sup> This rental was also expected to rise. Ballance therefore advised the meeting to 'lease their land rather than sell it'. If they leased they kept their land, while being able to live in 'ease and comfort'.<sup>576</sup>

Ballance asked the meeting for their views on the proposed system, which he claimed was intended to allow owners to exercise 'the principal voice' in how their land might be disposed of, with the Government providing the assistance of law and power to enable them to carry out their decisions. Ballance went on to state that Maori should be very pleased to have roads and railways coming through their lands. Europeans were anxious for them and so Maori communities should be as well. 'Land which is worth now not more than five shillings an acre will be worth five pounds an acre when the railway runs through the land'.<sup>577</sup> He appealed to everyone to assist the railway pass through their country and to convince any obstructionists that their opposition would not only be against their own interests, but against those of the people of the district. With regard to this, Ballance offered his sincere thanks to Te Keepa and Paori for their help in getting the survey for the railway through.<sup>578</sup>

Ballance also claimed that his government was committed to keeping the Treaty of Waitangi provisions. He noted that Tawhiao had visited England over this but he should have been advised that his visit was useless, as laws were now made by the New Zealand Parliament. The New Zealand Government had replied that the Treaty of Waitangi provisions were being kept and 'not a single acre of land can be taken from the people unless they wish to sell it

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<sup>575</sup> *AJHR* 1885 G-1 p 4

<sup>576</sup> *AJHR* 1885 G-1 p 4

<sup>577</sup> *AJHR* 1885 G-1 p 4

<sup>578</sup> *AJHR* 1885 G-1 p 4

themselves'.<sup>579</sup> Tawhiao had asked for a separate government, 'but there cannot be two powers and two authorities in the same country'.<sup>580</sup> When local authorities were given powers, this did not make them more powerful than Parliament. Ballance claimed that the Government was meeting the Treaty by giving Maori powers to elect their own committees and lease their own lands. They were also represented in Parliament and 'make your own laws'.<sup>581</sup> Further Ballance explained that he had thought a good deal on the matter and had decided that 'it is not so much for the Government to interfere as for you to consider yourselves what shall be done'.<sup>582</sup> Therefore, he proposed that when prospectors wanted to search for gold in the district, he would refer them to the Whanganui Committee.<sup>583</sup> Ballance insisted that his government intended to legislate for the 'whole' people. It would not be influenced by private individuals or land sharks. It also intended to 'consult' Maori all over the North Island and seek their opinions on issues of interest to them.<sup>584</sup> To do this, Ballance intended visiting many North Island districts 'to be guided largely by the opinion of the people themselves'.<sup>585</sup>

In reply, Major Kemp (Te Keepa) confirmed his refusal to support either the Kingitanga or Te Whiti. He placed his trust in the Government as 'parent' and protector of Maori and Native committees to help manage sales and leases and prevent the loss of land to speculators. He also went on to ask that no surveys or anything else should be done with lands 'except through the Committee'. With regard to lands near the railway, no private speculators should be allowed, but the Government and the Committee should manage the lands.<sup>586</sup> Te Keepa was concerned that committees might find it difficult to manage alone though and preferred the Government and committee to manage the lands together.<sup>587</sup> Later, he produced a surveyor's theodolite, which he referred to as 'my devil' and declared that for the good of both races, the Government should have charge of surveys and sales 'in conjunction with the Committees'.<sup>588</sup> The committee chairman, Paori Kuramate, also confirmed that he preferred the Native Committee to deal with questions of land title or any disputes between Whanganui

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<sup>579</sup> *AJHR* 1885 G-1 p 5

<sup>580</sup> *AJHR* 1885 G-1 p 5

<sup>581</sup> *AJHR* 1885 G-1 p 5

<sup>582</sup> *AJHR* 1885 G-1 p 5

<sup>583</sup> *AJHR* 1885 G-1 p 5

<sup>584</sup> *AJHR* 1885 G-1 pp 5-6

<sup>585</sup> *AJHR* 1885 G-1 p 6

<sup>586</sup> *AJHR* 1885 G-1 pp 6-7

<sup>587</sup> *AJHR* 1885 G-1 p 6

<sup>588</sup> *AJHR* 1885 G-1 p 7

Maori.<sup>589</sup> This was followed by a number of expressions of support for the Government in being willing to consult and of agreement that the railway should proceed.<sup>590</sup>

A chief, whose name was recorded as Te Peehi then referred to the proposed road from Waimarino to Manganui a te Ao. He supported the road, but wanted time to discuss the matter with his Manganui a te Ao people. He claimed that he had been instrumental in removing their obstruction to the earlier railway exploration. He wanted the chance to discuss the road further with them and then he would inform the Government of the result.<sup>591</sup> Another chief, Winiata, from Manganui a te Ao also asked for time to discuss the road. He had also assisted with the railway exploration and he agreed with Te Peehi that the matter should be left with them to discuss with their people.<sup>592</sup> Another chief, described as ‘Rangihuhatau’ was reported as asking for a mail service from Manganui a te Ao to Taupo, which Ballance agreed was important.<sup>593</sup> This chief was possibly Te Rangihuatau, the chief who would later be prominent in the creation, investigation of title and sale of the Waimarino block.

Ballance assured the meeting that it need not fear that under his proposed system the Committees would be able to sell land in large blocks; ‘the law would prevent that’. He reminded the meeting that the Kingitanga leaders had asked for liquor control in their district and the Government had provided that. He claimed that the laws were sufficient in most cases when asked for and if not then they could be made sufficient. He also welcomed the assistance of the chiefs Te Peehi and Winiata in persuading the people of Manganui a te Ao of the benefits of the road. He agreed they should consult with their people and then inform him of the outcome. Ballance also confirmed that he supported a road through Murimotu.<sup>594</sup>

Ballance went on to visit other settlements along the Whanganui River including Jerusalem or Kawaeroa, and Pipiriki, where it became clear that he was meeting groups who were now inclined to support the Government, even if some of them had previously been Hauhau. For example, one speaker at Pipiriki told Ballance that he had previously been Hauhau but had left when Te Keepa had assured them that he would ‘restore to us all our land’. He asked Ballance to defend them from other tribes coming and surveying their lands.<sup>595</sup>

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<sup>589</sup> *AJHR* 1885 G-1 p 6

<sup>590</sup> *AJHR* 1885 G-1 pp 6-7

<sup>591</sup> *AJHR* 1885 G-1 p 7

<sup>592</sup> *AJHR* 1885 G-1 p 7

<sup>593</sup> *AJHR* 1885 G-1 p 9

<sup>594</sup> *AJHR* 1885 G-1 p 8

<sup>595</sup> *AJHR* 1885 G-1 p 9

These meetings were important for the promises and assurances Ballance made to the chiefs to win their cooperation. They appear to have been largely attended by chiefs who were most inclined to support the Government and trust its promises. Nevertheless, they were also important in confirming to Ballance that even among the most supportive chiefs there was a very clear preference for management by Native committee. In contrast, there was very little support for the Native Land Court and strict qualifications on agreements for land to be used for settlement. Ballance seemed to accept this by agreeing the Native committees might be revised and they might share management with the Government and be the 'primary' stage of inquiry into ownership with the Land Court as a kind of ultimate appeal. While proposing a new 'board' of management for land, Ballance was also careful to explain that the 'power' of management would still reside in the district. He also appeared to agree that they should lease rather than sell land. These seem to have been important assurances for the chiefs.

Ballance may also have been heartened to see some upper Whanganui chiefs at the meetings, and to hear that the Whanganui (and later Taupo) people wanted their own boundaries for their districts. This at least revealed that some upper Whanganui chiefs might be persuaded to reject the interior alliance. It might also be possible to take advantage of the district desires among some communities to have their own Whanganui and Taupo districts, also possibly undermining commitment to the Rohe Potae.

The legislative proposals that Ballance was explaining in these meetings, would eventually be passed by Parliament as the Native Land Administration Act, 1886, although without many of the critical reforms Ballance was promising at this time. It had begun life as the Native Land Disposition Bill, 1884, but at the request of Wahanui the proposed land administration provisions had been held over for further consultation. The Whanganui and Kihikihi meetings of early 1885 were part of this consultation process over what was now called the Native Land Disposition Bill. Some of the provisions were intended to address the problems of managing Maori land when numerous owners were included in the title. The proposals were intended to make management of such land less unwieldy for Maori owners through the use of committees. The provisions were also intended to provide a more effective way for owners to use their land for settlement purposes, by leasing or sale.

The Rohe Potae alliance leadership also sought to continue negotiations over this Bill. For example, Wahanui and several other chiefs made another lengthy trip to Wellington from

about mid-June to mid-September 1885, to discuss the proposed legislation. On 20 June 1885, Wilkinson reported Wahanui's departure for Wellington on this trip.<sup>596</sup> Very little documentation has been found on this visit, although a letter posted from Wellington indicates that Wahanui was still there on 10 September 1885.<sup>597</sup> In July 1885, a Ngati Raukawa chief, Ngakura, also asked the Government for financial assistance to travel to Wellington to consult with Wahanui and others on matters of concern to Maori.<sup>598</sup> This suggests that others had travelled with Wahanui and the leadership was still attempting to function as an alliance. Later correspondence from Wahanui suggests that he had returned to the district by late September 1885.<sup>599</sup> The lack of official attention to this visit, in contrast to 1884, indicates that by now, the Government was paying less attention to the alliance. Instead, Ballance seemed determined by this time to seek cooperation from more traditional groupings outside the alliance.

This process of consultation does appear to have been significant in persuading many influential leaders that their best hopes lay in cooperation with the Government and trusting that the Government would act in good faith and implement its promised reforms, rather than remaining isolated outside the system. This campaign of consultation and assurances may well also have contributed to the decisions of some chiefs with upper Whanganui connections to decide to trust the Government rather than the alliance.

The Government continued the campaign to win over Maori communities with a large hui held at Waipatu near Hastings in January 1886.<sup>600</sup> The Maori leadership attending the Waipatu hui expressed many of the same concerns the interior and upper Whanganui chiefs had made clear to the Government. This included considerable concern that the proposed Native Land Disposition Bill still appeared to transfer too much authority over Maori lands to the Governor and various Government agencies. They were also uneasy about the Bill title, and they wanted Maori owners to have more direct control over their land. There were also concerns about the fees and costs involved in the proposed process. Some of the speakers also wanted the Bill to provide a means of preventing single individuals from selling land and there were continued requests for the Government to strengthen the powers of Native

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<sup>596</sup> MA correspondence register entry 85/2095, ANZ

<sup>597</sup> MA correspondence register entry 85/3014, ANZ

<sup>598</sup> MA correspondence register entry 85/2555, ANZ

<sup>599</sup> MA correspondence register entry, 85/3292, 29 September 1885, ANZ

<sup>600</sup> *AJHR* 1886 G-2 Native Meeting at Hastings

Committees.<sup>601</sup> Nevertheless, this meeting, as with those along the Whanganui River, also showed considerable goodwill and satisfaction that Ballance was willing to come and visit with Maori and involve them in consultation over legislation that affected them. There was also a feeling that if they did not engage in this process, and opposed the Bill entirely, then they would achieve no change at all from the ‘present evil’.<sup>602</sup>

Ballance was recorded as assuring the meeting that the main principle of the Bill was to place the control of land entirely in the hands of the owners.<sup>603</sup> In addressing the meeting, he agreed to consider a better name for the Bill if one could be suggested.<sup>604</sup> He also agreed to abolish the Boards originally proposed in the Bill and rejected by the meeting.<sup>605</sup> He accepted that the meeting wanted the Native Committees to take a greater role in land management and promised to give further consideration to this. Ballance also stated that he believed Native Committees could be ‘very useful’ and claimed he had already strengthened them.<sup>606</sup> He claimed that every committee now knew when an application was to be heard by the Court. This was apparently because they were sent a gazette notice notifying them that an application was to be heard by the Land Court. This was presumably intended to meet the constant concern that Native committees did not know when applications were being made and Ballance’s earlier promises that he would inform committees and influential chiefs of applications to the Land Court. However, a published notice once a Court was due to sit was hardly the same as notification when applications were being received. By the time a date for an investigation was set, and a gazette notice published, there was very little committees could do to influence the process.

Ballance claimed that he had strengthened Native Committees by obtaining a vote of £600 to pay each chairman £50 a year to perform their duties and they were now also enabled to frank letters and receive stationery. He had also increased the number of committees and districts. Ballance stated he believed they should have further powers and would give this his ‘best consideration’.<sup>607</sup> Ballance also stated later in the meeting that he intended allowing the committees the first right of decision making over any disputes over moneys to be paid out

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<sup>601</sup> *AJHR* 1886 G-2 Native Meeting at Hastings

<sup>602</sup> *AJHR* 1886 G-2 p 6

<sup>603</sup> *AJHR* 1886 G-2 p 3

<sup>604</sup> *AJHR* 1886 G-2 pp 2-3, p 12

<sup>605</sup> *AJHR* 1886 G-2 p 12

<sup>606</sup> *AJHR* 1886 G-2 p 11-12

<sup>607</sup> *AJHR* 1886 G- 2 p 11

under the proposed Bill, with a right of appeal to the Land Court.<sup>608</sup> Later still, he agreed with proposals that the committees should have the power to investigate titles with a right of appeal to the Land Court, much as he had promised at the earlier Whanganui and Kihikihi meetings.<sup>609</sup>

Ballance explained that concerns about the powers of Government agencies in the proposed Bill would be met by giving the Governor powers to make rules and regulations to give better effect to the Bill. He also agreed to exclude any mention of the Public Trustee in the Bill.<sup>610</sup> Ballance also agreed to drop some of the more objectionable clauses regarding costs and the powers of the proposed Commissioner in the Bill. Nevertheless, he felt that a five percent management fee and a sum for roads and surveys was reasonable. This led to a long series of discussions about the costs impacting on Maori lands through land duty, rates, property taxes and the proposed fee for administration. Ballance did not feel these could be entirely reduced but he agreed that customary lands should not be rated. He claimed that he had reduced many fees and costs and he promised to take the concerns of the meeting over these back to his colleagues.<sup>611</sup> The meeting subsequently agreed to a five percent administration fee, but asked Ballance to seek reductions in other duties, costs and fees.<sup>612</sup>

Ballance agreed that the proposed Native Land Laws Consolidation Bill should also be circulated amongst Maori during the Parliamentary recess. However, he warned that if reforming legislation was to pass Parliament, he would need the full support of the Maori people.<sup>613</sup> He also assured the meeting that he was keen to strengthen local self-government for Maori, by giving them power to deal with their affairs themselves while ‘weakening the power’ that enabled pressure on individuals ‘to induce them to sell land’. He claimed he supported Maori retaining sufficient land for themselves. However, he felt they would never be prosperous, or even survive, if they did not ensure everyone got a Crown grant and their own piece of land, rather than continuing to live in ‘a state of communism’.<sup>614</sup> Further in support of Crown grants, Ballance encouraged Maori to divide their land and become eligible for local body voting, giving them an alternative source of influence in the country.<sup>615</sup>

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<sup>608</sup> *AJHR* 1886 G- 2 p 14

<sup>609</sup> *AJHR* 1886 G- 2 p 17

<sup>610</sup> *AJHR* 1886 G- 2 p 5, 12

<sup>611</sup> *AJHR* 1886 G- 2 pp 3, 5, 12-13

<sup>612</sup> *AJHR* 1886 G- 2 p 14

<sup>613</sup> *AJHR* 1886 G- 2 pp 13-14

<sup>614</sup> *AJHR* 1886 G- 2 p 13

<sup>615</sup> *AJHR* 1886 G- 2 p 19

This led to some discussion at the meeting over why Europeans appeared to have less restrictions on who could vote in general elections than Maori. One speaker asked why the vote could not be extended to all Maori, whether their land was subdivided or not, and whether or not it had passed the Land Court.<sup>616</sup> However, Ballance insisted that Maori should get a Crown grant to their land and have it subdivided so they qualified to vote.<sup>617</sup> It seems the Government was determined to portray acquiring Crown grants as necessary for prosperity and to withhold voting rights unless Maori agreed to replace traditional authority over land, with title derived from Crown grant.

Ballance referred to the 'Waikatos' as isolationists who refused to take up the Government offer of cooperation. The Maori Member of Parliament, Te Puke te Ao also insisted that he was the 'proper representative' of Waikato and the West Coast. At the same time he explained that he had tried to ensure that the Bill would not apply to lands in 'Tawhiao's boundary' and he claimed Wahanui had supported him in this.<sup>618</sup> Nevertheless, some of those attending the meeting were clearly supporters of the Kingitanga and rejected the Government meetings as designed to 'blind the eyes of the Natives'.<sup>619</sup> Hirini Taiwhanga also claimed that some Waikato had asked him to ask why the Government had appointed a land purchase officer, Grace, for Waikato and Ngati Maniapoto and why the Government had authorised gold prospecting in that country. He claimed the people wanted this stopped until some 'good law' was passed for the benefit of Maori and European alike. He also referred to meetings that Grace was holding in the district and asked the Government to instruct Grace to stop making his survey. Taiwhanga also asked the Government to support a law to carry out section 71 of the Constitution Act, which provided for separate Maori districts.<sup>620</sup>

In reply, Ballance tried to portray all the criticism as isolationist and unhelpful. He claimed that he did not really understand what Taiwhanga meant and dismissed his call for powers to create separate Maori districts, saying this would be 'very unjust' to Maori. He thought it might mean a new province 'somewhere in the Waikato' but argued this would not suit those Maori who lived outside it. However, he said the Government would print the proposed new Bill at Government expense 'so that the people may see it'. The request about Grace and the survey was presumably in connection with concerns by late 1885, that William H Grace had

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<sup>616</sup> *AJHR* 1886 G- 2 p 19

<sup>617</sup> *AJHR* 1886 G- 2 pp 7, 15-16

<sup>618</sup> *AJHR* 1886 G- 2 p 18

<sup>619</sup> *AJHR* 1886 G- 2 p 11

<sup>620</sup> *AJHR* 1886 G-2 pp 6, 8

been appointed a land purchase officer and was encouraging some Ngati Tuwharetoa to withdraw from the external Rohe Potae boundary. Ballance chose to assume the concerns about Grace were referring to the Rohe Potae external boundary survey and itself and explained that this had been done at the request of the 'Waikato and Ngati Maniapoto tribes'.<sup>621</sup>

With regard to gold prospecting, Ballance claimed that he faced difficulties because some Waikato chiefs had asked for gold prospectors to be sent, while Tawhiao refused them, and he did not know which was the voice of Waikato on the matter. He did not seem to think it necessary to mention Wahanui's consistent opposition to gold prospecting throughout the Rohe Potae negotiations or his own promise to the alliance and at Whanganui to allow Native Committees to decide on gold prospecting. Ballance also questioned whether Taiwhanga could really claim to represent Waikato at the meeting.<sup>622</sup>

One of the speakers at the meeting was Paori Kuramate of the Whanganui Native Committee. He noted that he had travelled to the meeting with Ballance and that he had come to represent the people of the West Coast. He noted that further discussions were still required on the proposed Bill and that he had asked for another meeting at Whanganui to further discuss the Bill.<sup>623</sup> The Whanganui meeting did take place, in March 1886 just as the hearing for the Waimarino block ended, as will be described in the following chapters. It appears the promises and explanations offered by Ballance at this meeting were critical in persuading influential leaders of the upper Whanganui and Waimarino lands to trust that they could cooperate with the Government as asked.

The Native Land Disposition Bill was finally returned to Parliament and passed as the Native Land Administration Bill later in 1886. It was supported by most Maori Members of Parliament by this time, apparently because it at least contained some improvements over the current system. However, according to O'Malley, it hardly reflected the extensive consultation that had taken place over 1885 and 1886 and as such, it eventually received a hostile reception from Maori.<sup>624</sup> For example, it failed to contain the promised critical reforms increasing the powers of Native Committees or reforming the Land Court into effectively an appeal body. As a result it was largely ignored by Maori and in late 1887, it was effectively

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<sup>621</sup> *AJHR* 1886 G-2 pp 9-10

<sup>622</sup> *AJHR* 1886 G-2 pp 9-10

<sup>623</sup> *AJHR* 1886 G-2 p 9

<sup>624</sup> O'Malley, p 204

overturned.<sup>625</sup> The Native Land Court Act 1886 in a similar fashion made some administrative improvements to the Land Court and also provided that title could be granted to a tribe or hapu by name, as had been requested at Kihikihi. However, it too appears to have largely failed to implement the reforms Ballance seems to have been promising. Importantly, it allowed the Court to retain control over investigations of title. Nevertheless, while they were still under discussion, the promises and assurances anticipated with these Bills also appear to have been critical in persuading influential chiefs to trust and cooperate with the Government, including over Waimarino.

### **4.3 Continued alliance cooperation with the Government, 1885**

While the Government was seeking wider cooperation among Maori communities for its policies, it also seemed willing to continue negotiations with Wahanui and the alliance leadership. Wahanui and the other alliance chiefs may have been aware that there was some concern about their cooperation with the Government in the district but they appeared confident these could be overcome. They were well aware that a number of applications had previously been made concerning parts of the district, when chiefs thought they had no other choice. However, one main reason why they had decided to make one joint application for the survey of the outer boundary of the whole district was to prevent this kind of application being used to undermine the Rohe Potae. They believed the external boundary survey now protected against this and the Government was committed to upholding this protection. They appeared confident that the Government would treat any further applications as no more than registrations of interest in the district. Bryce had already told them he was holding some applications and he had refrained from acting on them while negotiations progressed. They may have believed that in return for their cooperation and good faith over assisting the surveys, the Government would also continue to act in good faith and delay acting on separate applications while alternatives or reforms to the Native Land Court were worked out. They also seemed confident, as indicated by Ormsby in February 1885, that once the recognised committees were established, such as the Kawhia committee, the committee requests for the Government to disregard earlier applications would be heeded.

In the meantime, the interior leadership led by Wahanui appears to have anticipated continued high level negotiations with the Government. For example, official records indicate a

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<sup>625</sup> O'Malley, p 204

subsequent meeting with Ballance was planned after the February agreement.<sup>626</sup> They also sought to control the problem of gold prospectors by asking the Government to send a thoroughly qualified person to the Tuhua country to prospect for gold.<sup>627</sup> As noted, Wahanui and other alliance chiefs also spent several months in Wellington discussing proposed legislation. In December 1885, John Ormsby the chairman of the Kawhia Native Committee, who also seemed to be increasingly taking over negotiating responsibility with the Government, asked to have an officer appointed to assess the value of land to be taken for the Main Trunk railway.<sup>628</sup> This was apparently an effort to continue district-wide negotiations over the railway including an agreement on payment for the chain width agreed to be taken for the railway.

It also seems the alliance chiefs may also have had reason to believe that Ballance was beginning to make good on his promises of the February meeting. Surviving official correspondence for this period is sparse but correspondence register entries appear to show, for example, that Ballance was circulating some proposed legislation through the district for comment.<sup>629</sup> Progress over gold prospecting appears to have been more mixed. There is some evidence of consultation with the chiefs over prospectors entering the district.<sup>630</sup> However, it seems that the chiefs and committees were still not given full control over prospectors as Ballance had promised. Prospectors still appear to have been seeking Government rather than Native Committee authority to enter the Tuhua district in 1885.<sup>631</sup> Other correspondence suggests that the chiefs did not feel they had the authority over prospecting they seem to have been promised. For example, in September 1885, the chief Ngatai te Mamaku wrote to the Government apparently asserting his right to be consulted regarding gold prospecting in the Tuhua<sup>632</sup>. In October 1885, Wahanui also wrote, requesting the Government not permit gold prospecting in the King Country for the present.<sup>633</sup>

With regard to Native Committees, it seems that Ballance did approve an annual payment of £50 per annum to Native Committee chairmen, presumably as a goodwill gesture. However,

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<sup>626</sup> Wilkinson report 21 March 1885, MA correspondence register entry 85/868, ANZ

<sup>627</sup> Wilkinson letter, 20 April 85, MA correspondence register entry 85/1248, ANZ

<sup>628</sup> MA correspondence register entry 85/4136, ANZ

<sup>629</sup> For example, MA correspondence register entries, 85/2002, 85/3606 re circulation of proposed Native Land Disposition Bill, 85/3441 re Acts to be sent to Maori up Whanganui River, ANZ.

<sup>630</sup> For example, MA correspondence register entries, 85/1348, 85/1415, 85, 1602, ANZ.

<sup>631</sup> For example, MA correspondence register entry, 85/2855, ANZ

<sup>632</sup> MA correspondence register entry 85/3280, ANZ

<sup>633</sup> MA correspondence register entry 85/3364, ANZ

O'Malley notes that Ballance never clarified whether this was a payment for chairmen alone or meant to cover committee expenses as well, causing widespread confusion. In the event the payment barely lasted a few years before being cut in half and then abolished altogether in financial retrenchments of 1887.<sup>634</sup>

In the meantime, the alliance continued to focus on the more effective operation of the Native Committees, which increasingly began to take over management of district affairs. For example, in November 1885, Wilkinson reported on the Kawhia committee meetings to fix timber royalties.<sup>635</sup> He also reported on the election of a Waikato committee.<sup>636</sup> The *Wanganui Herald* also reported in December 1885, that the Kawhia Native Committee had recently fixed prices for timber and decided to allow controlled prospecting for gold by someone qualified and responsible sent by the Government. Should gold be found the Government and the Committee together would arrange for the opening of a field. The paper reported that Wahanui and Taonui appeared to agree with this.<sup>637</sup> The discussions over the role of the Native committees and the Land Court as now proposed by Ballance also continued in the district. The *Herald* also reported that a proposal at this time to put the whole block through the Native Land Court was defeated and instead it would go to the Native Committee. However, if the people refused to allow the Committee to settle matters, then it would not oppose the Land Court.<sup>638</sup>

Ballance also appears to have continued visits to the interior district although these visits appear to have become more low-key by this time. For example, Ballance appears to have visited Kihikihi and Alexandra again in early November 1885 although the Native Department documentation of this appears slight. Ballance also travelled to Hamilton and other European settlements in the area and held extensive talks with deputations from those communities advocating settler interests. The *Waikato Times* reported that Ballance, accompanied by his private Secretary Butler, arrived at Alexandra on 2 November where they were met by the chief Wahanui. The next day Ballance was also joined by the Native Department under secretary T W Lewis. According to the *Times*, the main issue for discussion

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<sup>634</sup> O'Malley, p 176, MA series 26/13 p 80 ANZ

<sup>635</sup> MA correspondence register entry, 85/3771, ANZ

<sup>636</sup> MA correspondence register entry, 85/3896, ANZ

<sup>637</sup> *Wanganui Herald* 7 December 1885 p 2

<sup>638</sup> *Wanganui Herald* 7 December 1885 p 2

was expected to be gold prospecting and Ballance was likely to attend a large hui to be held at Te Kuiti in the next few days.<sup>639</sup>

In the next few days the *Times* reported that a Maori group from Kawhia on their way to the Te Kuiti meeting had called in to see Ballance on learning he was at Alexandra. Ballance had asked them if they wanted the Land Court and they had replied they were leaving the matter to the chiefs Wahanui and Te One.<sup>640</sup> A number of Ngati Maniapoto chiefs had also come to visit Ballance about the money due for the survey of the external boundary. They apparently wanted Ballance to attend the Te Kuiti meeting, where it was intended to hand over the large sum of £1200 collected amongst themselves to pay their share of the survey costs. Ballance apparently declined to go to the meeting but offered to meet with delegations who came to visit him at Alexandra. Wahanui explained to him that they had made extensive preparations for the Te Kuiti meeting, including for food that could not easily be transferred to Alexandra. However, Ballance explained that a combination of bad weather and feeling slightly unwell meant he could not go to Te Kuiti. He did promise to visit Te Kuiti some time in the future.<sup>641</sup>

As well as declining to attend the large Te Kuiti meeting, Ballance seemed to want to play down Ngati Maniapoto attempts to repay the survey money with some ceremony. He was reported as telling the deputation that the Government had never pressed for the repayment of the £1600 for the survey of the external boundary and he could not see how the government could accept payment yet, as one part of the boundary was still not completed.<sup>642</sup> In the event it does not seem the Government did accept payment from Ngati Maniapoto until April 1888 and then it was paid to Assistant Surveyor General, Percy Smith, without any fanfare or ministerial attendance. By then as well, the original external boundary had already been breached with the creation of the Taupouniatia block (and also Waimarino) and as a result Percy Smith had calculated the Ngati Maniapoto share as £992 4s 8d.<sup>643</sup>

The *Waikato Times* described the week Ballance spent at Alexandra and Kihikihi as not achieving anything spectacular, but continuing with the Government policy of undermining and isolating Tawhiao and his supporters. The *Times*, in common with many newspapers of the period, was generally dismissive of all Maori, consistently referring to them in a

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<sup>639</sup> *Waikato Times* 3 November 1885

<sup>640</sup> *Waikato Times*, 5 November 1885

<sup>641</sup> *Waikato Times* 5 November 1885

<sup>642</sup> *Waikato Times* 5 November 1885

<sup>643</sup> Memo Percy Smith to Surveyor General 16 April 1888, SG 6162/160, loose copy in MA-MLP 7/3 p 106, ANZ

derogatory way and assuming even the most apparently ‘friendly’ were still ‘savages’ just below the surface. It also tended to divide all Maori into either supporters or opponents of the Land Court and by extension land sales and ‘progress’. The *Times* tended to treat Tawhiao and the Kingitanga as clownish with misguided ‘delusions’ of royalty, and engaging in deliberately misleading criticisms of the Land Court. The *Times* was particularly scathing of the growing influence Te Kere in the district, his tours of various settlements and his opposition to the Court and sales and leases of land. In this context, Wahanui, although also generally described in a derogatory manner, was generally portrayed as more supportive of the Government and progress. This kind of logic appears to have led the *Times* to declare the startling news that in meetings with Ballance during the week, Wahanui had expressed himself ‘strongly’ in favour of the Land Court.<sup>644</sup>

This reported reversal of his long-standing concern about the Land Court, whether the result of over-enthusiastic wishful thinking, or a more deliberate strategy designed to increase fears about his real intentions, appears to have provoked even the normally patient Wahanui into reproaching the *Times*. On 17 November 1885, the *Times* printed a letter from Wahanui with a translation asking the *Times* to publish a correction about its claim that he supported the Land Court. Wahanui denied that he had ever consented to lands being put through the Court. He reminded the *Times* that instead he had told Parliament that he wanted to manage his own lands. He had heard of the ‘evil’ works of the Court and its dealings and asked whether it was likely that he would agree to it. He asked the *Times* to print his letter and its correction. His letter was printed without comment.

The *Waikato Times* also printed a number of reports during this period that were highly critical of the Kawhia Committee and the work it was doing in preparing to manage the construction of the railway in the district. For example, in a report of 7 November, it referred to the ‘exorbitant’ charges Maori were ‘inflicting’ on contractors for timber and for the use of their paddocks. The paper reported that in response, Ballance had involved himself in arranging with the committee for more reasonable charges. It had also been agreed that, in future, such issues would be arranged by arbitration between the Government and the committee. Ballance was reported as believing that if matters were properly explained to Maori, then they would respond in a fair and reasonable way.<sup>645</sup>

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<sup>644</sup> *Waikato Times*, 7 November 1885

<sup>645</sup> *Waikato Times*, 7 November 1885

A short while later, however, the *Times* complained again of ‘Maori bounce’ and ‘extortion’ in charging tolls for wagons and horsemen to cross the Puniu River, and in charging for gravel from the riverbed. The paper reported that Maori claimed the full width of the river and were even demanding payment from the Kihikihi Council for gravel for paving the main street. The *Times* also claimed Maori were making ‘extortionate’ charges for timber and other resources and suggested that the colony might require Bryce and his methods back, so Maori would not ‘dare’ rob people this way.<sup>646</sup>

The virulence of this newspaper comment indicates the kind of settler pressures the Government was now under with regard to Maori being able to participate adequately in new economic opportunities under their committees. The actions of the Kawhia committee in establishing charges for resources were simply a way of participating in the economic opportunities Ballance had promised Maori if they cooperated over developments such as the railway. Ballance also seemed convince that the committees would listen to reason if their charges were considered excessive. However, the newspaper was reflecting a widely held settler view that rejected any tolerance of this kind of Maori management of resources and benefits from them. It remained to be seen to what extent the Government would stand up to this pressure from settlers to have unhindered access to the region and its resources and honour its commitments and undertakings to Maori to ensure they could also gain a share of the economic wealth the railway might generate.

By late 1885, it seems that the alliance chiefs were beginning to have grave concerns that the Government intended to impose the Land Court over the railway area without the substantial reforms they were expecting. For example, on 9 December 1885, Taonui wrote to the Government asking that any applications for survey of the external boundary should be refused (presumably this was meant to refer to surveys within or that crossed the boundary). He also asked to be informed of any such applications, as Ballance had promised to do.<sup>647</sup> However, no record has been found of the Government informing these chiefs of applications at this time (other than possibly through public Gazette notices of sittings as the result of applications). Anyway, Taonui was already far too late. The Government had been encouraging applications for some time, and by late 1885, already had some that might prove useful in pursuing its policies of undermining and pushing back the Rohe Potae boundary. In

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<sup>646</sup> *Waikato Times*, 17 November 1883

<sup>647</sup> letter 9 December 1885, 85/4136, MA series 13/43a, ANZ

addition, the imposition of the Native Land Court was considered even more necessary as the Government had developed a new policy of extensive land purchasing along the central railway route, in contravention of Ballance's assurances to the interior chiefs and without consulting them.

#### **4.4 Tensions in the Rohe Potae, 1884-85.**

The Whanganui meetings had indicated that there was some concern within Whanganui and Taupo that these districts wanted their own boundaries and management by Native committees. This highlighted another strategy the Government seems to have adopted with regard to the Rohe Potae. The Government had always been reluctant to recognise the alliance, but the earlier negotiations had still been useful, allowing district-wide negotiations over surveys and the railway itself. However, as soon as it could, the Government seems to have returned to undermining the Rohe Potae in pursuit of its objective to solely control and promote settlement and development in the railway area. The Land Court as it was still operating was an important part of this. It was still, as the alliance feared, a major means of breaking down hapu and iwi authority and collective control over land, in the process facilitating the uncontrolled alienation of land. In the case of the Rohe Potae, the Government could use requests to bring in the Land Court to renew pressures and around the borders of the district and in some cases to even cut into the external boundary, much as the Court had done in the years before the negotiations.

The Government had reason to want to continue with the Land Court but the meetings at Whanganui in early 1885 had revealed the strong preference for Native committees and the lack of support for the Court, even among the chiefs and communities likely to be most supportive of the Government. If the Government wanted to encourage applications to the Court, it seemed the best chance was to encourage applications through fear rather than try and persuade communities to willingly choose the Court over committees. This required some means of persuading those involved that they had little choice but to apply to the Court, in the hope that it would in the meantime be reformed. Some communities may have also been reassured by Ballance's claims that while the Court would be involved in title investigation, this would be more as an ultimate appeal body, while the committees would undertake initial ownership decisions concerning land. The Government also had to promote some development that might cause communities to feel they had to apply to the Court to protect their interests. The Government had a key advantage with this because it had essentially

persuaded the Rohe Potae alliance to make the first application in the district. They may have intended the boundary survey to do no more than protect the external boundary of the district. However, to achieve this they had been persuaded to effectively make an application. This could now be used to encourage fears among the various communities of the district that their interests were now at risk.

It has already been noted that the Land Court process was very difficult to avoid and one of the reasons for this was the fear that if Maori did not engage with the Land Court process, then they risked losing recognition of their interests in their land. This was a very strong fear, regardless of whether owners really preferred their land dealt with by Native committees and even if they wanted nothing to do with selling or leasing land. The Land Court process as it still operated at this time, provided very little alternative for those seeking legal recognition of their interests. There were strong statements of support from within the Rohe Potae for Native Committees to decide ownership issues, but as John Ormsby had explained to Ballance, they had found that the committees as legally constituted, had insufficient powers to impose their decision making. Just as Wahanui and the alliance had been obliged to make a survey application in order to have their external boundary legally recognised, regardless of their preference for Native committees, other communities also increasingly came to believe that applications to the Court were the only way to protect their interests.

The Court process also still encouraged applications. They could be made by just a few individuals. They did not necessarily have to be influential owners, and nor did they need the knowledge or approval of the rest of the community who might also have interests in the land. There could be many reasons for making an application and they did not necessarily signify a desire to alienate land. They could be made as a result of impatience to take advantage of a particular economic opportunity such as to lease some land, where title was required before a lease could be enforced. They might also result from nothing more than a desire to protect land for interests that seemed in danger of being overlooked. Applications could also be a means of continuing a traditional rivalry, perhaps by a minor chief trying to enhance or recover status by defying or taking the lead from a more influential chief. They might also be a means of gaining a competitive advantage, such as through the increased respect shown by officials or perhaps the economic advantage to be gained from payments for 'services'. It was also widely believed that if other applications were being made, then communities had to move very quickly and also apply. It was known that once an investigation began, those considered the 'claimants' had a clear advantage in the adversarial Court system over those

considered to be ‘counter-claimants’ or ‘objectors’. Once rumours spread that applications were being made, this placed considerable pressure on others to make their own applications, often leading to a ‘snowball’ effect once an initial application was made. Once an application was made, it was also very difficult for a community to withdraw it, forcing the rest of the community and more influential leaders, to become involved.

There is no doubt that tensions already existed in the Rohe Potae. It was not easy to maintain an alliance in peacetime when there were so many pressures pushing communities to assert their independence. There was still considerable support for the alliance leadership to negotiate over land, but there were also very strong fears that the Court process might be used to provide some groups with more advantage. The alliance had made considerable efforts to dispel their fears, being careful to discuss matters with the various iwi and hapu sections in developments over the 1883 petition, the survey application and the final railway agreement. However, the Government was still in a strong position to either reassure those who were concerned or add to their fears, particularly those who were anyway suspicious of the idea of an alliance, fearing it might swamp their own identity.

Some of these groups, particularly within the upper Whanganui and Taupo areas also had close links with their wider communities who were more inclined to cooperate with the Government when it seemed to suit their aims, as the Whanganui meetings had shown. For some of these groups, even if they did not wish to become involved in widespread land alienation, there were still advantages in allying with the Government in ways that appeared to confirm and enhance their own independence and status. However, it was far too simple to assume, as officials and settler newspapers commonly did, that concern about the external boundary equated with support for the Land Court and land selling. Even among those who made applications to the Court to protect their interests, there was clearly widespread support for the alternative of Maori committees and their management and retention of the vast majority of land in the district.

Now the Government was close to succeeding over the railway, it could however portray the developments in the district in a manner that might encourage tensions, and in doing so promote its own objectives. From the time the survey application for the external boundary of the Rohe Potae was made in late 1883, fears were expressed within the district about what the implications of this might be. The alliance chiefs might have been persuaded that it was the only way to protect the district, but it was well known that a survey application, unless the Government was determined to act to delay or prevent it, would inevitably bring in a Land

Court investigation of title. The Government could delay or ignore applications and Bryce had already told the chiefs he had earlier applications he was not acting on. However, Bryce had indicated that the Government would not delay forever, and there was still concern over what the application, even jointly from the alliance might mean. As a result, the Government received a number of letters of concern from early 1884.

The Government could have reassured the writers that a joint application was already made covering all their interests and the intent was only to secure the outer boundary until such time as negotiations provided agreed reforms or replacement of the Court. However, it was in the Government interest to promote the view that the Native Land Court would soon operate in the district and to allow fears about what this would mean to continue. Officials began gathering together all previous applications relating to the district presumably to identify those communities already most likely to be supportive of applications and identify those applications that might seem most helpful to Government policies. In March 1884, W J Butler, Bryce's private secretary, collected and forwarded copies of these applications, supplied by the Native Land Court 'department' for the use of the Native Minister.<sup>648</sup> These mainly dated from earlier times when chiefs believed they had no other choice for protecting their lands other than by application to the Court but presumably it was felt they might be useful.<sup>649</sup> Officials also began responding to continued expressions of concern by encouraging further applications to the Court.<sup>650</sup>

Initially, the Government appears to have been a little wary of pursuing this, as it clearly undermined the wishes of the alliance chiefs and might well upset the surveys. For example, when Hitiri Paerata and others of Ngati Raukawa asked whether they should be applying to the Court to define the boundary between themselves and Ngati Maniapoto, Bryce noted it was not advisable to proceed at present.<sup>651</sup> However, as the months went by, and the surveys progressed, and while concerns in the district grew during the absence of Wahanui in Wellington, the Government seemed increasingly confident that it could encourage communities that the best way of protecting their interests was through application to the Court.

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<sup>648</sup> NO 84/691 W J Butler to Lewis 5 March 1884, MA series 13/93, ANZ

<sup>649</sup> NO 84/691 W J Butler to Lewis 5 March 1884, MA series 13/93, ANZ

<sup>650</sup> Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea block) 1840-1920* pp 38-40

<sup>651</sup> NO 84/338 letter Hitiri Paerata and others 4 January 1884 and note by Bryce 5 February 1884, MA series 13/93, ANZ .

The Government's confidence and insistence that a Court hearing was imminent, raised all the old fears and concerns that if communities did not engage in the process, they might well miss out. This was also encouraged by the apparent Government determination to portray the alliance application as actually one from Ngati Maniapoto, rather than the whole district. For example, the Government insisted on referring to the external boundary survey as 'Wahanui's,' as in Wahanui's Block or Wahanui's External Boundary.<sup>652</sup> This insistence presumably had the desired result of causing a number of chiefs and communities to suspect that in fact Wahanui and Ngati Maniapoto were making a claim to all the land within the boundary. It must have begun to seem to these communities that the 'Ngati Maniapoto' agreement and 'Wahanui's External Boundary' seemed very close to the secret dealing Government officials had previously indulged in with selected chiefs, especially as by now Wahanui was absent from the district, discussing matters with the new Government in Wellington.

The numerous surveys begun immediately after the application, for the railway, trig surveys and the outer boundary also appear to have caused fear and confusion. It was not clear what all this work would be used for, apart from the well known fear that surveys were useful for later Court investigations. Wahanui's support for the surveys now might work against him, raising fears that the surveys would provide an advantage for a Ngati Maniapoto claim. Wilkinson was able to report in June 1884, that there were concerns in the district that since Wahanui had signed the external boundary application, the Court might assume he had more rights to the land than he would otherwise be entitled to.<sup>653</sup> As concern grew that the Land Court process was imminent, even a number of chiefs who had supported Wahanui and been involved in the negotiations became concerned. Some, such as Rewi Maniapoto, temporarily renounced the boundary survey agreement and decided to return to Tawhiao.<sup>654</sup> Others appear to have decided that just 'in case' they should make an application to the Court to ensure their interests were not overlooked.

The pressure to make applications also seems to have included significant sections of upper Whanganui people. This seems to have included groups who had always seen benefits in allying with the Government, as well as those who had previously supported the alliance but

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<sup>652</sup> For example, most correspondence on applications was filed on what was then a 'Wahanui block Survey' file, NO 84/1892, some of which may have later been compiled into part of what are now the MA series 13 'special' files, ANZ.

<sup>653</sup> Wilkinson to Under Secretary, 7 June 1884, MA series 13/93, ANZ

<sup>654</sup> For example, NO 84/204, letter from Rewi Maniapoto 14 January 1884, MA series 13/93, ANZ

were now persuaded that separate applications had become necessary, if only to notify interests. For example, a translation of an undated letter apparently written in April 1884, to Bryce from the major iwi of Whanganui and signed by the chief Toakohuru Tawhirimatea and 101 others, sought to withdraw from Wahanui's tribal boundary, which ran through their tribal land. The writers noted they had a large area of Whanganui tribal land within the boundary survey and they claimed, as they had not been informed of the survey, the Whanganui hapu interested in those lands withdrew from the boundary, so their lands could be under the same authority and management as other Whanganui lands. The names of the hapu were given as Ngati Haua, Ngati Tamakana, Ngati Maringa, Ngati Reremai and Ngati Rongonui.<sup>655</sup>

The signatures attached included the names of a number of chiefs who would become prominent in the Waimarino block. These included the chiefs Te Pikikotuku, Te Wao, Peehi Turoa, and Te Rangihuatau. It is difficult to be certain but the list appears to be mainly from those who had never supported the alliance or were now wavering. It does not appear to include the names of other chiefs the Government recognised as influential in the upper Whanganui who were staunch supporters of the alliance, such as Ngatai te Mamaku or Herekieke who also had interests into what became the Waimarino block. Of those who signed this letter, the chief Te Rangihuatau would later make the application for what would become the Waimarino block. Bryce annotated this file on 22 April 1884, to the effect that the 'proper' course in this matter was to prefer any claims they had to the Native Land Court when it sits to determine title to the block.<sup>656</sup> In May 1884, Toakohuru Tawhirimatea wrote to Bryce again on behalf of his people. He stated they were willing to take their claim to land within 'te rohe potae a Wahanui' to the Court and asked when it would sit. They were advised to wait for a notice of the Court sitting and told their names would be placed on the Kahiti mailing list.<sup>657</sup>

By this time similar letters were being received by members of other iwi groups supposedly in the pan-iwi alliance, objecting to Wahanui's external boundary and seeking to withdraw and protect their own lands from within it. For example, in September 1884, the Government also received a letter from Te Heuheu Tukino and 21 others of Ngati Tuwharetoa. The translation of this letter explains that they also objected to Wahanui's external boundary, 'te rohe potae a

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<sup>655</sup> letter stamped received by Native Department, April 1884, NO 84/1252, MA series 13/93, ANZ

<sup>656</sup> Bryce annotation 22 April 1884 on file cover NO 84/1252, MA series 13/93 ANZ

<sup>657</sup> NO 84/1465 letter 2 May 1884 and annotation 7 May 1884, MA series 13/93, ANZ

Wahanui', which has been 'carried over the land belonging to us the Ngatituwharetoa tribe'. They objected to the external boundary line because Wahanui was a Ngati Maniapoto and his boundary should be taken back to his own line.<sup>658</sup> The Government reply was similar to that sent to the Whanganui objectors. Te Heuheu was advised that the survey itself would not affect title to land, and it was by 'the Native Land Court alone that it can be determined who the owners are'.<sup>659</sup>

Many of those involved with these letters were anyway suspicious of the Kingitanga and those associated with it. They were also most inclined, for reasons of their own, to ally with the Government. For example, the chief Te Heuheu had already been identified as cooperative by the Government when the exploration of the central railway route was begun. There were a variety of reasons for this, as previously explained. Te Heuheu may well have believed that the Kingitanga chiefs threatened his own independent traditional hereditary authority. This concern would have existed regardless of Government efforts, but the Government seems to have identified natural allies in those more traditionalist chiefs who distrusted 'modernist' pan-tribalism. Their natural concern could only have been increased by the Government promotion of the survey as a 'Ngati Maniapoto' application to the Court. No direct evidence has been found that the Government actively encouraged letters and then applications from these groups, at this stage. However, this seems likely, and at the least the letters from such groups were useful for the Government.

The Government insistence by late 1884, that land required for the railway route would be taken and then compensation paid to those who were 'determined' to be the owners, may have caused further fears that a Native Land Court hearing was imminent before further reforms could be made. An investigation under the current system required communities to signify and try and protect their interests. For example, shortly after the February 1885 agreement concerning the railway, the chief Paiaka te Pikikotuku wrote to the Government indicating Tuhua concerns about Ngati Maniapoto. This letter complained that Wahanui and his tribes proposed to sell all the land through which the railway would run, beginning at Kihikihi and going to Te Rerenga-o-Toakohuru, within the boundary of Whanganui. The letter objected to 'that system of sale' being introduced into the boundaries of Whanganui and claimed that Ngati Maniapoto should keep within their own boundaries. The letter went on to claim that

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<sup>658</sup> NO 84/2789, letter 15 September 1884, MS series 13/93, ANZ

<sup>659</sup> draft reply to Te Heuheu 22 September 1884, MA series 13/93, ANZ

the boundaries of Whanganui lands had been settled before Ballance on 8 January 1885, and those supporting the letter wanted the Whanganui Committee to deal with their land. This letter was also supported by Paori Kuramate, Chairman of the Whanganui Native Committee.<sup>660</sup> Paiaka te Pikikotuku would later become significant in developments over the Waimarino block.

In this case, officials felt obliged to recommend that the writers be advised that they had misunderstood what had taken place at Kihikihi in early 1885. There was no question of the sale of land required for the railway, but the Government would pay for land taken for railway purposes, the payment 'of course' to be made to owners ascertained by the Native Land Court.<sup>661</sup> This reply was approved by Ballance.<sup>662</sup> Although acknowledging the writers were in error about Wahanui's actions, officials were clear that the Native Land Court would still soon operate in the district.

The chief Te Rangituatea, who had attended the February meeting with Ballance, and reported on the final railway decision, also informed the Government that while he had spoken in favour of the railway at the meeting, he claimed the right of dealing with his own lands without interference from other persons or tribes. He also asked the Government not to pay any compensation to anyone for the railway land until title was determined.<sup>663</sup> In an earlier letter, Te Rangituatea had informed the Government that he and his people wanted to obtain title to their lands as soon as possible but they had also objected to the Land Court adjudicating on their lands.<sup>664</sup> Now the prospect of Court compensation awards for land taken for the railway was clearly causing concern.

However, even while consultation and a certain optimism continued over many of the legislative proposals concerned with Maori land, other developments were occurring through 1885 that would ultimately overshadow them and make them largely irrelevant. Official records reveal an increasing concern throughout the year among Maori communities about the interior alliance and the possible implications of the external boundary survey for their own lands. For example, on 28 May 1885, the Government received a letter from Te Papanui Tamahiki and Maiha Te Keepa at Taupo, on behalf of Ngati Tarakaiaha, a hapu of Ngati

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<sup>660</sup> letter Te Pikikotuku, 7 February 1885, NO 85/898, MA series 13/43a, ANZ

<sup>661</sup> Note by Lewis on letter, 1 April 85, NO 85/898, MA series 13/43a, ANZ

<sup>662</sup> annotation by Ballance 1 April 1885, on NO 85/898, MA series 13/43a ANZ

<sup>663</sup> Te Rangituatea letter 28 February 1885, NLP 85/966, MA series 13/43a, ANZ

<sup>664</sup> MA correspondence register entry 85/964, 17 February 1885, ANZ.

Raukawa, who claimed they had stood aloof from the petition of Wahanui and the ‘four tribes’ of Raukawa, Tuwharetoa, Maniapoto and Whanganui. They claimed their district was ‘for us alone to administer’ and did not want ‘any one man administering our land’ (presumably a reference to Wahanui). They also believed the law did not provide for any man to assume control over the district of any other person or hapu. Moreover, they believed ‘the external boundary would be of no advantage’ to them and they wanted to ‘definitely withdraw the land we are interested in from that block’.

They gave a detailed description of the boundary of their lands beginning at the peg in the Whangamata block at Taupo, then along the line of Tatura as far as the Waikato River, and in that river to the Waipapa rapid. The boundary then turned west through a number of named places, before ascending the ridge of Tuhua mountain and turning south through Te Pohue, Taringamotu, Kaitara, Te Pikohua, Waikino, Tihimahue, and Te Totara. The boundary then ascended the ridge of Tarawhati and turned north again before going through the middle of Taupo and to the peg of the Whangamata block again.<sup>665</sup> This appeared to cover a large amount of territory from halfway across Lake Taupo in a westerly direction into the Tuhua district. The official response to this letter, approved by Ballance, was to agree with the writers that no one could control their land without their consent. They were also advised to bring their land to the Native Land Court to be settled.<sup>666</sup>

On 7 October 1885, Te Papanui Tamahiki wrote to the Native Minister again, noting the reply and advice to have his lands adjudicated on. He informed the Minister that was why they had written the first letter. He asked the Minister to send a surveyor to begin the work. He also asked the Minister to stop Pakeha digging for gold in the district.<sup>667</sup> By this time it seems that the routine Government reply to such expressions of concern was to encourage separate applications to the Land Court, which it was assumed would be hearing title in the district.

Some of these tensions were long standing and it seems likely that concerns would have been expressed regardless of Government action. However, as will become clear, it seems likely that the Government was actively promoting and encouraging such expressions of separation from the Rohe Potae, especially in the Whanganui and Taupo districts. The active role of land purchase officers, such as WH Grace in Taupo, had become a matter of concern in the Rohe

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<sup>665</sup> letter 28 May 1885, MA series 13/93, ANZ

<sup>666</sup> reply 8 September 1885, MA series 13/93, ANZ

<sup>667</sup> letter 7 October 1885, MA series 13/93, ANZ

Potae by late 1885, as was later explained by Taiwhanga at the Hastings hui in 1886 as described.

It is very difficult to find evidence of this suspected Government collusion and incitement from the time, not surprisingly as it was not the kind of activity that was officially recorded. As will be explained, the Grace brothers did later claim some responsibility with regard to Taupo. At the time, the only surviving records found of relevance seem to be those revealing that the Government was following its long-standing policies of seeking to influence individual chiefs who might be cooperative to its policies. For example, correspondence of April 1885, refers to the restoration of the chief Pikikotuku as an assessor.<sup>668</sup> This upper Whanganui chief was known to be suspicious of the alliance and of Ngati Maniapoto intentions over the external survey. Certain other chiefs were also given personal recognition by the Government. In May 1885, the Premier also recommended that Takirau, who was believed to have been involved in the Moffatt killing, should receive an amnesty.<sup>669</sup> This token of goodwill was reciprocated with Wilkinson reporting in November 1885, that he had received a taiaha named 'Mehura' from Wahanui, apparently promised to the Government when Ngatai was amnestied.<sup>670</sup> The Government also appears to have paid particular attention to the upper Whanganui chief, Ngatai te Mamaku, who in April was invited to accompany Premier Stout to Wanganui, presumably in connection with Stout's trip to turn the first sod of the central railway route.<sup>671</sup> Topine te Mamaku also appears to have been paid a pension from this time.<sup>672</sup>

In the meantime, the Government faced another challenge that not only reinforced how critical the cooperation of Wahanui and other alliance chiefs was at this time while the Government completed the necessary preparations for building the railway but appears to have convinced the Government that it had to move quickly to begin having the Court operate as far as possible to the edges of the Rohe Potae. This challenge was the renewal of opposition to dealing with the Government and having the railway in the district at all. This opposition had always been evident in the district and appears to have been galvanised by the February agreement over the railway and the fear that Wahanui and the alliance might have

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<sup>668</sup> MA correspondence register entry 85/1407 ANZ , The MA salaries register for 1885/86 also shows Pikikotuku as an assessor form 1 April 1885, MA series 26/13 p 21, ANZ

<sup>669</sup> MA correspondence register entry 85/1416, ANZ

<sup>670</sup> MA correspondence register entry, 85/3770, ANZ

<sup>671</sup> MA correspondence register entry, 85/1423, ANZ

<sup>672</sup> For example, MA correspondence register entry, 85/2220, ANZ and salaries register MA series 26/13 p 21 ANZ

given away too much. This renewed opposition also appeared to gain support even among some of those chiefs the Government had previously believed were likely to be ‘cooperative’. The news of the final February agreement seems to have caused this opposition to begin calling its own meetings from March 1885, centred around calls for renewed support for Tawhiao and opposition to the railway.<sup>673</sup> Although officials and settler newspapers appeared determined to publicly dismiss the seriousness of this opposition, it seems that at the time, Tawhiao and also the prophet Te Kere had considerable support in their opposition to the railway and in dealing with the Government at all. Documentation of this opposition is sparse, as the press and Government sought to downplay its importance. Nevertheless, Government agents and officials do seem to have felt it necessary to report on some of the larger meetings that were held. For example, correspondence register entries indicate that Wilkinson reported regularly on any meetings that appeared significant. A report on one large meeting held at Poutu near Taupo in early September 1885, was also printed.<sup>674</sup>

About 1000 Maori apparently attended this meeting mainly from the Tuhua, upper Whanganui, and Taupo areas.<sup>675</sup> The meeting was convened by Topia Turoa and Hori Ropiha both of whom had accompanied Tawhiao on his visit to England. Hori Ropiha was also an important member of Te Kere’s Pae Tiuihou movement. Te Kere himself was reported as having attended, although Hori Ropiha appears to have done most of the speaking on his behalf. Chiefs who spoke at the meeting also included Topia Turoa, Peehi Turoa, Matuahu, Te Heuheu Tukino, Te Moana, and Kingi Herekieke. According to officials, others included Paurini (of Whanganui), Ngatau (Ngati Maniapoto) Te Potatau (of Manganui a te Ao) Tapihana (of Te Ore, Tuhua) Rihia (of Manganui a te Ao) Te Raka (of Manganui a te Ao) Te Huaki (of Whanganui) Henare te Aro (of Patea) Hitiri Paerata (Ngati Tuwharetoa of Waipapa) and Te Aro (of Karioi). It seems these chiefs were of the interior with mainly upper Whanganui, Ngati Tuwharetoa and Ngati Maniapoto connections. The attendance of upper Whanganui chiefs at this meeting, while others had also attended the earlier Whanganui meetings with Ballance, indicates the extent of pressures on the district by this time over railway and other developments.

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<sup>673</sup> For example, reports by Wilkinson, NO 85/893, MA series 13/43a, ANZ; MA correspondence register entries, NO 85/870, 85/821, ANZ

<sup>674</sup> report on Native meeting at Rotoaira beginning 7 September 1885, *AJHR* 1886 G-3

<sup>675</sup> *AJHR* 1886 G-3 p 1

The issues to be discussed at the meeting included united support for the Kingitanga and for Tawhiao as leader, acknowledging the Queen's authority but not that of the colonial Government, and that Maori committees should rule and manage all Maori business under the mana of Tawhiao. Native Land Courts were also to be entirely done away with, and sales, surveys or leases of lands would be prohibited and no liquor was to be sold in the King Country. It was also proposed to abstain from voting for Maori members of the House of Representatives, and no active obstruction was to be offered to the construction of the railway. However, passive obstruction could be offered by declining work on it or by charging exorbitant prices for timber and other materials. It was also proposed to test at some future time whether the colonial government had broken the provisions of the Treaty of Waitangi. In addition the Rohe Potae boundary laid down for Whanganui, Tuwharetoa, Ngati Raukawa and Ngati Maniapoto by Wahanui was to be discussed.<sup>676</sup>

Unfortunately, the report of this meeting by Sergeant E S Thompson of the Armed Constabulary and clerk of the resident magistrate's court at Taupo, often seems brief and garbled, given the meeting extended over several days. He also apparently left early, mistakenly believing the meeting had finished, before all the discussions on the resolutions had ended.<sup>677</sup> However, he did report that these resolutions were supported by the great majority of those attending, except for Ngati Terangiita, a hapu of Ngati Tuwharetoa who, he said, lived on the eastern shores of Lake Taupo and whose chief was Hitiri Paerata. Some of those chiefs mentioned as attending, such as Kingi Herekieke, had also been supporters of Wahanui's alliance but presumably found the resolutions did not conflict with alliance concerns. Hori Ropiha was reported as speaking against the Land Court, gold mining and leases. He also claimed the Maori Members of Parliament were too small in number to be effective. He wanted Maori to unite together and reject European institutions including courts, laws and Parliament. He did not object to railways or roads provided they did not encroach on Maori land and that Maori could retain authority as recognised by the Treaty of Waitangi. He also wanted Maori government for Maori districts. At the same time, he spoke against physical violence and killing and against liquor. He asked for signatures to support a petition outlining the resolutions.<sup>678</sup>

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<sup>676</sup> *AJHR* 1886 G-3 pp 1-2

<sup>677</sup> *AJHR* 1886 G-3 p 1

<sup>678</sup> *AJHR* 1886 G-3

The resolutions were set out in a document which was signed by a number of chiefs present, including Topia Turoa, Kingi Herekieke, Matuahū, Hitiri Paerate (even though his hapu was reported as not supporting it) Tini Waata, Te Ahi Pu, Te Heuheu Tukino, Te Whakaiti and Tureiti te Heuheu.<sup>679</sup> Other chiefs indicated they wished to have more time before signing. Te Potatau of Manganui a te Ao was reported as saying he was opposed to surveys and would not have his land interfered with at all. Tapihana of Te Ore, Tuhua, was reported as saying he had nothing to say about Land Courts, leases or parliaments as he had never had anything to do with any of them.<sup>680</sup> It was also reported that the Tuhua and Manganui a te Ao people had agreed not to have towns or railway stations in their country or to take money for ‘anything of the sort’.<sup>681</sup>

Topia Turoa, Kingi Herekieke, and other chiefs attending such as Matuahū, were later involved with dealings over what became the Waimarino block. As previously described, Topia Turoa, in particular, was an important upper Whanganui chief of the Ngati Patutokotoko hapu of Te Ati Haunui-a-Paparangi of the upper Whanganui River.<sup>682</sup> His influence extended over the whole Whanganui River and into the Taupo area where the Turoa family had close Ngati Tuwharetoa connections. He had supported the Kingitanga but had also taken part in peacemaking with lower Whanganui communities following the wars. He had also led an alliance of Whanganui forces against Te Kooti in the upper Whanganui interior and then into the Bay of Plenty with Te Keepa.<sup>683</sup> Following this he had sought various ways of accommodating development and Pakeha expansion, while ensuring the welfare of his people. He still supported many of the objectives of the Kingitanga including Maori authority over their own land. He was also one of those who had accompanied Tawhiao on his visit to England. However, he also appears to have been concerned to assert his traditional mana and that of the Whanganui people, independent of a Ngati Maniapoto-dominated alliance. In his report of this meeting, resident magistrate Scannell, linked Topia Turoa and Hori Ropiha together, as inspired by ‘fanaticism’.

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<sup>679</sup> *AJHR* 1886 G-3 p 4

<sup>680</sup> *AJHR* 1886 G-3 p 4

<sup>681</sup> *AJHR* 1886 G-3 p 6

<sup>682</sup> Church, Ian, ‘Turoa Topia Peehi’ *DNZB*, vol 2 (1870-1900) 1993, Young, Woven by Water, p 39-48, 68, 89-94, 139

<sup>683</sup> Church, Ian, ‘Turoa Topia Peehi’ *DNZB*, vol 2 (1870-1900) 1993, Young, Woven by Water, p 39-48, 68, 89-94, 139

Unfortunately the poor quality of reporting of the meeting prevents insights into much else that was discussed. Even the question of the Rohe Potae boundary is poorly reported although it does seem that there was concern among Ngati Tuwharetoa at this time, particularly their concern that their part of the boundary had been altered when it was surveyed. Heperi Pikirangi was reported as saying, for example, that perhaps the Government should be told what their boundary was and not to disturb it, while he believed it was altered when Wahanui 'laid it out'.<sup>684</sup> Te Moana also commented that Wahanui ruled this boundary more for the purpose of gaining power with Europeans than of following the king'.<sup>685</sup> This seemed to indicate significant concern with Wahanui's actions, not out of support for the Government and land selling, but because it was believed that Wahanui may have gone too far and conceded too much in his dealings with the Government. Nevertheless, the chief the Government had already identified as potentially 'cooperative', Te Heuheu Tukino was reported as being more interested in the significance of the land as a whole, regardless of some 'rotten' parts at the edges and was reported as saying that it did not matter about the disputed boundary with Ngati Maniapoto or that they had shifted 'your boundary' as he knew what it was from former times and he supported the King.<sup>686</sup>

In this atmosphere, it seems that the consistent support of Wahanui and other influential chiefs for the railway was still critical to the Government. In upholding their part of the compact and trusting in Government good faith about continued negotiations they effectively ensured that the level of opposition to the Government and the railway was much less serious in the district than it otherwise may have been. On the other hand, if they had suspected the Government was not acting in good faith and they had supported those opposing the railway, the Government may well have found itself in considerable difficulty. While the Government relied on this cooperation, however, it also seems to have regarded the introduction of the Court as even more critical to defuse this kind of organised opposition and re-commitment to King Tawhiao. It also appears that the Government also became even more convinced of the necessity of persuading Maori communities that the land settlement policies now being developed by the Government would include sufficient reforms and opportunities for consultation to protect their interests while at the same time offering them greater

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<sup>684</sup> *AJHR* 1886 G-3 p 3

<sup>685</sup> *AJHR* 1886 G-3 p 4

<sup>686</sup> *AJHR* 1886 G-3 pp 3-4

opportunities for economic benefit than supporting the ‘backward’ and anti-progressive policies of the Kingitanga and the alliance.

#### **4.5 New Government purchase policies in the railway area**

While communities in the railway area were considering the various arguments and claims being put to them over the future of the district, the Government also seems to have been developing a new policy to undertake extensive land purchasing in the railway district. This was another critical reason for insisting on the introduction of the Land Court into the railway area. The Government had signalled its intention to undertake some dealing in land in the district and to promote settlement, but up until this time, its interest in dealing in land had appeared to be limited to the railway route, while its interest in settlement appeared to acknowledge Maori preferences to lease rather than sell land. For example, when the Railway Alienation Act 1884 was passed, the assumption of Parliament had been that it only referred to dealing over land required for the railway route.

This new policy also cut across the clear wishes of not only the Rohe Potae leadership but also the more cooperative chiefs Ballance had been courting, including at meetings along the Whanganui River. For example, when Ballance had met with the alliance chiefs at Kihikihi, in February 1885, he had also assured them that ‘I am not anxious that the Government should purchase land’.<sup>687</sup> He further noted that he would be ‘satisfied’ if the Government could get back the large advances it had previously made on land in the district. He had also assured the chiefs that he intended introducing legislation to ‘prevent the necessity of the Government acquiring lands’. He had noted that the Government’s main aim was to settle the country, but if Maori were to do that by leasing their land, then he had promised the Government would assist and ‘not otherwise interfere’.<sup>688</sup> Ballance had also acknowledged the lower Whanganui concern for selling relatively small blocks of land and had exhorted them to lease rather than sell.

In fact, it seems that even as Ballance was making these assurances to the Whanganui and Kihikihi meetings, he had already begun preparations to re-commence extensive Government purchasing of Maori land in the areas surrounding the central railway route, far in excess of what was required for the railway route. This included other lands in the Whanganui and

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<sup>687</sup> *AJHR* 1885 G-1 p 18

<sup>688</sup> *AJHR* 1885 G-1 p 18

Rohe Potae districts that might be suitable for settlement and could be expected to increase in value once the railway was built. Ballance had assured Maori that they could expect a significant rise in the value of their land once the railway went through, but now it seems the Government was determined to purchase as rapidly as possible in advance of the railway construction. As a result it would be the Government, not Maori, who would benefit from increased values once the lands were on-sold for settlement.

Neither, it would become apparent, was the Government only interested in those lands suitable for farming. Ballance had referred in his meetings along the Whanganui River in early February to the river steamer expected to ply the river and enhance tourism.<sup>689</sup> This made river lands, that might be marginal for farming, nevertheless valuable for tourism. Early land purchase officers and more recently the railway surveyors had also recognised the potential value of resources, especially timber, in the upper Whanganui lands. This timber was not only valuable for road and rail building but the fine totara forests south of Taumarunui especially, were a valuable resource for general economic growth. Even the eastern volcanic peaks and hot pool areas were subject to Government interest. By 1885, the Government was already placing pressure on Ngati Tuwharetoa to have a township in the Tokaanu hot pool area.<sup>690</sup> The idea of including the volcanic peaks and nearby hot pools in a public park had also been raised by Pakeha visitors, such as Kerry-Nicholls in 1883.<sup>691</sup> Ballance had also indicated that as well as building the railway from the northern and southern ends, the Government also intended to begin work in the central Manganui a te Ao area.<sup>692</sup> This made these lands, in what would become the Waimarino block, additionally attractive for land purchasing. It seems much of the area in what would become the Waimarino block, from Ruapehu to the Whanganui River was now considered potentially valuable for purchasing by the Government.

Much of the critical correspondence detailing the Government decision to begin extensive land purchasing in the Rohe Potae and in particular upper Whanganui lands does not survive, but enough evidence remains in the official record to indicate that it was deliberate and made with the full support and involvement of Ballance himself. In January 1885, just a few weeks before the Kihikihi meeting, the Government re-opened the Whanganui land purchase office,

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<sup>689</sup> *AJHR* 1885 G-1 p 3

<sup>690</sup> Minutes of Tokaanu meeting 23 February 1885, Scannell to Under Secretary Native Department, 1 March 1885, NO 85/595, MA-MLP1, 1892/19, ANZ

<sup>691</sup> Kerry-Nicholls, p 302

<sup>692</sup> *AJHR* 1885 G-1 p 4

under Lt-Colonel Thomas McDonnell.<sup>693</sup> As noted in earlier chapters, McDonnell had previously been operating as a private land purchase agent in the Whanganui district in the partnership of McDonnell and Brassey.<sup>694</sup> He had also worked on commission for the Government in purchasing particular Whanganui land blocks at various times. Now Government officials appeared to believe his experience would be useful to the renewed government land purchase programme.<sup>695</sup> Given past difficulties, he was employed on condition that he was to on no account undertake private transactions concerning Maori land.<sup>696</sup> He was also later warned not to deduct amounts from purchase monies to pay debts owed to private persons.<sup>697</sup> Even while the Ballance Government seemed well aware of his previous indiscretions, it seems McDonnell's knowledge of the district and his previous land purchase experience was considered more important.

In early 1885, McDonnell was instructed to begin purchasing in the Murimotu, Rangipo-Waiu and Maungakaretu blocks, all on the route of the proposed main trunk line.<sup>698</sup> He was also given a return showing the state of land purchase progress Booth had reached before being transferred out of the district in the early 1880s.<sup>699</sup> This was presumably so that he could use previous advances to pressure cooperation in new purchasing. It also seems that, far from simply recovering previous advances, McDonnell was expected to purchase as much land as possible in the blocks surrounding the railway, this time without the burden of private competition in the very large alienation restriction district.

Other official records, although sparse, indicate that preparations were being made to encourage Land Court sittings for land along the borders of the Rohe Potae. The Land Court sittings were now even more a necessary part of the land purchase process, with the Government decision that land dealings were generally now to take place after a Court investigation of title, even though the Crown itself could claim exemption to this if need be. Ballance issued instructions in May 1885, reorganising land purchase through a Native Land Purchase office as a branch of the Native Office. The previous chief of land purchase, R J Gill

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<sup>693</sup> MA-MLP 3/5 p 111, letter of appointment 5 January 1885; MA-MLP 4/3 p 133 memo authorising rental of rooms at Wanganui for office 16 January 1885, ANZ

<sup>694</sup> For example, MA-MLP 4/3 p 124, ANZ, re land purchase activities of partnership

<sup>695</sup> MA-MLP 4/3 p 132 Gill to Native Minister, 11 January 1885, ANZ

<sup>696</sup> MA-MLP 3/5 p 111, ANZ

<sup>697</sup> MA-MLP 3/5 p 178, 23 May 1885, ANZ

<sup>698</sup> MA-MLP 4/3 p 139, ANZ

<sup>699</sup> MA-MLP 3/5 p 174, letter 16 May 1885, ANZ

was made a Land Court judge.<sup>700</sup> This continued the long standing close connections between Government land purchase and the Native Land Court.

Records also indicate a flurry of activity over the progress of surveys in the Rohe Potae district, including the exterior boundary of 'Wahanui's block' by June 1885.<sup>701</sup> In July 1885, the Government requested returns over the state of Maori lands in the Whanganui district, including showing whether they had passed the Native Land Court.<sup>702</sup> These preparations indicate that the Government was preparing for Land Court hearings in the district as a prelude to extensive purchasing along the central railway route. The Government appears to have been willing, where possible, to use previous purchase advances made under the 1870s purchase system to exert pressure on owners to cooperate in the new purchases. This was in spite of the strong criticism by Maori of that system and Ballance's apparent agreement to reform it. The exemption for the Crown in the legislation preventing such dealing now began to have much more significance.

The policy of extensive land purchasing around and including the central railway route appeared to undercut the Government's earlier insistence that it intended to take land along the railway route and pay compensation for it. This insistence had been useful in encouraging expectations that the Land Court would operate in the district, at least to make compensation awards. This presumably encouraged concerns and even applications to the Court to protect or at least signify an interest in the lands. However, the policy of extensive land purchasing actually made taking land for the railway largely redundant. With extensive purchases, the Crown would acquire most of the land it needed for the railway without the need to take or have compensation awarded. It is not clear how well Rohe Potae Maori had ever understood this process, but the requirement to have the Land Court in was clear and does seem to have caused concern. The chiefs may not have been aware of it, but they now had much more to be concerned about with land purchases than with land takings.

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<sup>700</sup> instructions from Native Minister 5 May 1885, MA correspondence register entry 85/ 1462, ANZ

<sup>701</sup> MA correspondence register entry 85/1896 June 1885 ANZ

<sup>702</sup> MA correspondence register entry 85/2235, July 1885 ANZ

#### 4.6 The new purchase policy and Ballance's assurances to Maori

In Parliament in August 1885, Ballance explained the Government's new land purchase policy in more detail. This was significantly different to the assurances he was making to Maori at this time, through 1885 and into early 1886. He explained to Parliament that he was in no doubt that Maori land would need to be extensively acquired for settlement along the railway, although as he explained to the House of Representatives it could only be acquired once it had passed through the Native Land Court. This presumably explained the pressure to introduce the Court in the area and to encourage applications to the Court. Ballance then explained that the 'first step' in inducing Maori to bring their land to the Native Land Court, was to 'establish a feeling of confidence in their minds'.<sup>703</sup> This seems to have been a particularly cynical view of both the Rohe Potae negotiations and his claims over consultation with Maori over proposed legislation.

Ballance then explained his view of what Wahanui had understood by Crown pre-emption in land purchasing. He stated that Wahanui had said that he understood pre-emption to mean that he could sell his land to the highest bidder, the one who offered the most money.<sup>704</sup> Ballance did not explain that Wahanui was in error if he believed this, as the Government, in fact, regarded pre-emption as preventing Maori from either leasing or selling their lands and associated resources to anyone other than the Crown, regardless of price. Instead, Ballance chose to interpret Wahanui's statement as a sign that he supported land sales. Wahanui had never ruled out all land sales, but this was a long way from supporting the kind of policy of extensive land sales the Government had now determined on.

Ballance told Parliament that there were some four and a half million acres along the railway and the Government already had an application from Taupo Maori to bring around 450,000 acres into the Court. The Government had also received applications from the Whanganui tribes to survey almost 1,200,000 acres for the Court. He claimed this had the consent of 'nearly all the Wanganui tribes'.<sup>705</sup> Ballance also informed members that 'since last session' when legislation was passed giving the Government the 'absolute right' to deal over Maori lands in the district, it had begun purchase negotiations for such lands. It had already acquired some land as a result, and had begun surveying it for small farm settlements. Ballance seemed

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<sup>703</sup> *NZPD* 1885, vol 53, p 354, Ballance speaking in debate on confidence, 28 August 1885

<sup>704</sup> *NZPD* 1885, vol 53, pp 354-355

<sup>705</sup> *NZPD* 1885, vol 53, p 355

to be implying that gaining the 'absolute right' to deal in Maori land had been a deliberate strategy as a necessary prerequisite to beginning the new land purchase programme.

However, this was not the way the provisions had been explained in Parliament at the time. As noted in the previous chapter, most members in 1884, understood the Government was only interested in gaining a right to deal over land required for the actual railway route. Ballance had been even more explicit at Kihikihi in early 1885, claiming 'I am not anxious that the Government should purchase land'.<sup>706</sup> He had also appeared to support those who had land outside the actual route being able to retain it.<sup>707</sup> Now, it seemed those assurances had been false and the Government may well have been planning extensive purchasing from at least the time it had passed the Railway Alienation Act in late 1883.

Ballance went on to deny that the Government had ever really seriously intended taking rather than purchasing the land required for the railway route. He claimed he had explained last session and was saying 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 of taking land and then awarding compensation was 'insane' and would bring 'disaster'. In addition, if compulsion was used, 'the cost to the colony would be infinitely greater than even purchasing the land at a high price'. However, he was confident that Maori would be willing to dispose of 'as much as we want' of their land 'at a reasonable rate'.<sup>708</sup> It is not entirely clear what Ballance meant by the cost of 'force'. Possibly he meant that if physical force was required to meet Maori resistance caused by compulsory taking, then the colony would suffer severe costs in supplying and arming this force - higher than would even be caused by purchasing at a 'high price'. The cost of employing physical enforcement on a resisting population would be very high financially and in other ways.

However, if this was what was meant, then Ballance was being misleading. As already shown, the 'taking' had been negotiated and for that reason compulsion had not been an issue. Ballance had been involved in these negotiations and knew perfectly well that the interior alliance had already agreed to the land one chain wide being taken and was prepared to negotiate further over extra land required. The government had made no taking proclamations until after this agreement had been made. It may well have expected some pockets of

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<sup>706</sup> *AJHR* 1885 G-1 p 18

<sup>707</sup> *AJHR* 1885 G-1 p 23

<sup>708</sup> *NZPD* 1885, vol 53, pp 354-355

resistance, as there had been for the survey. However, the survey had been successfully completed through continued negotiations without the need for force. There was no reason why the same could not be achieved with the land required for the railway, especially as compensation equal to what Pakeha might expect had been promised. The implication that the expensive use of force would be necessary to enforce arbitrary and compulsory land takings in the face of widespread resistance was simply untrue.

The other meaning that might be taken from this was that Ballance meant that the requirements involved in a compulsory taking, including having awards heard and compensation paid, would be far more costly financially to the Government than simply purchasing the land even at 'high' prices. This also seems dubious. As the Land Court system operated, the owners rather than the Government generally bore the cost of Court investigations through Court fees. This would presumably also hold true for Court determinations of compensation awards. Compensation was also determined on what the land was worth in an open market, assuming willing buyers and sellers. Therefore, any compensation awards should have been fairly equal to the value the land could be purchased at, incurring no hugely greater cost for the Government than purchasing at a 'reasonable' price let alone a 'high' price.

However, these statements may really have pointed to an important part of the Government land purchase policy in a district where the Government now had the 'absolute power' to deal in lands. This was that independently made compensation awards would have provided a much higher price than the Government actually expected to pay through purchasing in such a situation. It seems that paying relatively low prices for Maori land was an important part of Government policy and would in fact help pay the cost of the railway and of settlement. The later North Island Main Trunk Railway Loan Application Act 1886, appeared to confirm this view. This Act would provide moneys for land required for the railway route itself and a further £100,000 for acquiring land within the 1884 Native Land Alienation Restriction Act boundaries. It would also provide that 2 ½ percent of this purchased land could be set apart for education, hospital and other endowments and the remainder would constitute a railway reserve, the proceeds of which were to be applied in the construction of the Main Trunk Railway and in associated branch railways, tramways or roads required. In effect, the more the Government could profit from buying up such Maori land as cheaply as possible and on-selling it, the more it could recover the cost of the construction of the main trunk railway. The Government also had an immense advantage in this, within the railway district boundaries

because it could set prices without effective competition. It had created the real possibility that cheap Maori land would be used to help pay for the railway. This new pressure was also in contrast to Ballance's assurances that Maori would be able to profit significantly from increased land values in agreeing to the railway.

At the Kihikihi meeting in early 1885, Ballance had estimated that interior lands with no access were by then worth about 'three or four shillings an acre', while with rail or roads through them, he claimed they would be worth as many pounds per acre.<sup>709</sup> He was probably exaggerating the latter figure but presumably the three or four shillings an acre was a reasonable current value. It may not have been reasonable to expect a value of three or four pounds an acre immediately the railway route was confirmed, but something a little over three or four shillings an acre was reasonable for land close to the railway even if construction had not started. In addition, owners might reasonably have expected compensation awards for resources from their land, such as gravel or timber that might be required when building the railway. It seems that Ballance was concerned that even the likelihood of reasonable, independently determined compensation awards might prove more costly than the 'reasonable' prices the Government might obtain by purchase.

This suggests that Ballance was well aware of, and intended to take advantage of, the ability the Government now had to force lower than market prices for very large blocks of land, especially without any competition from private interests. His definition of what might be 'reasonable' now seems entirely different to the benefits he was assuring the interior people they were bound to receive if they agreed to the railway. This concern to reduce costs and pay a rate far below what Ballance had promised the interior chiefs they might expect, or what an independent award may have allowed, becomes more apparent in the purchase of Waimarino lands, as will be discussed in the next chapter.

In the meantime, it seems that earlier explanations the Government had made to Maori, that the land for the railway route would be taken (thus requiring the Land Court in) were false. At Kihikihi, in February 1885, Ballance had told the meeting that the Government would be taking the estimated one to two chains wide required for the railway route and five to ten acres required for stations. He had explained that in taking the land, the Government would treat Maori 'precisely as we should deal with Europeans' and compensation would be made

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<sup>709</sup> *AJHR* 1885 G-1 p 17

when the ‘owners are found and the title determined’.<sup>710</sup> The Government was also misleading the Kawhia committee in engaging with it in negotiations over compensation to be paid, if it never really intended to take the majority of the land.

Ballance described another Member’s suggestion of first acquiring 500,000 acres as ‘very modest’. Instead, he believed that ‘before the railway is completed’ the Government should be able to acquire in successive stages ‘nearly two million acres’ for settlement. This would be ‘easy’ but if it was attempted to acquire 500,000 acres before going on with the railway at all, this would ‘create suspicion in the minds of the Natives, and they will refuse to sell any land at all’. Apparently referring to his negotiations with Wahanui, Ballance told members, ‘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’.<sup>711</sup> Ballance went on to claim that he was certain that the ‘iron heel will not do’ in the administration of Maori affairs. A ‘little reasoning with the Natives will go further than a thousand Armed Constabulary’. He claimed there was little in the way of ‘Native troubles’ now under his administration and including at Parihaka; ‘All is silent; all the Natives are content’. The reason for this was that they ‘believe the Government of the colony is prepared to act fairly to them, and to reason out questions with them’.<sup>712</sup>

These statements to Parliament appear to raise issues of good faith and fair dealing on the part of Ballance and his Government in relation to the Rohe Potae negotiations, the consultations over proposed legislation and understandings about the opening of the railway district. As Ward has noted, it seems that Ballance was admitting that he had been ‘less than frank’ with the interior chiefs.<sup>713</sup> Ballance appeared to be saying that the Government had engaged in dialogue over the interior as an alternative to physical violence, but only with the intention of ‘inducing’ the chiefs to bring their lands before the Court, so they could be made available for settlement. Some of this inducement also seemed to be quite misleading, such as claiming the Government was not really interested in purchasing generally and only interested in acquiring the land actually required for the railway route.

It was true that many chiefs were not totally opposed to settlement but they had made it abundantly clear that they wanted settlement to be limited and to retain management over it.

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<sup>710</sup> *AJHR* 1885 G-1 p 23

<sup>711</sup> *NZPD* 1885, vol 53, p 355

<sup>712</sup> *NZPD* 1885, vol 53, p 355

<sup>713</sup> Ward, ‘Whanganui ki Maniapoto’ p 62

This was true even of what were regarded as the more moderate and cooperative chiefs like Te Keepa. Those who agreed to some sales, like Te Keepa, wanted them to involve relatively small areas, while most preferred leasing to sales. There seems to be no evidence that Maori supported selling as much land ‘as we want’ as Ballance claimed. Ballance did not explain to Parliament how the Government might address any conflict between what Maori were prepared to sell and the amount of land now required for settlement. Instead, he seemed to have implied that if the Government appeared to be treating Maori fairly, then it could, by a piecemeal process, acquire as much land as it wanted, far more than Maori might agree to if the actual areas of land the Government wanted were discussed openly. This seemed to contrast with his statements to Parliament in late 1884, when Wahanui had been present, that Maori should be able to make decisions about land sales with full knowledge and understanding. The proposed acquisition of almost two million acres in ‘successive stages’ and ‘from time to time’ seemed to imply the kind of relentless loss of land that Maori communities had complained of from the 1870s and had been so concerned to avoid.

Ballance’s previous assurances that the Government did not want to deal in land other than for the actual railway route and his advice that Maori should lease rather than sell their land were presumably also intended to gain the chiefs’ confidence, rather than being statements the chiefs were entitled to trust. Ballance had referred Members to his statements of ‘last session’ and his reiteration of them now that there was only one ‘safe’ way of getting land from the Natives and that was ‘by purchase’. In fact, in debates on what was to become the 1884 Native Land Alienation Restriction Bill, Ballance had allowed Parliament and presumably Wahanui to believe that the Government interest in dealing in land was restricted to the railway route. This was an estimated belt of 3,360 acres, not the almost two million acres now being considered.<sup>714</sup> Again, it seems that Ballance was being less than frank.

In 1884, Ballance had also appeared to criticise those who supported the Native Land Court having all possible powers to cut out individual rights and to give individual Maori owners full powers to deal with their own land. This enabled Europeans to purchase small pieces from a block from particular individuals, ‘until gradually they shall have acquired the freehold of the whole block’. If the object was to alienate lands from Maori, then Ballance had claimed ‘no better plan than that could possibly be adopted’.<sup>715</sup> However, Ballance had appeared to

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<sup>714</sup> *NZPD* 1884, vol 50 p 316

<sup>715</sup> *NZPD* 1884 vol 50 pp 314-5

criticise this as being connected with ‘a great deal that was wrong in our dealings with the Native people’. Instead, he had claimed to support policies that would not divide and conquer the Maori people, or wrest their land from them ‘without their full and intelligent consent’. With proposed sales, he believed Maori should be able to ‘consider the matter fully and clearly, and with knowledge of all the circumstances’ so they could deal with their land for their own benefit and not for the benefit of private dealers and speculators.<sup>716</sup>

Ballance had also appeared to support vesting powers of land management in tribes or hapu with landowners having the power to deal with their land as a corporation, tribe or hapu. In that case, the consensus of the tribe or hapu was required regarding land. Ballance had claimed in 1884, that this was more likely to be ‘right and sound’ than relying on the opinion of individual chiefs who might be pressed at their weakest moments and placed in a situation where they were liable to temptation and persuaded to alienate or part with their property.<sup>717</sup> Now, however, just a few months later, Ballance appeared to be advocating the individualisation process of the Land Court and on acquiring land on a piecemeal basis so as not to raise Maori ‘suspicion’. This was in spite of the fact that land purchasing had been started again before any promised substantial legislative reform had been passed. This meant that there was no effective prohibition against using the practices of earlier times, (apart whatever weight was given to Government assurances and promises) with the added advantage that this time the Government did not have to deal with competition from private agents.

Ballance was quite open in his statements to Parliament that the Land Court was regarded as an essential component of this new policy of extensive land purchasing. He acknowledged that it was the Land Court that would make settlement possible. This raises the issue of how committed he really was to implementing reforms requested by Maori that might hinder the ability of the Court to facilitate alienation and in doing so promote settlement in the way it preferred. It also raises the issue of how much good faith was behind his promises to the Rohe Potae leadership that he would not ‘force’ the Court on anyone.

Ballance clearly welcomed applications to the Land Court in spite of acknowledging Wahanui’s continued opposition to it. He had made a great deal of gaining chiefly confidence and appearing to act honestly and fairly with the chiefs. He had relied on the goodwill this had

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<sup>716</sup> *NZPD* 1884 vol 50 pp 314-5

<sup>717</sup> *NZPD* 1884 vol 50, p 315

created to gain chiefly cooperation over the surveys and agreement to the building of the railway and now seemed to be using it to persuade chiefs to cooperate over the Land Court. However, he appears to have felt no obligation to uphold the undertakings and assurances he had made in return, to protect the Rohe Potae boundary and to negotiate significant reforms to the Court before it was allowed in. The influence and wishes of Wahanui were respected when he could offer support for Government objectives, but when his views conflicted with the Government over the Land Court, then the Government was ready to discard him as soon as it could.

Even by August 1885, Ballance was confidently informing Parliament of a large Taupo application covering some 450,000 acres and a number of applications from Whanganui totalling around 1,200,000 acres.<sup>718</sup> He made no mention of the interior alliance but spoke in terms of separate traditional iwi groupings that could be separated off from the central interior. This also suited the Land Court process, which had no provision for recognising more modern alliances or developments attempting to somewhat imperfectly reflect traditional groupings and their customary interests at 1840. The focus of the Court process was on individualisation and facilitating land alienation, not on providing a means for enabling continuing collective management of land.

It is not absolutely clear what lands Ballance was referring to as being subject to applications in Taupo and Whanganui. It does seem the Government was receiving sufficient letters of concern to feel confident of bringing the Court in, and of using these to push back the boundary of the Rohe Potae as laid down by the alliance. It also seems significant that most applications concerning lands along the central railway route were identified as coming from Whanganui and Taupo, the southern and eastern gateways to the Rohe Potae, areas the Government had always identified as potential entry points into the district.

In fact, while these letters and then applications appear to have been driven largely by a concern to protect interests and lands, as shown, it appears they had become an important part of the Government's tactics to undermine the Rohe Potae, and to make large areas of land subject to the land Court and to subsequent Government purchasing. Ballance himself now seemed totally confident that such applications would inevitably lead to land sales. He even seemed to imply that applications were effectively proof of a willingness to sell land. This

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<sup>718</sup> *NZPD* 1885, vol 53, p 355

also seems to have misled Parliament about the true state of Maori feeling over the opening up of the district as had been made abundantly clear to him in his meetings in the Whanganui district and in the interior and as the tone of letters expressing concern made clear.

Although he seemed to be anticipating them, Ballance appears to have been referring in Parliament to two applications that were to prove significant in achieving Government policies. These applications would be formally lodged in the next few months. The Government prior knowledge of them indicates that it was actively involved in at least encouraging those letters of concern and applications that would also support Government objectives in the district. The two most significant applications that were about to be made were the application for what became the large Tauponuiatia block in the eastern Taupo area that would penetrate into and effectively cut off a large eastern chunk of the Rohe Potae. This development is subject to a separate report by Bruce Stirling. This would shortly be followed by an application for the Waimarino block, also covering a large area of upper Whanganui lands, and also penetrating into the southern border of the Rohe Potae. The official applications for these blocks do not appear to have been made until later in 1885, but it seems highly likely that Government officials were already aware of and encouraging these and similar applications by August 1885.

#### **4.7 Conclusion**

The February 1885 agreement to allow the Government to build the Main Trunk railway appears to mark a critical change in Government willingness to continue with good faith negotiations with the Rohe Potae alliance leadership. The Government had gained considerable benefit from negotiations with the alliance, and was still reliant on alliance cooperation through 1885 to complete preparations for building the railway. The apparent success of the negotiations with the alliance had also impressed Maori communities throughout the North Island that the Government was now more committed to consultation and legislative reform. The success of this appears to have convinced the Government to undertake a general campaign of consultation with North Island Maori communities to persuade them to trust government assurances that cooperation with its land settlement policies would result in improved protections for Maori interests, while enabling them to share more fairly in the expected economic benefits of settlement.

The government campaign began with a tour of North Island Maori districts in 1885, beginning with visits along the Whanganui River. As part of this the King Country meeting

already discussed also led to the railway agreement. Discussions at other meetings revealed how influential the alliance ideas and concerns raised during the Rohe Potae negotiations had been for Maori of other districts. The chiefs attending the Whanganui River meetings, for example, appeared to support the idea of a protected district boundary, the strengthening of Native committees and a preference for leasing land rather than sales. Ballance, while still supporting the Native Land Court, seemed receptive to significant reforms of it at the 1885 meetings. This included a willingness to discuss having Native committees as the first stage of title investigation with the Land Court more as an appeal body. At the Whanganui meetings Ballance also explained the government monopoly on land dealing in the railway area as an attempt to protect it from speculators and 'save' it to the owners and he assured the meeting that he preferred leasing to sales of land. Nevertheless, Ballance also clearly anticipated the use of such land for settlement purposes, and he explained the proposed legislation as providing for a more effective system of leasing or selling Maori land, although with significant Maori input into the decision making and management of this. Ballance also promised the meetings that they would also benefit from developments associated with settlement, including the development of steamboat traffic on the Whanganui River and the Main Trunk railway. The Whanganui meetings appeared generally supportive of these government assurances and ready to trust the Government based on this.

Ballance continued this campaign of consultation and made similar assurances as a later hui near Hastings in 1886. During this meeting Ballance was keen to show the Government was willing to consult over proposed legislation and take account of Maori concerns. In response to concerns about the Native Land Court, he confirmed his willingness to consider strengthening Native committees, and to consider having the Native Land Court more as an appeal body. These meetings also illustrate what appears to have been a major aim of the Government at this time, to portray itself as a government of fairness and protection, through which cooperative Maori communities would share in the anticipated benefits of settlement. At the Hastings meeting in particular Ballance was careful to portray movements such as the Kingitanga and Parihaka in contrast, as isolationist, backward-looking and with policies that would condemn their people to marginalisation and poverty.

In the meantime, the Government still relied on the cooperation of alliance chiefs to uphold their commitment to smoothing preparations for the railway and to some extent it seemed to be continuing the relationship developed in the negotiations. For example, Ballance appeared to support the efforts of the Kawhia committee in managing community participation in

gaining benefits from railway development. However, there is also evidence that at the same time, the Government was developing policies that would cut across what it knew to be alliance understandings. One of these policies was to withdraw from even pragmatic recognition of the alliance structure, in favour of dealing separately with hapu and iwi groups. This can be seen, for example, in the much lesser official importance given to continuing meetings with the alliance leadership and the reluctance to engage in a ceremony to jointly hand over the payment for the survey of the external boundary. Instead, the Government seemed more concerned to present the survey application as an entirely Ngati Maniapoto initiative, even while it was aware of the tensions this might create.

The Government also appears to have begun encouraging applications to the Land Court, partly as a result of these tensions, in apparent contravention of the alliance understanding that the external boundary survey would protect against this. This raises issues of government good faith in persuading the alliance to make a survey application in the first place, while downplaying and refusing to recognise the real nature of the alliance. This made it very easy for the Government to promote (or at least refuse to correct) increasing concern that the application was really an attempt by Ngati Maniapoto alone to claim the large Rohe Potae district in an inevitable Native Land Court hearing.

The Government insistence that a Land Court hearing was imminent and inevitable, even when the alliance understood that this would not happen without significant reform, also tended to convince communities that, regardless of their preference for Native Committees, they had no option but to engage in the Land Court process if they were to protect their interests, including making applications to the Court. Their only hope was to trust the Government that it had already reformed the Land Court process, or that it would do so under proposed legislation, by the time their applications were heard. This pressure to engage in the Court process also seems to have involved some Whanganui chiefs with interests in upper Whanganui lands, particularly those who were most inclined to be concerned about Ngati Maniapoto and the Kingitanga. The railway agreement and the apparently imminent imposition of the Land Court appears to have caused a revival in support for the Kingitanga wing still supportive of Tawhiao. This in turn appears to have caused the Government to decide to press even more closely for rapid Land Court hearings to undermine this opposition.

At this time, and again in contravention of assurances to Maori communities, the Government also appears to have decided to adopt policies of extensive purchasing of lands in the railway area. This now made the government failure to effectively reform the Land Court, while

actively encouraging applications to bring it into the district, much more significant. This was especially important given the role of the Court in undermining collective customary authority and facilitating the alienation of land. The Government may have had good intentions in buying up the land to ensure that expected benefits were directed to Maori and settlers, rather than land speculators. The managed acquisition of large areas of land may also have assisted the more effective and rational development of infrastructure such as roads. However, this raised issues of how far the Government would explain its change of policy to Maori in the consultation process being developed, and honour its commitments to ensure Maori were treated fairly under the new policies and enabled to participate fairly in the expected benefits.

The discrepancies between the assurances Ballance was making to Maori communities in his consultation campaign at this time, and the statements he was making in other forums, raise serious issues about Government good faith and fair dealing at this time. This is perhaps summed up in Ballance's statement to Parliament in late 1885 to the effect that in implementing extensive purchasing of Maori land, and encouraging Land Court investigations necessary for this, it was first necessary to establish a 'feeling of confidence' among Maori. Ballance made it clear to Parliament, that in spite of his apparent receptiveness to reform of the Land Court, to Maori wishes not to lose large areas of land and to his promises that if they cooperated with the Government Maori could expect to participate in expected economic benefits; the Government was actually intending to purchase large areas of Maori land in the railway area, that if fully expected the Native Land Court process to assist with this and that it expected to acquire this land at relatively cheap or 'reasonable' prices. Ballance was also welcoming large numbers of applications to the Court, including some for very large areas of land that he knew were undermining the Rohe Potae boundary agreement.

These new policies, and the apparent Government decision to place the anticipated benefits of settlement before its assurances and undertakings to Maori, also raises issues about government good faith in its continuing campaign to of consultation and winning over Maori communities to trust in its land settlement policies. As will be seen in the following chapters, continuing Government assurances to Whanganui Maori communities and their leadership as part of this were an important background to the creation and subsequent alienation of the Waimarino block.



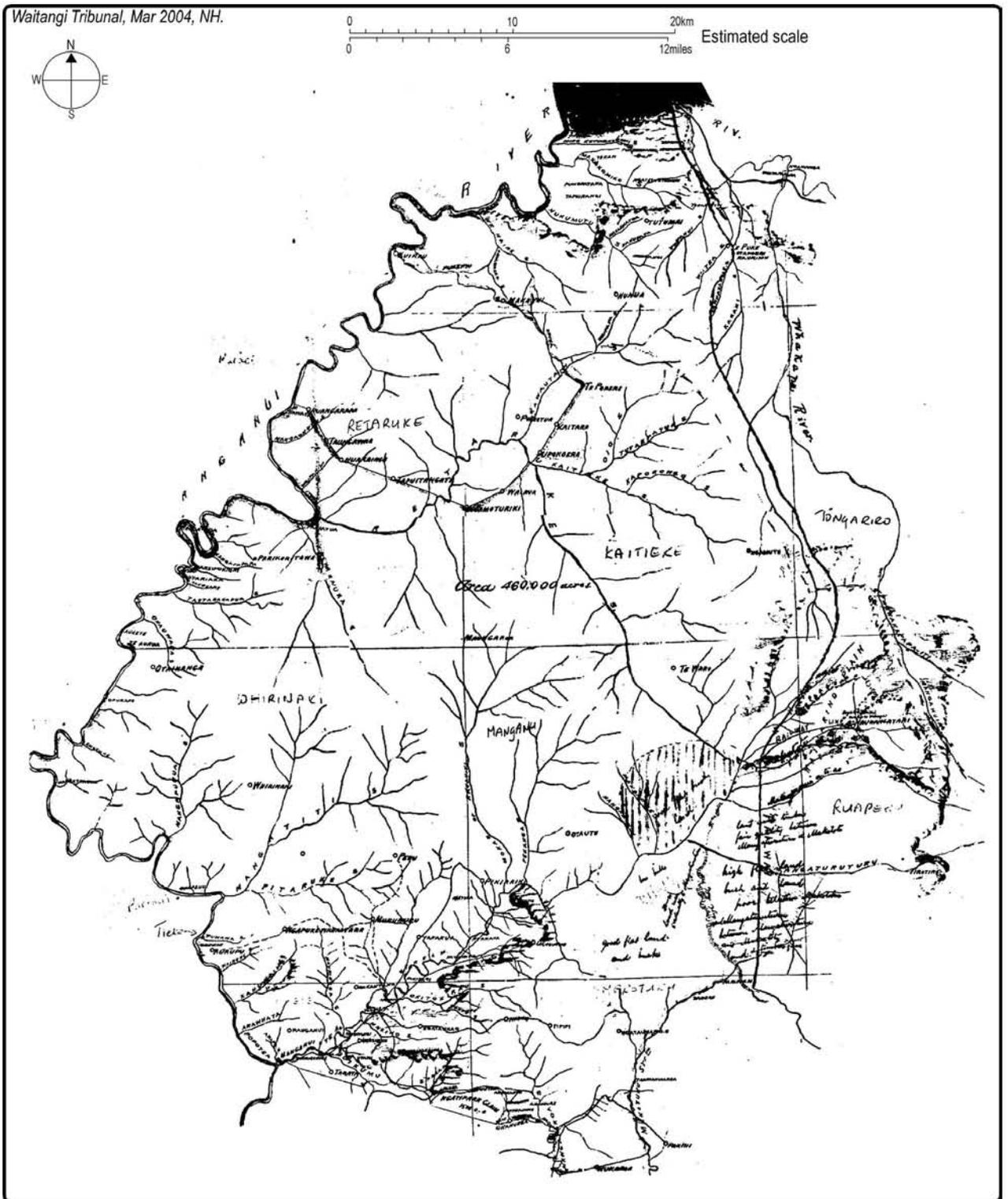
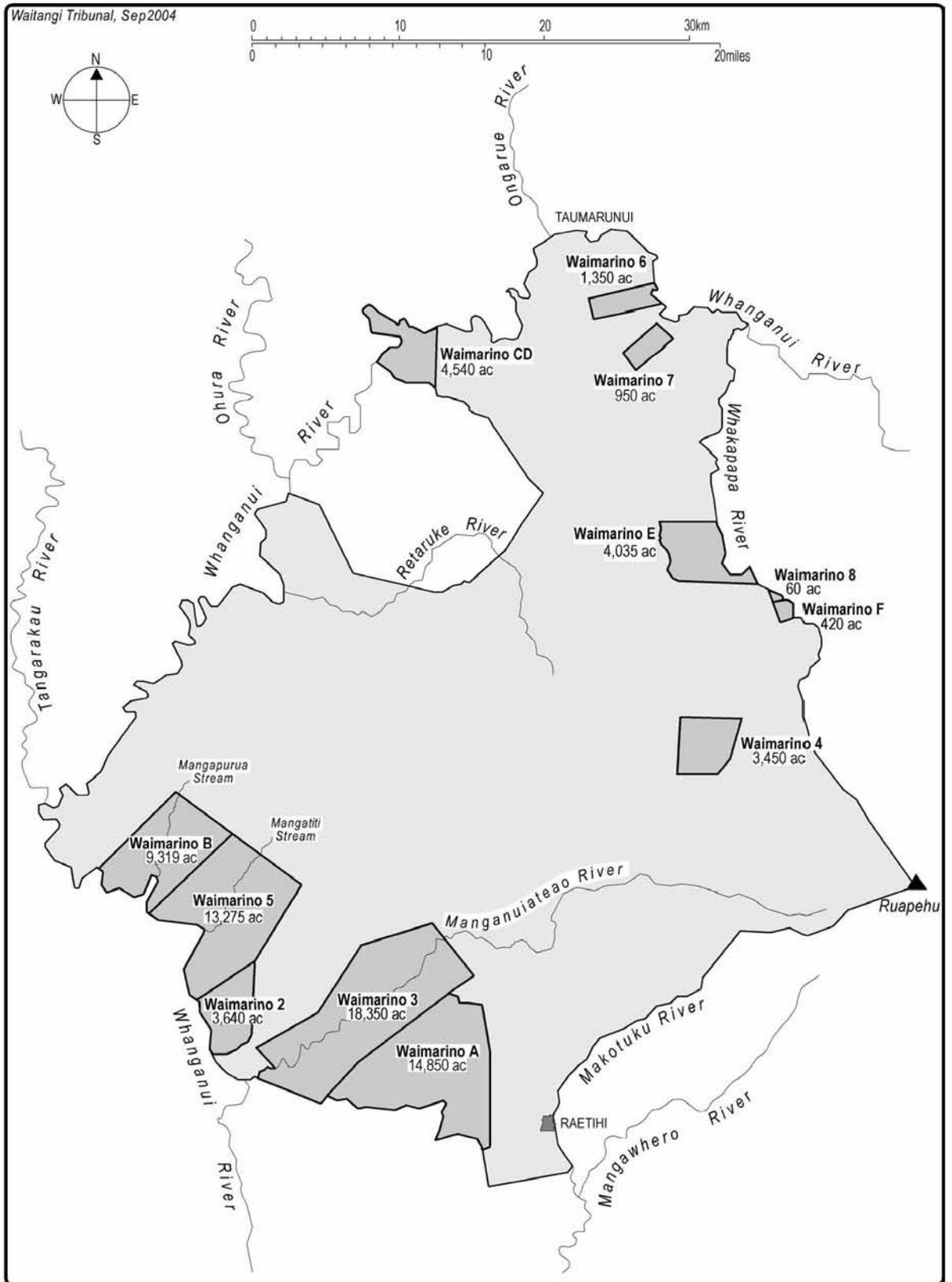


Figure 6: Sketch Plan for Waimarino, 1886 – 1887 (Source: Based on sketch plan SO 2351/66 from MA 1, 1924/202 vol. 1, ANZ, Wellington)



Figure 7: Plan for Court Award Hearing, 1887 (Source: ML 776, LINZ)



**Figure 8: Seller and Non-seller Reserves in Waimarino (Source: Clayworth, 'Located on the Precipices and Pinnacles', Wai 903 doc A55, 2004, map 2)**

## **Chapter 5 The creation and investigation of title of the Waimarino block 1885-86**

### **5.1 Introduction**

The Government strategies of reassuring Maori communities that their interests and concerns were being taken account of and of encouraging concern about Ngati Maniapoto claims to the Rohe Potae appear to have been successful by late 1885, in encouraging applications to the Court that could be used to pursue its objectives of extensive land purchasing and undermining the Aotea Rohe Potae. There were many applications to the Court at this time, but two of these were of particular strategic importance to the Government, in pushing back and undermining the Aotea Rohe Potae and in preparing for purchasing as far as possible along the central route of the railway line. The first of these was the large Tauponuiatia block application, penetrating into the external boundary from the east. This was closely followed by the application for Waimarino block lands penetrating the Rohe Potae boundary in the upper Whanganui area and straddling a large area of the railway route. This chapter is concerned with the Waimarino application and investigation of title.

### **5.2 The Tauponuiatia application, 1885**

It seems that by the later part of 1885, the Government had begun to receive the kind of application for Native Land Court investigations that it had been seeking. These enabled the Government to introduce the Native Land Court 'by request' into the border areas of the Rohe Potae and in some strategic areas they even penetrated into the 'protected' Rohe Potae boundary. In October 1885, the Ngati Tuwharetoa chief, Te Heuheu, made a separate application for a Native Land Court hearing for Ngati Tuwharetoa lands included within the eastern part of the Rohe Potae boundary. These lands were later heard as the Tauponuiatia block.<sup>719</sup> These lands had long been a matter of concern, with some Ngati Tuwharetoa communities supporting the 'Hauhau' Rohe Potae. Ngati Tuwharetoa chiefs, as seen, had been actively involved in the alliance and in the survey of the outer Rohe Potae boundary. This involvement had also been confirmed by the Assistant Surveyor General, Percy Smith. Other chiefs, while sympathetic to many of the objectives of the Rohe Potae had also become concerned that the Kingitanga and then Wahanui's negotiations might swamp traditional

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<sup>719</sup> Ward, 'Whanganui ki Maniapoto' p 66

Ngati Tuwharetoa authority. As previously seen, the chief Te Heuheu had long been regarded as potentially ‘cooperative’ by the Government. This did not mean he necessarily supported Government policies but he was willing to cooperate over issues that seemed to provide mutual benefit for the Government and his people.

The Poutu meeting of September 1885 had included numbers of Ngati Tuwharetoa chiefs and considerable concern had been expressed at that meeting that ‘Wahanui’s boundary’ might involve Ngati Maniapoto claims to some of their land. The Government may have been concerned that at this meeting the Ngati Tuwharetoa chief Te Heuheu who had been regarded as an ally, had appeared to show renewed support for the Kingitanga and did not seem overly worried about boundary concerns. However, within a short time the Government, through sympathetic agents, appears to have made a determined and successful attempt to persuade Te Heuheu that he should be worried, particularly if a Native Land Court hearing was imminent.

Ballance acknowledged that the Government had used the Land Court to counter the Kingitanga at this time, in speaking to a later hui at Aramoho in 1886.<sup>720</sup> He explained then that the Land Court had sat at Taupo because Tawhiao had been trying to have the chiefs hand their land over to him. Ballance thought this was ‘improper’ and it was the duty of the Government to ‘resist’ Tawhiao, in favour of ‘the people’ being given title to the land. He claimed that this was why the Court had sat at Taupo when it did and that all the principal owners of Ngati Tuwharetoa were now satisfied with what the Court had done.<sup>721</sup>

The Government pursued this policy by making preparations for the Native Land Court to sit at Taupo in anticipation of a suitable application. The correspondence registers reveal that even where the actual correspondence has been lost, Ballance was pressing for a Land Court sitting at Taupo, where W H Grace had been appointed a land purchase officer.<sup>722</sup> More extensive preparations for a Taupo sitting appear to have been made once the Tauponuiatia application was received.<sup>723</sup>

In the case of the Tauponuiatia application, there is further evidence to suggest that the Government actively promoted the kind of application it wanted, through the Grace brothers, who were later willing to claim responsibility for their involvement in this. As previously

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<sup>720</sup> Report of Aramoho meeting, March 1886, *Wanganui Herald*, 27 March 1886, p 2

<sup>721</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>722</sup> MA correspondence register entry May 1885, 85/1562, ANZ

<sup>723</sup> MA correspondence register entry October 1885, 85/3711a, ANZ

noted, the Grace family had intermarried into influential Ngati Tuwharetoa families. William H Grace had been identified as helping persuade the Rohe Potae alliance to make their survey application in late 1883. Now it seems that his brother and Te Heuheu's son-in-law, Laurence M Grace (by then a Member of the House of Representatives) was pivotal in persuading the family to make Land Court applications to protect their interests and to enable them to take advantage of expected new economic opportunity. According to Ward, Te Heuheu had recently visited Wellington for discussions with the Government in the company of Lawrence Grace.<sup>724</sup> This presumably led to Ballance's later optimism in Parliament. Lawrence Grace also later claimed the credit for an agreement with Ngati Tuwharetoa in August 1885, which included establishing ownership through the Land Court to enable the laying out and cutting up of Tokaanu township.<sup>725</sup> However, by now the Government appeared interested in an application for more than just Tokaanu. According to Ward, William H Grace (land purchase agent) who had earlier been involved with the 1883 boundary survey application, later testified that he had been instructed by the Government to go to Taupo and have the application for the larger area signed, because at the time, the Government was dissatisfied with Ngati Maniapoto having including part of Taupouuiatia in their Rohe Potae.<sup>726</sup> More evidence on this is likely to be revealed in the Stirling report on Taupouuiatia, which at the time this report was written, was still in preparation.

This claim of Government dissatisfaction was clearly news to the rest of the alliance, who had believed they were negotiating in good faith with the Government and had always been quite clear that the remaining Rohe Potae lands they wanted in the external boundary included lands claimed by a number of iwi and hapu. This was never disputed. What they had always insisted was that the various hapu and iwi interests involved could settle internal divisions themselves, without the Land Court being brought in (unless it was substantially reformed) and transforming their customary title into one derived from the Crown.

Wahanui and Ormsby later supported the establishment of an inquiry into Taupouuiatia in 1889. In regard to this, Wahanui, Taonui and other chiefs explained their understanding of the Rohe Potae negotiations. This had included the agreement to fix the outside boundary of the land known as the Rohe Potae of the five tribes, Ngati Maniapoto, Ngati Raukawa, Ngati Hikairo, Whanganui and Ngati Tuwharetoa. Under this agreement the whole block was one,

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<sup>724</sup> Ward, 'Whanganui ki Maniapoto' p 66

<sup>725</sup> Lawrence Grace memorandum 17 August 1885, NLP 85/274, MA-MLP 1, 1892/19, ANZ

<sup>726</sup> Ward, 'Whanganui ki Maniapoto' p 66

with one survey and one investigation of title for the whole. They said that the weight and authority of this agreement was also exactly similar to that of a 'Treaty' with the Government. Since then, they claimed they had not been informed of and did not know why the original block was partitioned and the block called Tauponuiatia formed. They were not informed that the original agreement had been broken and therefore at first had not known to attend the Court, although later they had sent Taonui and others to withdraw that part of the Rohe Potae block and adjourn it to be heard with the rest of the block for the five tribes. They had also not understood that the Tauponuiatia hearing meant that the Tauponuiatia land would be 'gone from us'.<sup>727</sup> They submitted similar evidence to the Tauponuiatia Commission itself, also likening the agreement to a 'treaty'.<sup>728</sup>

### 5.3 The Waimarino application, 1885

No such direct evidence of Government pressure has been found in official records in the case of another application made in late 1885 that effectively resulted in the creation of the Waimarino block.<sup>729</sup> The earliest official record of this Waimarino application found in research for this report is dated 27 December 1885.<sup>730</sup> It is a duplicate copy of the original application, sent to the survey office and requesting as was usual, a survey of the claimed lands prior to a Native Land Court investigation. Other applications bound into the same survey volume are annotated with the words 'duplicate' and the Native Land Court application number. However, this is not the case for the Waimarino application, which has not been annotated. Nevertheless, it seems likely that this is the duplicate of the original application numbered 772 in the official record.<sup>731</sup> The original Native Land Court copy of the application appears to have been lost.

The duplicate application 772 is written in Maori on a printed application form and is signed by the chiefs Te Rangihuatau, Tawhiri Matia and Tukehu o te Motu. The application describes the land under claim as Waimarino, reaching to Owango in the Tuhua district ('Waimarino tae noa ki Owango i te takiwa o Tuhua'). The boundaries, claimed to have lines cut, according to the application, are described generally as beginning at the peak of Ruapehu, then following the Mangakuia River to Whakapapaiti, Whakapapanui and Waipatukakahu

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<sup>727</sup> Wahanui and others to Native Minister, 6 May 1889, NO 89/1138, MA series 71/6, ANZ

<sup>728</sup> Cited in Waitangi Tribunal, *Pouakani Report*, pp 126-7

<sup>729</sup> application no 772, LS-W series 46/6, ANZ

<sup>730</sup> application no 772, LS-W series 46/6, ANZ

<sup>731</sup> application no 772, LS-W series 46/6, ANZ

then following the Whanganui River to the Manganui o te Ao, then south to Pukeatua, Okahurea, Hukaroa and Orangitakotohau. The boundary then went to the Mangawhero River and then following its source to the peak of Ruapehu again.<sup>732</sup> The area included within this new Waimarino block was very large, later estimated at around 490,000 acres.<sup>733</sup>

The Waimarino application boundaries appeared to follow natural features, such as waterways for convenience and presumably to reduce survey fees for such a large block. As explained in chapter 1, the use of rivers as boundaries is likely to have split natural communities. For example, the block now included the southern part of the Tuhua district. It may well have also split other communities along the course of the Whanganui River. The block also included areas that may have been considered discrete from Tuhua, including the Manganui a te Ao district and the more open plains of Waimarino ‘proper’. The new block also included parts of, or entire blocks, previously known under different names for which the Government had previously paid purchase advances in the 1870s. Presumably, it was possible that the application was partly a response to pressure to repay those advances. However, this application was the first mention of a block named Waimarino. Importantly for the Government, the block boundaries also contained much of the buffer area of the southern Rohe Potae, including the Tuhua area and the Retaruke valley and effectively penetrated into the external 1883 boundary from the south. At the same time, by adjoining or even enclosing the previously isolated Kirikau and Retaruke blocks, already purchased by the Government, this new block offered the opportunity to finally make them more accessible from the proposed railway (see map 2 of this report).

The Waimarino application was signed by three chiefs, described in the application as Te Rangihuatau, Tawhiri Matia and Tukehu o te Motu and dated 27 December 1885.<sup>734</sup> These chiefs, while having some status, do not appear to have been those the Government had previously recognised as being the most influential in the district. The people the survey application represented were named in the application as Ngati Tamakana and their place of residence as Manganui o te Ao. The names of those individuals the application claimed to represent included Te Whakaraukura, Te Rangi Whakaaruraa, Tautahi, Uanurewa, Uenuku, Te Kakahi, Te Peehi, Karaitiana, Te Poumua, Makarita, Te Pikikotuku, Te Waonui a Tame, Te Kauhi, Wiari Turoa, Te Matawhitu, Kete Whakaniwha, Te Taniwha te Waitaruna, Kahu

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<sup>732</sup> application no 772, LS-W series 46/6, ANZ

<sup>733</sup> ML plan 772

<sup>734</sup> application no 772, LS-W series 46/6, ANZ

Karewae, Wiremu Te Manuauete and 'me etahi te kinatanga'. Some of those named such as Te Pikikotuku, and Wiari Turoa were recognised as influential chiefs of the area and have already appeared in this report. It is not clear who was meant by Te Peehi - possibly Te Peehi te Opetini or Te Peehi Turoa, both of whom were later involved with the Waimarino purchase, as will be explained. All of those named appear to have had upper Whanganui connections. Many also had other iwi connections, such as to Ngati Tuwharetoa, as might be expected in this area. Some prominent names the Government had previously associated with the area, such as Ngatai te Mamaku, Te Herekieke, Topia Turoa and Te Potatau were not included. However, the application does appear to have attempted to represent some of those supporters of Kingitanga objectives with the words 'me etahi te kinatanga'.

Some circumstantial evidence does point to some Government involvement around the time the application was made. At the very least, the application certainly coincided with Government objectives in the area to break into the Rohe Potae boundary and as far as possible to have land investigated along the railway route. As with the Tauponuiatia application, the Waimarino application cut a chunk from the external Rohe Potae boundary, this time from the southeast. This northernmost part of the Waimarino claim also coincidentally surrounded a significant section of the proposed railway line and the fine totara forest long identified as a valuable resource by officials. Strategically, the new block also included the ancient transport routes along the Manganui a te Ao and west of the volcanic peaks through the Waimarino plains. Interestingly, the block boundaries also appeared to coincide quite nicely with other nearby block boundaries. This might indicate that the chiefs had been advised as to what boundaries the Court and government was most likely to accept.

The Waimarino application does not appear to have been the only application of the time concerning lands in the Tuhua or upper Whanganui region. Ballance had claimed in August 1885, that applications had been received concerning some 1,200,000 acres in what was regarded as the Whanganui district. There were a number for lower Whanganui lands and at least some also appear to have concerned upper Whanganui or Tuhua lands. They were presumably made to protect interests in the face of what was seen as a further round of inevitable Land Court hearings in the district including into the upper Whanganui lands and the Rohe Potae. For example, at the same time as the Waimarino application was notified, another application was notified from Ngatai te Mamaku, Tuao, Te Warahi and Te Whiutahi concerning Koiro in the Tuhua district. The boundaries of this area appear to have been further west of what became Waimarino towards the Ohura River and including Papanui,

Papaiti, Te Upoko o Purangi, Te Pukehinau, Te Kiekie and Opatu.<sup>735</sup> It has not been possible to research this application in detail for this report and no correspondence has been found indicating why these chiefs, who were supporters of the alliance may have made such an application. It is also not entirely clear whether the boundaries of this block penetrated the Rohe Potae, although it seems they did not. An application for nearby Opatu block had already been notified for hearing by panui published in the *Kahiti* of 17 December 1885.<sup>736</sup> Dealings had already begun over this block and it also does not seem to have been considered as being within the external Rohe Potae boundary.

Other large blocks in the upper Whanganui area, with applications for title hearing at this time, included the large Taumatamahoe block, originally estimated at around 146,000 acres on the other side of the Whanganui River from the Waimarino block. The title determination process and later purchase in blocks such as Taumatamahoe, appear to reflect the overall Crown policy in the district, of encouraging investigations of title in ways that supported later purchasing. Te Rangihuatau was also a principal applicant for this block, as he was in a number of other nearby blocks, and the hearing process for Taumatamahoe in 1886, appears to have shared many similar features with Waimarino, such as a carefully managed case with few objections, and a sketch survey plan based largely on information from other blocks. The Government also began purchasing in Taumatamahoe in 1889, with Butler as land purchase officer, having completed the Waimarino purchase. More detail on Taumatamahoe can be found in the report by Steven Oliver on that block.<sup>737</sup>

There also seem to have been a number of applications around this time that involved lands may well have been at least partially included in the larger Waimarino application. Some of these can also be found within duplicate applications sent to the survey office. For example, a duplicate application 689 for Ngati Pare lands at Mangapapa and Otaihanga from applicants Whakamou, Pairua te Rangikatatu and Honeri Henare is dated just before the Waimarino application on 12 November 1885.<sup>738</sup> Application 693 of 26 October 1885 was for Kawautahi land and signed by Honi Paiaka Te Uruhanga, Te Tera Pounamu and Tangi Makurau. The place names given are not easily identifiable but appear to be in the Kirikau area and the application describes the land as Kawautahi to Tuhua.<sup>739</sup> The same applicants also put in an

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<sup>735</sup> *Kahiti*, 21 January 1886, no 3 p 10, notice dated 12 January 1886, application number 14

<sup>736</sup> *Kahiti*, 17 December 1885 notice dated 31 October 1885 appln no 70

<sup>737</sup> Oliver, Steven, 'Taumatamahoe Block Report' 2003

<sup>738</sup> LS-W 46/6 application 689, ANZ

<sup>739</sup> LS-W 46/6 application 693, ANZ

application for the nearby Opatu block over the river from Kirikau, as will be described. An application 694 dated even earlier, of 11 July 1885, for Popotea lands is annotated as being near the Maungapukaka block. The application is signed by Taiwiri, Paora Toho and Toi te Huatahi.<sup>740</sup> Another application 704 of 3 December 1885 for land near Mangapapa also includes the same applicants as for 689<sup>741</sup>

Other applications may well have been provoked by knowledge of the larger Waimarino application. Application 723 of Ngati Rangi of Kirikiriroa of 4 January 1886 includes in the description the place names Te Kiekie, Maraekowhai, Marangi, and Te Pohatu and the application is signed by Te Rangi Kawana, Wiha Te Whata and Iwi Tewhatupunga.<sup>742</sup> Application 774 of 5 January 1886 concerns what is described as Ngati Wai land at Tahereaka. The applicants are described as living at Tieke and are named as Patu Wairua, Te Rangi Tawana and Kuramate.<sup>743</sup> Application 725 of Te Keepa Tahukumitia, Kaioroto and Mahirini of 5 January 1886 is for lands at Whakaihuwaka.<sup>744</sup> Application 727 of 5 January 1886 for Ngati Rangi lands at Oruapuku is signed by Kaioroto, Rahera te Kauwhata and Te Aurere described as living at Pipiriki.<sup>745</sup> Application 726 of 5 January 1886, for Ngaporo lands from Ngati Rangitautahi applicants is signed by Kaioroto, Paura Herekau and Mahirini Rangitaurira.<sup>746</sup>

It is not always clear from descriptions what lands are being claimed but it seems that many of these referred to smaller areas of land within the larger Waimarino claim. A few of the applications, such as for Kawautahi, appear to extend near or even into what were regarded as Tuhua lands in the northern part of Waimarino, although it is not clear these extend into the external survey boundary area.

Of the various applications received for what were to become Waimarino block lands, it seems that the Government appears to have considered the application for the large Waimarino claim to have been of the greatest strategic importance. It included a large amount of land within the one application, it included upper Whanganui lands within the Aotea Rohe Potae boundary and it straddled a good part of the central railway route well into the interior.

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<sup>740</sup> LS-W 46/6 application 694, ANZ

<sup>741</sup> LS-W 46/6 application 704, ANZ

<sup>742</sup> LS-W 46/6 application 723 ANZ

<sup>743</sup> LS-W 46/6 application 724 ANZ

<sup>744</sup> LS-W 46/6 application 725 ANZ

<sup>745</sup> LS-W 46/6 application 727 ANZ

<sup>746</sup> LS-W 46/6 application 726 ANZ

No evidence has been found as to why the three chiefs made such a large application at this time, when most other applications were far more localised. Possibly it was an attempt to protect lands against a flood of smaller applications. Nevertheless, it certainly coincided with Government interests and may well have been prepared with encouragement and advice from officials. While the chiefs may have been willing to ally with the Government on certain matters of expected mutual benefit, this does not mean they supported or were even aware of the entire Government policy in the area. It is not at all clear, that at this time they intended to sell all, or even large areas of the block. They may have been eager to be involved in sharing in the benefits expected to arise from the imminent construction of the main trunk line through the block. This may have involved leasing land, the sale of resources and possibly the sale of small areas to encourage settlement, especially around railway stations. They may well have been persuaded to trust the Government that an application to the Court would enable them to do this, especially after the assurances Ballance had given.

It is also possible the application may have been the result of an attempt to continue traditional rivalry and competition for status from relatively minor chiefs who wished to use the process to enhance their own standing within their communities and with the Government. It may also have been an attempt to protect land to Whanganui interests, especially if those involved were persuaded that Wahanui and Ngati Maniapoto were indeed attempting to claim for Ngati Maniapoto into these lands.

The chief, Te Rangihuatau, was later prominent not only in the application, but in the Court investigation and the later purchase of the Waimarino block. He showed a willingness to cooperate with Butler on a number of occasions but there are also indications that he was not fully supportive of Government actions in the block. For example, as will be explained, he was one of the later applicants for a rehearing of the block and in the later hearing for the Crown purchase award in 1887, he was critical of the system of purchasing in the block. Whatever his motivations, his actions over the block were nevertheless critically important for Butler.

In contrast to its willingness to delay action on previous applications while negotiations were continuing, the Government acted very quickly on the Waimarino application. An official notice dated 12 January 1886, was published in the *Kahiti* of 21 January 1886, notifying the application as one of those to be heard at a Native Land Court sitting beginning on 22

February 1886.<sup>747</sup> This was less than two months between the date of the application and the beginning of the advertised Land Court sitting. The published notice described the application as number 12 and that it was made by Te Rangihuatau, Tawhiri Matea, and ‘Terehu o Te Motu’ (rather than the Tekehu o te Motu of the application). The description of the boundaries of the Waimarino block in the published notice was virtually the same as in the application.<sup>748</sup> This notice, with the date of the Land Court sitting, is presumably the only notice the Whanganui Native Committee would have received in fulfilment of Ballance’s February 1885 promise to keep them informed. As the sitting was technically in the Whanganui district it is not clear whether the Kawhia committee or other influential chiefs of the Rohe Potae would even have been supplied with the notice.

#### **5.4 Government preparation for land purchasing in Waimarino**

By the time the Waimarino application was made in December 1885, the Government already appears to have decided to purchase the block and had begun making preparations for this. The official correspondence records for the period from September 1885 until early 1886 have largely been destroyed by fire. All that remain are register entries and some Native Land Purchase Department accounts records of the time. Although sparse, these do indicate that the Government was actively making preparations to have the Waimarino block investigated by the Native Land Court with a view to a Government purchase as soon as possible afterwards.

For example, the land purchase accounts journal reveals that land purchase officials began charging expenses to the Waimarino block as a purchase account from October 1885, even before the December application. The Land Purchase Office accountant, Patrick Sheridan, charged the first of these on 31 October 1885, to pay the Native Land Court clerk, R Campbell, for work undertaken from 19-31 October 1885, preparing plans for the Native Land Court for Waimarino.<sup>749</sup> This was presumably for making plans to enable a Court investigation of the block to take place. Further expenses charged to the Waimarino account in December 1885 and January 1886 show payments by Sheridan for the carriage of correspondence between himself and chiefs at Taumarunui and for travel and other expenses for meetings held in Wanganui, including for Sheridan, McDonnell, Campbell and Wiari

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<sup>747</sup> *Kahiti o Niu Tireni*, 21 January 1886, no 3 pp 9-10, notice dated 12 January 1886, application number 12.

<sup>748</sup> *Kahiti*, 21 January 1886, no 3 p 10, notice dated 12 January 1886, application number 12

<sup>749</sup> MA-MLP 7/10 Land Purchase accounts journal p 8, voucher 489, ANZ

Turoa.<sup>750</sup> As previously noted, Wiari Turoa was one of those named in the application 772 for Waimarino lands, although he was not one of the actual signatories. It seems that by this stage, Butler was actively seeking the cooperation of both Topia and Wiari Turoa as influential chiefs of the upper Whanganui district. He also seems to have been successful in this, for as will be described in the following chapter, their signatures are the first two on the Waimarino deed of sale.

No official records appear to have survived indicating what was discussed at these meetings or what chiefs understood by them. At the time, it was believed that construction of the railway was imminent. Chiefs and communities understood this would involve the acquisition of lands for the track, and the use of resources such as timber and gravel, as well as rentals of nearby land for camps and the use of stock. These all provided possible economic opportunities for owners, even before taking into account the long term potential of leasing land made accessible once the railway was built. Most of the interior chiefs and communities were interested in participating in these developments, including those who supported Wahanui and the interior alliance, as they had made clear. What they were concerned about was retaining significant management powers over such developments and retaining significant areas of their land. Therefore, their participation in meetings to discuss possible economic developments did not necessarily imply their willingness to sell large areas of land. It also seems, as indicated above, that Butler was able to persuade numbers of chiefs to allow their smaller claims to be included within the larger block. This was presumably on the basis that their interests would be protected when it came to the lists of ownership for the block.

While meetings with the chiefs were being conducted and charged to the Waimarino purchase account, in late 1885, the Government decided to change the personnel of the Wanganui land purchase office, presumably also to assist with purchasing. In early December 1885, land purchase agent Thomas McDonnell was transferred to land purchase duties in the Wairarapa and he was replaced at Wanganui by W J Butler.<sup>751</sup> McDonnell had already been involved in some of the initial meetings over Waimarino as indicated by the expenses records. However, the Government now appears to have decided that Butler was more suitable. No correspondence has been found explaining this, but possibly, McDonnell was regarded as

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<sup>750</sup> MA-MLP 7/10 land purchase accounts journal pp 8-11, December 1885-January 1886 vouchers 559, 563, and 581, ANZ

<sup>751</sup> MA correspondence register entry 85/3916- instruction from Balance, 1 December 1885, Lewis jnr appointed private secretary vide Butler transferred; ANZ, MA 4/3 p 221, ANZ; *Wanganui Herald* 3 December 1885 p 2

being too 'tainted' by his previous land purchase reputation in the Whanganui district to be acceptable to Maori. In contrast, Butler was well known in the district as a high ranking government official who had been involved in the Rohe Potae negotiations from the early 1880s. Of any government official, he could have been expected to have most understanding of interior Maori views and concerns. He also had very close contacts with the Government and the Native Minister, presumably an advantage for chiefs who wished to remain in close contact with high levels of Government.

Butler was the son of a 'Captain Butler' of Northland, possibly a trader. He was born in 1848 and trained as a surveyor but had also worked in the flax and gold mining industries before joining the government service in the Native Department as a government agent and interpreter from 1878. He was fluent in Maori and after transferring to Wellington in 1879, he was appointed the private secretary to a succession of Native Ministers, including Bryce, Rolleston and Ballance.<sup>752</sup> As ministerial private secretary he was closely involved in Rohe Potae negotiations throughout the period from 1882 to 1885. In connection with this, he has already been mentioned numerous times in this report. He was present at many of the critical meetings and negotiations between the Government and the alliance leadership. For example, he was reported as accompanying Bryce's early visits to Tawhiao in 1882 over the possible opening up of the Rohe Potae.<sup>753</sup> When Bryce presented Tawhiao with his personal lifetime railway pass in 1882, Butler was also reported as presenting him with a pipe.<sup>754</sup>

Butler continued to be present at almost all of the subsequent meetings of importance to the Rohe Potae negotiations. He was reported as being present when Bryce negotiated the March 1883 agreement for Hursthouse to make the first exploratory trip for the railway.<sup>755</sup> This agreement was later referred to by Wahanui as beginning the Rohe Potae compact. Butler was also reported as attending many subsequent negotiations between Bryce and lower Whanganui chiefs over the railway including a September 1883 meeting with Te Keepa.<sup>756</sup> Evidence suggests that Butler sometimes took an important role in these meetings. His knowledge of previous agreements and his facility with the Maori language apparently made him a valued official for ministers. For example, Butler appears to have participated in

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<sup>752</sup> *Cyclopedia of New Zealand* vol 1, Wellington 1897, p 141; Scholefield, *Dictionary of New Zealand Biography* Wellington, 1940, p 128, *Evening Post* obit 2 February 1904; MA series 25/1 p 10, MA series 25/4 p 11 MA series 26/13 p 1, ANZ ,

<sup>753</sup> For example, *Waikato Times* report 31 October 1882.

<sup>754</sup> *Waikato Times*, 31 October 1882, 'presentation to Tawhiao'

<sup>755</sup> *Waikato Times*, 17 March 1883 and 29 March 1883

<sup>756</sup> For example, NO 83/2921, MA series 13/43a and NO 84/1254 MA series 13/93, ANZ

meetings with Wahanui and Rewi Maniapoto at Kihikihi in 1884, on behalf of the Native Minister.<sup>757</sup> Butler was also involved in negotiations over Wahanui's long visit to Wellington in 1884 and met with him at Wanganui in May 1884, before Wahanui travelled on to Wellington.<sup>758</sup>

Although it has not been possible to research this in detail, it seems likely that Butler, as ministerial private secretary, would have also attended negotiations over the external boundary agreement in late 1883 and as private secretary to Ballance, would have continued to attend the later railway agreements, including at Kihikihi in early 1885. Evidence has been found of Butler accompanying Ballance to meetings at Kihikihi and Alexandra, later in 1885.<sup>759</sup> These were presumably his last trips in his role as private secretary before he was made senior land purchase officer in early December 1885.

As well as attending meetings, Butler's other duties as private secretary would have increased his knowledge of Government policies, along with the views and concerns of a wide range of chiefs and communities of the interior. He would have been familiar with the requests of the 1883 Rohe Potae petition and Bryce's measures to address it. He was also apparently responsible for collecting documents relating to land sales and claims to lands in the upper Whanganui area for the use of Ministers, once the Government moved to a policy of extensive purchasing in the railway area.<sup>760</sup> He was also involved in drafting letters for Native Ministers and in writing translations of letters to and from chiefs.<sup>761</sup>

As a result of these experiences Butler is likely to have gained important knowledge of the concerns and wishes of all sections of the leadership and communities of the interior. They were also familiar with him and would have associated him with the policies of Native Ministers who seemed to be committed to upholding the undertakings and understandings of the Rohe Potae compact. This included not just opening the district to new developments and the promised benefits of settlement but a commitment to opening it in a way that enabled chiefs and communities to retain significant management and control over their lands in their ownership. It is not clear whether those chiefs who began discussions with Butler, initially at least, realised that his new role involved a complete departure from their understandings of

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<sup>757</sup> MA correspondence register entry 84/799, ANZ

<sup>758</sup> MA correspondence register entries, 84/1758, 84/1770, 84/1792 ANZ

<sup>759</sup> *Waikato Times*, 3, 5 November 1885

<sup>760</sup> For example, MA correspondence register entries, 84/690 and 84/691 ANZ

<sup>761</sup> For example, 19 November 1883, MA series 13/93, ANZ draft of letter re arrangements to discuss external boundary

the compact negotiations and that he was now committed to persuading them into processes that were intended to result in the rapid alienation of very large areas of their lands.

Butler moved from Wellington to Wanganui to begin his land purchase work in late December 1885. In doing so, he charged his removal expenses to the Waimarino land purchase account.<sup>762</sup> He also charged the account with a number of other expenses necessary for beginning land purchasing in the district, including a tent and fly and alterations to the land purchase office at Wanganui.<sup>763</sup> This seems to indicate that even at this stage, the Waimarino lands were intended to be the focus of his interest. However, while initial preparations over these were taking place, Butler was also instructed to pursue purchasing in other blocks in the Whanganui district where previous advances had been made.<sup>764</sup>

Butler's expenses records show that he also held a number of meetings with chiefs at Taumarunui and Wanganui during December 1885 and February 1886.<sup>765</sup> These presumably coincided with the meetings Sheridan was also involved with and may well have involved some of the other blocks as well as Waimarino lands, although expenses were charged to the Waimarino account. No correspondence survives to indicate the subject of these meetings. Correspondence register entries show expenses for conveyance of an urgent letter to the chief Ngatai at Taumarunui in December 1885.<sup>766</sup> This was presumably Ngatai te Mamaku and may have been concerned with the Opatu block. However, it is possible that Butler was also intending to sound out his opinions on the nearby Waimarino block.

When the application for the Waimarino block was received in late 1885, purchase preparations appear to have intensified. A significant meeting appears to have occurred in Taumarunui in early January 1886, with Butler paying for four canoemen and the hire of a canoe for travel to Taumarunui and return on 7 January 1886. this was also charged to the Waimarino account.<sup>767</sup> On 8 January, Butler paid S Manson (a storekeeper) for the provision of supplies to Maori between 16 December and 8 January 1886, again charging it to Waimarino.<sup>768</sup> Butler may have just been helping out with the expense of the meeting but the

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<sup>762</sup> MA-MLP 7/10 p 11-12 vouchers 588 and 618 December 1885 ANZ

<sup>763</sup> MA-MLP 7/10 pp 11-12 vouchers 588, 618, 619 December 1885 ANZ

<sup>764</sup> MA-MLP 4/3 p 222,227 instructions Lewis to Butler January 1886 re purchasing in Kaimanuka, Rawhitiroa, Otaupari, and Otaranoho blocks, ANZ .

<sup>765</sup> MA-MLP 7/10 pp 12-14; 19-20 vouchers 620-623, 681, 839, 889, ANZ

<sup>766</sup> MA correspondence register entry 85/4106, 16 December 1885, ANZ

<sup>767</sup> MA-MLP 7/10 p 12 vouchers 620-623 for 7 January 1886 , ANZ

<sup>768</sup> MA-MLP 7/10 p 19 voucher 839 , ANZ

payment of storekeepers for provisions for cooperative Maori was an old land purchase tactic. Later in January 1886, Butler charged the expense of conveying a letter to surveyors Thorpe and Annabell to the Waimarino account.<sup>769</sup> Presumably this was in connection with the sketch plans required for a Land Court investigation. On 22 February 1886, the same day the Court session began in Wanganui during which the Waimarino case was to be heard, Butler paid Te Huia Te Whetu £3 for delivering letters up the Whanganui River to the chief Ngatai and other Maori.<sup>770</sup> These expenses were charged against the Waimarino land purchase account, possibly indicating that Butler was attempting to deal with recognised influential chiefs in the area, even if Ngatai had not been directly involved or named in the application.

A few days later, on 24 February 1886, Butler paid Kahu Karewao an advance to pay the Court fees on the Waimarino block.<sup>771</sup> This was also an old tactic already mentioned in connection with 1870s purchases, where government agents paid many of the costs of cooperative chiefs in order to have land identified for purchase brought to the Court. Kahu Karewao was possibly the same Kahu Karewae named in the body of application 772, although he was not one of the signatories. This again suggests that Butler was already in contact with at least some of the chiefs who were involved with the Waimarino application. On 10 March 1886, just before the Waimarino hearing began, Butler purchased duty stamps for land purchase receipts, again charging them to the Waimarino account.<sup>772</sup>

Clearly, although the exact details are not available, Butler was very busy meeting chiefs and it seems very likely that his discussions included details of how the large Waimarino application might be brought before the Land Court. These discussions may also explain why many of the smaller applications of this time seem to have been accepted as subsidiary to the main Waimarino case, although it is not clear what communities understood would be the implications of this for their interests.

## **5.5 Purchase preparations in nearby Opatu block, 1885-86**

While most correspondence concerning Waimarino for this period does not appear to have survived, some official correspondence does survive for the nearby Opatu block in the Tuhua

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<sup>769</sup> MA-MLP 7/10 p 13, voucher 630, ANZ

<sup>770</sup> MA-MLP 7/10 p 20, voucher 889, ANZ

<sup>771</sup> MA-MLP 7/10, p 20 voucher 890, payment 24 February 1886 advance to pay Court fees on Waimarino block, ANZ

<sup>772</sup> MA-MLP 7/10 p 23, voucher 983, ANZ

district where Butler was also pursuing a purchase. His reports from this block may give some idea of what Butler may also have been attempting with the Waimarino block. Early developments with the Opatu block have already been described in connection with the earlier 1870s system of Government land purchasing in chapter 1 of this report. The block was located in the 'v' shaped area just north of the confluence of the Ohura and Whanganui Rivers and roughly within the Kakahi and Opatu streams (see map 5 of this report).<sup>773</sup> It was located just over the river from the Retaruke and southern part of the Kirikau blocks. It is difficult to be sure whether it was considered part of the Rohe Potae area, although it was certainly on the borders. It may have been considered excluded because it had already been subject to considerable purchasing under Booth in late 1878. A survey in preparation for a Land Court hearing had also been completed in the late 1870s, although not without considerable opposition. A proposed Land Court hearing had been delayed and then postponed during the years of the Rohe Potae negotiations.

Ballance had been very critical of the system of purchase advances before Native Land Court investigation, but his final legislation making the practice illegal had exempted the Crown. When land purchase operations were started again in the Whanganui district, the Government appeared determined to take advantage of this to enforce the completion of the purchase begun with advances in the 1870s. In September 1885, Sheridan had noted that very large advances had been made on the block and after it was passed through the Court, the agreements would be 'enforced' while any European attempting to deal in the lands was now liable to penalties under the 1884 Act.<sup>774</sup>

The determination to 'enforce' the purchase based on advances paid cut across Ballance's earlier claim that the Government would be pleased just to get back the advances it had paid. Just a month earlier, the chief Ngatai and others had indicated that they wanted to return the purchase advances and instead lease the land to Europeans.<sup>775</sup> However, Butler was instructed to complete the purchase of the block along the lines of the original agreement.<sup>776</sup> In late January 1886, Butler reported that the Opatu block had passed through the Land Court without opposition. He believed that all those who had been paid advances had been included in the lists of owners and asked whether he should request the Court to define the Crown

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<sup>773</sup> sketch map on MA-MLP 1892/203, ANZ, also shown on ML 772

<sup>774</sup> MA-MLP1, 1892/203, NO 85/253, ANZ

<sup>775</sup> MA-MLP 1, 1892/203, NO 85/253 16 August 1885, ANZ .

<sup>776</sup> MA-MLP 1, 1892/203, NO 85/253 telegram Lewis to Butler 26 January 1886, ANZ

interests or withdraw the Crown application, presumably to allow the whole block to be purchased. He also reported that he had ‘assisted the Maoris to prepare their case before going into Court’ and hoped that ‘we shall be as successful with the other upriver blocks’.<sup>777</sup>

Those listed as owners in the Opatu block included Topine te Mamaku, Te Pikikotuku and Hoani Paiaka. In February 1886, Butler reported that there were 67 names in total and that he had ‘endeavoured to have the number of names on the lists reduced, but in the absence of the Tuhua people who were admitted by the claimants to be largely interested, they declined to exclude any of them’. Therefore, he had decided not to insist on less names in the title, as if Ngatai and the others were omitted, this might ‘prejudice the successful investigation of the title to the larger blocks on the Whanganui River which we advertised for hearing on 22<sup>nd</sup> instant’. He hoped that then all the upriver Natives would attend the Court.<sup>778</sup> One of those larger upriver blocks he was referring to is likely to have been Waimarino.

In March 1886, Butler reported further difficulties with purchasing in the block as some owners refused to sell and others alleged they had never received the earlier advances or that they had been unfairly distributed.<sup>779</sup> These complaints were of course similar to those often associated with the 1870s system of advance payments to selected individuals. The Government insistence on purchasing based on these advances ensured the same concerns continued into the new purchase. Butler suggested the problem might be overcome by offering reserves to those who were complaining. The Under Secretary of the Land Purchase Department, T W Lewis, authorised Butler to make reserves of 10 acres for every owner who agreed to accept the purchase price of £5 (per interest) while slightly more could be paid to those who did not require a reserve. The reserves were to be located in one agreed area and were to be absolutely inalienable.<sup>780</sup>

The correspondence regarding the Opatu block is useful for indicating Butler’s tactics and intentions at this time, given that almost nothing survives regarding his early involvement with Waimarino. It seems clear from the Opatu reports, that Butler understood it was critical to involve himself in a block well before it was heard by the Land Court. This enabled him to assist selected persons in preparing their cases, especially those known to be supportive of selling or at least susceptible to purchase pressure because they had previously been paid

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<sup>777</sup> MA-MLP 1, 1892/203, NO 85/386 telegram Butler to Lewis 28 January 1886, ANZ.

<sup>778</sup> MA-MLP 1, 1892/203, NO 87/115 Letter Butler to Lewis 4 February 1886, ANZ

<sup>779</sup> MA-MLP 1, 1892/203, NO 86/64 March 1886, ANZ.

<sup>780</sup> MA-MLP 1, 1892/203, NO 86/64 telegram Lewis to Butler 10 March 1886, ANZ

purchase advances, so that those most likely to sell were found to be owners. It also gave him an opportunity to influence the numbers of names that might be included in ownership lists. He was keen to reduce these as much as possible, presumably because this reduced the numbers he had to purchase from. However, he would modify this if it caused too much opposition, or if by including certain Tuhua names, he undermined potential opposition.

It is not clear how Butler persuaded people to reduce the lists of owners, thereby excluding some they clearly knew had interests. Possibly it was not well understood that only those actually named would be legally recognised as owners. Having fewer owners also made the future management of a block easier. The move in 1873 from ‘trustees’ to individual named owners had been a protection designed to prevent exclusion of interests. However, while it provided convenient lists for land purchase officers, the system of numerous individuals on a title, all with equal individual rights, made future management of a block very difficult, especially before systems of incorporations were provided. This had been one of the difficulties the alliance chiefs had identified in seeking legislative improvements concerning Maori land administration. In the meantime, it may have seemed sensible to have a few representatives represent everyone else in managing blocks. The difficulty was, as Butler well knew, that reduced numbers also assisted land purchase.

Similarly, Butler appears to have allowed claimants to believe that they could act on behalf of interests who were not even involved, even naming them in lists without their apparent knowledge or authority. He had reported that he tried to get the numbers of Tuhua names in the lists for Opatu reduced, but in their ‘absence’, and as they were admitted to be ‘largely interested’, the claimants had refused to do this. This suggests that officials were knowingly involving themselves in situations where owners with significant interests were not involved and may not even have known of the investigation. Instead, they were encouraging some people to name others so the process would seem credible, regardless of whether those named wanted to be involved. This appears to have been a cynical use of Court processes, especially in a district where it was known that there was long standing opposition to involvement with the Court. In this case, Butler appears to have allowed in these names for tactical reasons in the interests of further investigations upriver, including Waimarino. The claimants may have thought they were fairly acknowledging other interests, but they were effectively being used to make the system more apparently credible. Those boycotting or unaware of the Court hearing had few options. If they objected, they effectively had to take part in the process. In the meantime, the inclusion of their names might help the cases go unopposed. The land

purchase officers had the advantage of seeking to manipulate the lists so that while sufficient of these names were admitted for tactical purposes, their numbers would be low enough to still enable a significant purchase.

Another tactic Butler used in Opatu was the promise of purchase reserves for owners who might otherwise be reluctant to sell. These purchase reserves had some appeal, especially if it was understood they would be Crown granted to individuals avoiding the usual expense and delay of partitioning and surveying out interests. They offered the owners cash for their as yet undefined interests as well as the guarantee of some land. At the same time, the land purchase officer retained the advantage with such promises, as indicated by Lewis, of effectively deciding where these reserves would be located, so as not to upset Government plans for settlement.

The sparse surviving documentation for Waimarino suggests that Butler's preparations in this block would have been similar. It seems, for example, that Butler was involved in negotiations with influential chiefs of the district in late 1885 and early 1886. Butler's payment of an advance for Court fees for Waimarino to Kahu Karewao and his payments for sketch plans suggest he was closely involved in preparing for the Court case. It is possible that Butler may have also used previous advance payments on parts of the block to place pressure on some owners to take part in the Court case, even though as will be explained, it was later decided that it would be more convenient to write off these advances and begin purchasing afresh.

## **5.6 The sketch survey for the Waimarino title investigation**

It seems that although the Waimarino block was very large, and involved a number of different community and iwi and hapu interests, Butler and the Government decided to prepare for a very rapid Native Land Court title investigation. They may have been assisted by the opportunity to avoid a possibly contentious detailed survey of the block for the Court investigation. Previously, in the 1870s, at least a basic survey on the ground was required for the necessary sketch plan for Court investigation. The field survey work would have alerted local communities to the possibility of a hearing, and indicated what land was involved. This gave them the opportunity, if they wished, to oppose the investigation and obstruct the survey.

In the case of Waimarino, officials already had substantial survey information from the railway surveys, trig surveys and the survey of the external boundary. Ironically, although the

external boundary survey had been intended to protect the Rohe Potae, and although the Government had denied that the railway or trig surveys would be used for land title investigations, the information gained from these surveys appears to have been very useful to enable a sketch plan to be prepared with only minor fieldwork, avoiding to a large extent the possibility of further obstruction and preventing many communities from gaining an understanding of what land was involved.

As noted, Sheridan had charged some mapping work to the Waimarino purchase account as early as October 1885, well before applications for investigation were even made.<sup>781</sup> This indicates that officials were already considering what land might be included in the block to government advantage. Once the main application for Waimarino was received in December 1885, the Government sought to have the block mapped sufficient for Land Court hearing purposes. It seems that a number of surveyors were already operating in the southern part of the block, conducting triangulation and topographical surveys for general information, including in the 'back country' of the Whanganui district.<sup>782</sup> The surveyor Cussen was also still working on completing the triangulation surveys and topographical surveys in the Rohe Potae.<sup>783</sup> Surveys were also being conducted along the central route of the railway. As noted previously, there was considerable confusion in the district about the meaning of these various surveys, but communities had been assured that the triangulation surveys were for general information purposes and the railway survey had been agreed for railway exploration and construction purposes.

Some of the surveyors already working on these surveys were asked for the information they had already gathered to help compile a sketch plan of Waimarino sufficient for the Land Court, based on work already completed. They were asked to work within a very limited time, the application being made in late December 1885 and the hearing expected for February 1886. Most of the sketch plan could be based on natural features such as river boundaries and some existing trig stations, such as at Ruapehu, with just some areas of uncertainty that required more work. This feature and the fact that the claimed boundaries generally respected other block boundaries (other than the Rohe Potae) suggests that Butler or other officials may have advised Te Rangihuatau and others what would be acceptable in their application. They may also have believed they were protecting lands not yet under Native Land Court authority.

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<sup>781</sup> MA-MLP 7/10 p 8 voucher 489, ANZ

<sup>782</sup> Report of Wellington survey office, J W A Marchant, 1883-84. *AJHR* 1884 C-1 pp 36-37

<sup>783</sup> Survey reports for 1883-84, *AJHR* 1884 C-1

Most of the work required for the Waimarino sketch plan seems to have been managed from the Wellington survey office. However, the provincial boundary ran across the northern part of the claimed block and this meant that some of the northern part of the plan would need to rely on information from the Auckland survey office, in particular on the work of Cussen who had been working in the Rohe Potae area carrying out triangulation surveys and the external boundary survey.

The main Wellington survey file for the work on the sketch plan contains a number of early plans and reports on work required for the Waimarino title hearing.<sup>784</sup> This indicates that the main areas of concern in preparing the sketch plan were in the northeast and south of the block. The north of the block included much of what communities of the area regarded as southern Tuhua lands and a large portion of land that had been included within the Aotea external boundary survey agreement. However, official indications of uncertainty were not over any possible conflicts with the Aotea boundary. This was clearly shown in early sketches and tracings as being within the claimed Waimarino boundary.<sup>785</sup>

Instead, officials appeared most concerned that the northeast boundary of Waimarino, from Ruapehu north to the upper Whanganui River, matched with the block boundaries of the adjoining eastern Okahukura and Taupouiatia blocks as established by the Land Court. There was some difficulty with Taupouiatia, as this was still before the Court and the boundaries had not been clearly confirmed. The clear inference was that the Native Land Court block boundaries the Government wanted were to be taken careful account of, but not the Aotea block the interior alliance was trying to protect, even though the Government had persuaded the alliance to make an application in order to protect it and had also entered an agreement in good faith by which the iwi involved would pay for the external Rohe Potae boundary survey.

The Chief Surveyor at Wellington, J W A Marchant, contacted the Auckland survey office for information and a tracing of the northern part of Waimarino by telegram of 13 January 1886.<sup>786</sup> Marchant asked for tracings to be sent to Wellington showing the boundary places listed and adjacent country. These place names (also named in the Waimarino application) began at the summit of Ruapehu then down the Mangahuaia and Whakapapaiti streams to the

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<sup>784</sup> LS-W 1, 2351, ANZ. Unfortunately many of the sketch maps on this file are not easily copyable. The maps have the same main number as the file - 2351.

<sup>785</sup> Sketch plans and tracings at beginning of file, eg 2351/1, LS-W 1, 2351, ANZ

<sup>786</sup> telegram Marchant to Assistant Surveyor General, Auckland, 13 January 1886, BAAZ 1108/108c Waimarino block survey file, ANZ-Akd, copy on LS-W1, 2351 ANZ

Whakapapanui stream. From there the boundary went to Te Kouroau, then northeast to Taurewa and then to Waipatukakahu on the Whanganui River, then by the river to the 'Manganui o teao'. Survey officials were generally much more open than other officials about the close relationship between the Land Purchase Department and the Native Land Court. In this case, Marchant explained that, 'as map has to be made for Land Purchase Department to submit to present Court matter is urgent'.<sup>787</sup>

At the same time, Marchant also gave instructions for compilation work to begin on the main sketch plan for Waimarino and noted he was also seeking information from the surveyor James Thorpe on the southern boundary of Waimarino. Thorpe was to 'add what he can' to the copy of the tracing Marchant was preparing.<sup>788</sup> Marchant noted sketch plans were needed for Waimarino and another block, 'which the Land Purchase Department are endeavouring to purchase'. The matter was considered 'most urgent' and the tracings 'will be sent by Mr Butler'. On the back of this note a draft instruction marked as 'urgent for Mr Ballance's land purchase information' required the preparation of a sketch plan for Waimarino and noted the requests to Mr S P Smith at Auckland for the Aotea and northern areas and to Mr Thorpe for the southern boundary of Waimarino.<sup>789</sup>

In response to Marchant's request, the Assistant Surveyor General, S Percy Smith, first noted that some of the place names mentioned were shown on the plan for the Okahukura block, which Marchant already had. He further explained that his office had no information on names past 'Taurere' [Taurewa?] and he informed Marchant that the tracing was in the mail.<sup>790</sup> The tracing as sent clearly lacked considerable detail. It was based on triangulation work done by Cussen, largely to the north of Waimarino, in the Aotea Rohe Potae and other blocks, although there was the overlap of that part of the Aotea block in the claimed Waimarino boundary. The covering letter with the tracing noted that the Auckland office had been unable to provide many of the boundary names asked for, 'principally because this country is the only part of the King Country block remaining untriangulated' although Mr Cussen 'is now doing it'.<sup>791</sup>

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<sup>787</sup> telegram Chief Surveyor Marchant (Wellington) to Assistant Surveyor General, Auckland, 13 January 1886, BAAZ 1108/108c Waimarino block survey file, ANZ-Akd, copy on LS-W 1, 2351 ANZ

<sup>788</sup> File note, 13 January 1886, J W Marchant to Mr Mackenzie, LS-W 1, 2351, ANZ

<sup>789</sup> File note 13 January 1886 and draft instructions on reverse, LS-W 1, 2351 ANZ

<sup>790</sup> Telegram S P Smith to Chief Surveyor Wellington, LS-W 1, 2351, ANZ

<sup>791</sup> Memo, Assistant Surveyor General to Chief Surveyor, Wellington, 16 January 1886, BAAZ 1108/108c Waimarino block survey file, ANZ-Akd, copy on LS-W 1, 2351, ANZ

Percy Smith also explained that he had sketched in the approximate boundary of the Taupouiatia claim on the tracing [where it adjoined Waimarino]. He described the Taupouiatia claim as the tribal block of Ngati Tuwharetoa now before the Land Court at Taupo, but also ‘on a mere sketch’. He explained that the boundaries of the [Taupouiatia] block were not defined on the ground, simply being run from known place to known place. However, as the sketch plan was before the Taupo Court, details could not be provided. Instead a copy of the Court panui, listing the claimed boundaries for Taupouiatia was enclosed. Percy Smith also asked for the name of ‘your block’ for his records.<sup>792</sup> This was presumably so that, in general, the normal practice could be followed of ensuring that Native Land Court block boundaries were defined so as to properly adjoin rather than conflict with each other.

Another area of uncertainty with the Waimarino sketch plan was the southern boundary of the claimed block, which on a number of early sketches is shown as a fairly straight line (sometimes dotted to show uncertainty) from the confluence of the Whanganui and Manganui a te Ao Rivers across to Ruapehu.<sup>793</sup> As soon as the tracing from Auckland for the northern part of the block was received, Marchant arranged to have copies sent to James Thorpe to use in his compilation of a sketch for the whole block. On 20 January 1886, the chief draughtsman wrote to Thorpe noting that Thorpe and Marchant had been discussing the survey for the Waimarino block and informing him that he was sending on tracings from the Auckland office. He understood that a sketch plan of the block was required early next month for the Land Court and ‘that you are going to supply it from your topographical data’. He asked Thorpe to let him know if he required any assistance and reminded him to ‘help the Land Purchase Department as much as possible, this matter most urgent’.<sup>794</sup> Shortly afterwards, Marchant also instructed that a rough compilation be sent to Butler at Wanganui. Butler was also to be informed of the instructions to Thorpe, and another surveyor Annabell, for the completion of sketch maps of blocks he wished to bring before the Court.<sup>795</sup> Marchant was, again, much more direct about Butler’s role in ‘bringing’ blocks to the Court.

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<sup>792</sup> Memo, Assistant Surveyor General to Chief Surveyor, Wellington, 16 January 1886, BAAZ 1108/108c Waimarino block survey file, ANZ-Akd, copy on LS-W 1, 2351, ANZ

<sup>793</sup> LS- W 1, 2351, early plans on file including SO 2351/1, SO 2351/3 and annotated lithographs, ANZ.

<sup>794</sup> Chief Draughtsman to Thorpe 20 January 1886, LS-W 1, 2351, ANZ

<sup>795</sup> File note 26 January 1886, LS-W 1, 2351, ANZ

Thorpe later reported that he received his instructions for completing the Waimarino sketch plan on 25 January 1886.<sup>796</sup> He had also apparently been asked to sketch in on this the boundaries described in a number of other applications at the time. Unlike the case with Waimarino and the Rohe Potae, the Government apparently decided in this case that the other applications would simply be noted on the main Waimarino sketch plan, not treated as entirely separate applications. This highlights the advantage the Government could gain by being able to pick and choose which applications in any area would be treated as the ‘main’ ones and which would be regarded as subsidiary or even separate to this.

The records show that Thorpe was sent three other applications for lands within the main Waimarino claim. These were all dated 5 January 1886 and were some of the applications already mentioned from the duplicate survey records.<sup>797</sup> These were for Oruapuku (duplicate 727) described (in translation) as beginning at the lower part of Oruapuku, then running inland of Rautoha River to Pakuka then to Te Kohatu before turning east and running to Makotuku and Kopounga. From there it turned south and followed the Makotuku stream to the mouth of the Makara stream before turning west to Takewhata and to Oruapuku again.<sup>798</sup> Thorpe later described this claim as a narrow strip of land one to two miles wide bounded by the streams mentioned and descending west for several miles from the western slopes of Ruapehu.<sup>799</sup> Another application sent to Thorpe was Ngaporo (duplicate 726) described (in translation) as beginning at Te Autapu, then to Parinui, Te Hihi, Koraki, Paerata, Purakau, Te Hirinaki, Kaiaho, Wekapatua then northeast to Horokoihai and Waimere then west to Waituhu, Pukeatua, and falling into the Manganui a te Ao following it to the Whanganui River and then south again to Ngaporo at the start.<sup>800</sup> Thorpe described this as an area of about 2900 acres at the junction of the Manganui a te Ao and Whanganui Rivers.<sup>801</sup> The third application Thorpe held was Tahereaka (duplicate 724) described (in translation) as beginning at Tahereaka then east to Puauae then along the Mangaturuturu stream to Parihakoakoa, west to Takahirangi striking the Kaiwaka stream and following it to the confluence with the

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<sup>796</sup> Thorpe reports on Waimarino claim boundary surveys, LS-W 1, 2351, ANZ

<sup>797</sup> Copies of applications sent to Survey office, LS-W 1, 2351, ANZ

<sup>798</sup> Translation attached to copy of application, LS-W 1, 2351, ANZ

<sup>799</sup> Thorpe survey reports on Waimarino claim surveys, LS-W 1, 2351, ANZ

<sup>800</sup> Translation attached to application, LS-W 1, 2351, ANZ

<sup>801</sup> Thorpe reports on Waimarino claim boundary surveys, LS-W 1, 2351, ANZ

Whanganui River and following the river to Tahereaka again.<sup>802</sup> Thorpe later described this claim as being in the locality of Mangapurua.<sup>803</sup>

Thorpe had apparently been asked to show these three applications on the main Waimarino sketch plan of the application made by Te Rangihuatau and others. It is not clear why the other applications also apparently involving lands within Waimarino, such as the Ngati Rangi claim at Kirikiriroa and the Popotea claim were not also sent on. Possibly this was because they were outside the area where Thorpe was working. There may have also been some undocumented arrangement about these other applications or possibly the boundaries were already known.

With regard to the large Waimarino claim, it seems clear that Thorpe was really just compiling a sketch plan from his previous work and the additional information sent to him. The only additional work on the ground was along the unclear southern boundary and for the three applications sent. Thorpe clearly had difficulties in finding many of the places mentioned in the applications and in defining the applications and southern boundary on the ground. He reported that after receiving his instructions he had gone to Tieke on 27 January 1886, to seek the assistance of Te Rangihuatau over the southern Waimarino boundary. However, he claimed that Te Rangihuatau had pleaded other engagements and referred him to other Manganui a te Ao chiefs, including 'Peehi'. These chiefs had refused to show him the boundary points and he therefore completed his sketch plan for this area from his own previous trig work and the information sent to him. Thorpe had apparently originally intended to follow the southern boundary on the ground with Te Rangihuatau as a guide, as far as the surveyor Wilson was working on trig surveys just south of Ruapehu. However, in a telegram of 17 February 1886, he reported that as the Natives had refused to show him the southern boundaries, he had returned to Wanganui to 'compile the best plan possible' from the maps sent to him and his own work 'near' the southern boundary.<sup>804</sup> He reported that he had handed his tracing of the block to the Registrar of the Native Land Court on 24 February 1886.<sup>805</sup>

Thorpe had also found defining the other application boundaries difficult. He reported that Kaioroto and Mahirini had pointed out the boundaries of Ngaporo to him on the 2 February 1886 and following days. However, in the case of Oruapuku, Thorpe reported that Kaioroto

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<sup>802</sup> Translation attached to copy of application, LS-W 1, 2351, ANZ

<sup>803</sup> Thorpe reports on Waimarino claim boundary surveys, LS-W 1, 2351, ANZ

<sup>804</sup> Thorpe telegrams to Chief Surveyor Wellington, 17 February 1886, LS-W 1, 2351, ANZ

<sup>805</sup> Thorpe report on Waimarino sketch plan LS-W1, 2351, ANZ

had only been willing to point it out from the Pipiriki trig station on 11 February 1886 and he had declined to show the boundaries further on the ground. Thorpe had, therefore, been unable to fix the boundaries and could only show the approximate position of the claim on the Waimarino plan. With regard to the Tahereaka claim, Thorpe reported that arrangements had been made on 15 February 1886, for the chief Patuwairua to point out the boundaries. However, Thorpe reported the chief had decided at the last minute to postpone doing so until after the hearing of the Waimarino claim. As a result, Thorpe was, again, only able to indicate the approximate area on the sketch plan.<sup>806</sup>

Even if the chiefs had been willing to point out more boundaries on the ground, they hardly had time to do so in time for Thorpe to compile the sketch plan in the few weeks allowed. On 2 February 1886, Thorpe had already assured the Chief Surveyor that he would do his best to complete the plans by the 14 February.<sup>807</sup> It was certainly convenient that Thorpe was unable to continue to work on the ground, given the very short time he had. This left him at least some time to use the information at hand to compile his sketch plan. It also seems that the chiefs involved with Tahereaka especially, understood that having made an application, their claim would be heard after Waimarino. They may well have formed this view after seeing how the Waimarino and Tauponuiatia applications were allowed to intrude into, or override the Aotea block application. However, in general, it seems that the Government retained the ability to decide what application in an area it would regard as taking precedence while other conflicting applications might simply be treated as counter-claims. Waimarino seemed to follow this general procedure with the three applications simply shown on the main sketch plan and not treated as completely separate claims. Popotea does eventually seem to have been treated separately, although it is not clear why and other claims appear to have received little further attention.

While Thorpe was completing the Waimarino sketch plan, Butler became concerned that it would not be completed in time. Marchant sent Butler an early tracing of the Waimarino block on 1 February 1886, asking for any details that might be helpful for the finished sketch plan and noting that Thorpe had been instructed to compile the sketch plan for the Land Court.<sup>808</sup> On 9 February, Butler wrote to Marchant saying he was returning the tracing and noting that Annabell had told him that Thorpe might be some time in making the final sketch

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<sup>806</sup> Thorpe, survey reports on Waimarino claims, LS-W 1, 2351 ANZ

<sup>807</sup> Thorpe to Chief Surveyor 2 February 1886, LS-W 1, 2351, ANZ

<sup>808</sup> Marchant to Butler, 1 February 1886, LS-W 1, 2351, ANZ

plan. He asked whether a sketch plan could be made from the tracing and provisionally certified for the use of the Court, in the event of Thorpe not finishing by 22 February.<sup>809</sup> Marchant replied on the same day that, if Butler would go carefully over the Waimarino boundaries and sketch on the tracing any alterations 'you require', he would have a sketch plan made for the Court. At the moment he 'had no further information to enable me to amend plan' but when they heard from Thorpe, they could correct the south boundary.<sup>810</sup>

On 11 February 1886, Butler returned the tracing of Waimarino noting all boundaries 'appear to be as nearly as possible correct'. He also noted that, if any alteration was required to the southern boundaries, 'I suppose it could be done before a final order is made' by the Court, if Thorpe could not supply the necessary information in the meantime. He also noted that surely the area was more than 40,000 acres.<sup>811</sup> He had presumably noted an error in the figure written on the map for the estimated acreage. Butler's letter was annotated by Marchant on 13 February 1886, that the tracing was provisionally approved and to return it to Butler. This was noted sent on 15 February 1886.<sup>812</sup> A copy of the reply from Marchant to Butler dated 15 February 1886, notes the tracing of Waimarino was returned 'as provisionally approved by me'.<sup>813</sup>

This series of correspondence clearly shows how closely such block surveys were linked to land purchase work and how they were manipulated to promote the interests of land purchasing. In the case of Waimarino, which was a very large block, the time available to compile even a rough sketch plan was clearly inadequate, especially if it was to inform and protect Whanganui Maori interests in any way. Even though the Government had insisted the railway and triangulation surveys were neutral and separate from the surveys for Court investigations, in practice they clearly were not. The information gained in these surveys was vital to compiling any kind of sketch plan in limited time. Survey officials also clearly understood that their function was to facilitate land purchasing and help in any way possible. Again this raises the issue of how neutral such surveys were for the process, let alone protective to Maori interests.

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<sup>809</sup> Butler to Chief Surveyor Wellington 9 February 1886, LS-W 1, 2351 ANZ

<sup>810</sup> Marchant to Butler, 9 February 1886, LS-W 1, 2351, ANZ

<sup>811</sup> Butler to Marchant, 11 February 1886, LS-W 1, 2351, ANZ

<sup>812</sup> Letter Butler to Chief Surveyor Wellington, 11 February 1886, and annotations, LS-W 1, 2351, ANZ

<sup>813</sup> Copy of reply Marchant to Butler, 15 February 1886, LS-W 1, 2351, ANZ

The process also shows what a fundamental role such surveys had in renaming, redefining and sometimes even relocating names and districts from the way they may have been traditionally understood. Surveyors named trig stations, using Maori names, but these need not bear much, or any, relation to traditional understandings. The locations were also chosen for survey requirements; they did not necessarily mark important areas for Maori. Nevertheless, it was the trig stations and names that came to be considered authoritative, even though in many cases such as Waimarino, there was very little or no community participation input into naming. Similarly, survey districts also commonly used Maori names but they also came to redefine those districts. The early maps show the Tuhua survey district as including the central Tuhua area, but well distant from the land south of the upper Whanganui also regarded as Tuhua by local communities. This helped confirm official views that ‘Tuhua’ did not extend south of the river. This kind of process was far from neutral and is likely to have had important consequences for those Whanganui people attempting to establish their claims in Waimarino, especially when the sketch plan seems to have included so few names familiar to them.

There is no evidence at all in the correspondence concerning the sketch plan for Waimarino of any concern to protect Whanganui Maori interests in the process. It seems to have been considered quite appropriate to simply compile sketch plans from other surveys and from calculations without having spent much time on the ground, even when the plan was intended for a title investigation where owners may have need to see place names they were familiar with and where careful work on the ground may have alerted communities to the need to protect their interests. There is also no evidence of any concern that the very great haste in compiling the sketch plan effectively left virtually no time for owners to examine the map and raise any objections to it. The focus is very clearly on the needs of land purchase and to facilitate this, rather than any requirement to protect Maori interests. This raises the issue of just how adequate many of the protections of the survey process, including the need to approve plans really were, once the Government was determined to purchase. It may also have been expected that with the Government in such a position of power, through its monopoly in dealing in land in the railway district, considerable care would have been taken to ensure any possible protections in surveying were carefully observed. This does not seem to have been the case for Waimarino.

The Waimarino sketch plan for the Court investigation of title appears to have been compiled in time for the hearing and it had at least provisional approval. However, it was clearly based

on very sketchy information, and with little input from Whanganui Maori. The official copy of the sketch plan for the Court title investigation appears to be Linz plan ML 772.<sup>814</sup> A copy is included as map 5 of this report. This plan ML 772 has the same number as the main Waimarino application from Te Rangihuatau and others. It also shows the original estimated area of around 490,000 acres for the Waimarino block. It is shown mostly bounded by natural waterways and the mountain. It also contains large amounts of blank space in the interior as might be expected given the lack of detailed information. The most detail appears around the vicinity of the Manganui a te Ao. Some adjoining blocks, such as Opatu, Retaruke, Kirikau and the Tauponuiatia block are shown. A faint line showing the Aotea boundary as it is enclosed by the block is also shown, although it is not labelled. A number of the other smaller applications as required to be drawn in by Thorpe are also shown. These include, for example, the Ngaporo, Oruapuru, Tahereaka and Popotea claims. Plan ML 772 is also annotated as being the sketch plan produced before the Court for the March 1886 hearing for Waimarino, and is signed by Judge O'Brien as the official Court copy. It has unfortunately since been amended, with information on a later military reserve, for example, and some information may have been lost or faded over the years.

Nevertheless, this plan ML 772 does not have the annotations noted in Court evidence, especially the lettering marking claimed boundary places, as was later referred to in Court, as will be explained. It is possible this is therefore a 'cleaned up' version of the original map produced before the Court. A tracing on the survey file for Waimarino (SO 2351/12) does show some of this lettering, indicating that possibly a version of this tracing was also placed before the Court.<sup>815</sup> The tracing on file, however, is also a slightly later version, as it shows the areas the Court finally accepted for inclusion in the Waimarino claim and those areas that the Court excluded. Some caution seems required, therefore, when using information now shown on ML 772 as an accurate indication of what was actually before the Court at the time.

A copy of another somewhat later sketch plan (SO 2351/66) has also been found on the purchase file for the Waimarino block.<sup>816</sup> This is annotated as a 'rough outline of Waimarino as sent to Court 21 January 1886'. This is signed and dated 22 January 1887.<sup>817</sup> (see map 6 of this report). This sketch plan, although it may show information used by the Court in 1886,

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<sup>814</sup> Linz – map ML 772

<sup>815</sup> SO 2351/12 on LS-W 1, 2351 ANZ

<sup>816</sup> MA1, 1924/202 v1 ANZ

<sup>817</sup> SO 2351/66 copy on MA1, 1924/202 v 1

was later amended and actually seems closer to the later plan produced for the Crown award hearing in early 1887. It may well have been a copy of the earlier tracing, annotated and used by Butler for purchasing purposes, as it also shows information about the proposed railway route and comments on the suitability of land for settlement along it, presumably as obtained by Rochfort during his explorations for the railway route.

Paul Hamer has noted that plan ML 772 does not contain the annotation ‘certified as correct by the Surveyor-General or a surveyor authorised by him in that behalf’ as required by section 39 of the Native Land Court Act 1880.<sup>818</sup> It is possible that this certification has been lost in some parts of the map that have since worn away. It is also clear from earlier correspondence that Marchant had anyway provisionally approved a sketch plan, should Thorpe not finish in time. It seems likely therefore that this map would have been certified. As Hamer notes, the Land Court could anyway waive this ‘protection’ and proceed under section 23 of the Act, which enabled the Court to investigate title by such evidence as ‘it shall think fit’.<sup>819</sup> Clearly a very rough plan was all that was required. The Court could proceed on this for an investigation of ownership and then require a ‘proper’ plan before title could issue, leaving the owners with no option but to wait for this, often with very little idea of what land was actually involved. This seems to have been the case with Waimarino, where Maori had very little input into place names for the sketch plan, which may have helped them recognise districts, and virtually no chance to examine it before the hearing. The ‘proper’ survey plan for Waimarino, what would become plan ML 776 (map 7 of this report) was not completed until early 1887, and by then most of the block had already been purchased.

### **5.7 The Native Land Court investigation of title to the Waimarino block, March 1886**

The Native Land Court investigation of title for the Waimarino block began on 1 March 1886.<sup>820</sup> The block had been notified to be heard by Native Land Court sitting at Wanganui beginning on 22 February 1886, although in fact the Whanganui Land Court had been sitting from mid-January 1886.<sup>821</sup> The sitting beginning 22 February just seems to have flowed on from this. Possibly it was advertised separately to allow for blocks such as Waimarino to be included even when applications were received relatively late for the sitting. As was usual with Court notices, the February date was simply when the particular sitting was to begin and

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<sup>818</sup> Hamer, ‘The Crown’s purchase of the Waimarino block’ p 14

<sup>819</sup> Hamer, ‘The Crown’s purchase of the Waimarino block’ p 14

<sup>820</sup> MLC-Whanganui MB 9 p 199

<sup>821</sup> MLC-Whanganui MB 7 p 517

there was no certainty when the Court would be hearing the Waimarino case after this. Those interested just had to attend until the case came up. Butler appears to have believed it might come up reasonably soon after 22 February, hence the pressure on Thorpe. However, Thorpe had finally handed his sketch plan to the Court registrar on 24 February 1886, two days after this and possibly Butler managed to have the Waimarino hearing delayed a little longer.

After beginning the Waimarino case on 1 March 1886, the Court adjourned after less than two hours to allow for the compilation of lists. On 9 March, the Court granted a further time extension to the adjournment to allow further work on lists.<sup>822</sup> The hearing continued again from 13 March until 16 March 1886, when the order for the block was made. In total, the hearing for the estimated 490,000 acres of the Waimarino block lasted less than three and one half days.<sup>823</sup>

The original Waimarino case appears to have been jointly heard by Judges E W Puckey and Laughlin O'Brien, although the Court minutes are not entirely clear about this. Having two judges working together appears to have been an attempt to ensure the Whanganui hearings could sit almost continuously for a long period at this time, presumably so that land could be made available for the renewed programme of government land purchasing. After a break at the end of 1884, Native Land Court hearings at Wanganui appear to have begun again on 14 January 1886.<sup>824</sup> These sittings appear to have continued through 1886 and into early 1887 when the partition order for the Crown award in Waimarino was made.

Judge Puckey, like many Native Land Court judges of this time, had previously served as a government land purchase agent in the Thames and Piako districts before being appointed a Land Court judge in 1881.<sup>825</sup> Judge O'Brien had been a sheriff, marshall and registrar in the Court system before retiring from the public service as registrar of the Supreme Court Auckland in 1875.<sup>826</sup> In 1880, at the age of 59, he had been appointed a judge of the Native Land Court.<sup>827</sup> He had been pensioned again in 1885.<sup>828</sup> However, he seems to have been brought back to assist with Whanganui Native Land Court investigations, possibly due to

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<sup>822</sup> MLC-Whanganui MB 9 p 257

<sup>823</sup> MLC-Whanganui MB 9 pp 199-290

<sup>824</sup> MLC-Whanganui MB 7 p 517

<sup>825</sup> MA series 25/1 p 226, ANZ

<sup>826</sup> MA series 25/1 p 191 ANZ

<sup>827</sup> *New Zealand Gazette* no 99, 21 October 1880, p 1519

<sup>828</sup> MA series 26/13 , 85/1251 pensioned from 30 June 1885 ANZ

anticipated heavy workloads. He appears to have continued to be pensioned and then brought back through 1887-1889.<sup>829</sup>

The Court minutes indicate that both Puckey and O'Brien sat together for most cases heard in early 1886. For example, the minutes of 23 January 1886, record those present as judges Laughlin O'Brien and E W Puckey, the interpreter REM Campbell and clerk, J B Austin.<sup>830</sup> The assessor Paraki te Waru was not noted at this time, but was recorded as being present a few days earlier.<sup>831</sup> It seems that Judge Puckey was quite ill for much of the first few months of 1886 and this was sufficiently serious for him to have to leave the Court on several occasions, both before and after the Waimarino hearing, leaving Judge O'Brien to continue hearing cases alone. The minutes indicate when he had to leave but are less clear when he returned so it is not entirely clear whether he also heard Waimarino. However, it seems likely that both he and Judge O'Brien heard the case.

It seems that Judge Puckey was quite ill leading up to the Waimarino hearing. The minutes record him as absent through indisposition on 29 January 1886, and he was also recorded as absent on 30 January and 1 February.<sup>832</sup> He was forced to leave the Court through illness again on 27 February 1886, soon after it opened at 10am and the Court adjourned shortly afterwards at 11.45 am, until the following Monday 1 March, when the Waimarino hearing was due to start.<sup>833</sup> Unfortunately the minutes are not clear whether Puckey and O'Brien were both in attendance for the Waimarino hearing, they merely note that those present were 'the same' as previously.<sup>834</sup> However, it seems likely that both judges did hear the Waimarino case, as the minutes of 16 March, when the order for Waimarino was made, note that Puckey was feeling ill again and left the Court at 10.30 am while the Court continued sitting in his absence. Puckey remained absent on 19 March, when the Court adjourned until the following week to allow for the large hui taking place at the time. Puckey was apparently present at the Court again on 24 March, but was absent again through illness on 7 April 1886.<sup>835</sup> From 8 April 1886, it seems that Judge Puckey left the Whanganui Court for Hokianga and Judge O'Brien continued to hear cases on his own, including later findings for the Waimarino block regarding matters such as the appointment of trustees for minors, errors in lists of owners and

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<sup>829</sup> MA 26/14 p 23, p 88, *New Zealand Gazette* no 63, 22 November 1888, p 1285 ANZ

<sup>830</sup> MLC-Whanganui MB 9 p 3

<sup>831</sup> MLC –Whanganui MB 7 p 517

<sup>832</sup> MLC-Whanganui MB 9 pp 46, 51 and 53

<sup>833</sup> MLC-Whanganui MB 9 p 197

<sup>834</sup> MLC-Whanganui MB 9 p 199

<sup>835</sup> MLC-Whanganui MB 9 , pp 315, 324-5, 365

successions.<sup>836</sup> As noted, O'Brien also signed the plan 772. Later in the year he seems to have received additional assistance, such as from Judge Wilson.<sup>837</sup>

The minutes are not entirely clear about the other Court officials attending the Waimarino hearing. They are also recorded as 'the same' although it seems there were some changes over the year. It seems possible the assessor at this time was still Te Waru, although by 20 April, Hoani Taipua is also recorded as assessor.<sup>838</sup> It seems that in March 1886, the clerk of the Court was HC Jackson and the interpreter was still REM Campbell.

The minutes of the Waimarino hearing appear to be a summary only of the evidence heard. For example, the evidence taken for 45 minutes on 1 March 1886 from 2pm until 2.45pm is summarised in the Court minutes in just nine lines.<sup>839</sup> The minutes show that the notification of hearing for the block was by panui for a sitting from 22 February 1886 and it was number 12 as also shown in the panui. The minutes also refer to the application and Native Land Court numbers 86/20 and 3/100. Unfortunately these are not annotated on the duplicate of application 772, but presumably would have been on the original. The minutes show that the sketch plan used by the Court originally showed an estimated 490,000 acres for the block.<sup>840</sup>

## 5.8 The claimant case for Waimarino

The chief Te Rangihuatau, one of the signatories to application 772, was the first to give evidence and conducted the case for the claimants. He gave his hapu as Ngati Tamakana, and made his claim through descent and constant occupation from his tupuna Tamakana and through conquest.<sup>841</sup> He claimed that the Waimarino block boundaries also embraced claim number 10 of the panui for the 22 February 1886 sitting, regarding Oruapuku, and claim numbers 69 and 72 for Kawautahi and Mangapapa, notified in the panui for the 14 January 1886 sitting.<sup>842</sup>

Claim number 10 was the application 727 for Oruapuku already described, west of Ruapehu and in between the Kautoha and Makotuku streams. It had also been notified in the *Kahiti* of

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<sup>836</sup> MLC-Whanganui MB 9 p 376

<sup>837</sup> MLC-Whanganui MB 12 pp 95-98 23 October 1886

<sup>838</sup> MLC-Whanganui MB 10 p 7

<sup>839</sup> MLC-Whanganui MB 9 p 200

<sup>840</sup> MLC-Whanganui MB 9 p 199

<sup>841</sup> MLC-Whanganui MB 9 p 199

<sup>842</sup> MLC-Whanganui MB 9 p 200

21 January 1886.<sup>843</sup> The gazette boundary descriptions were also similar. It is shown as the ‘Oruapuku claim’ on map ML 772 (map 5 of this report).

Application numbers 69 and 72 had been notified earlier in the *Kahiti* of 17 December 1885.<sup>844</sup> Gazette application number 69 was notified as from Hone Paiaka Uruhanga, Tetara Pounamu, and Tangi Manurau (the same signatories as notified for the Opatu block application number 70 in the same notice). The block was called Kawautahi in the Tuhua and Whanganui districts and therefore seems to be the same as application 693 noted earlier, and dated 26 October 1885, even earlier than the Waimarino application. The boundaries of this claim were described as beginning at Iringaotewhiu, Murumuru, Kahikatea, Huratahi, Hunua, and near the Retaruke and Kirikau blocks. Some of these place names are shown on the map ML 772 and plan SO 2351/66 (map 6 of this report) and appear to mostly be located just east of Kirikau and Retaruke in the Kaitieke survey district in between the blocks and the external Rohe Potae boundary. No record has been found of a survey for this claim as Thorpe had done for other applications. It is also not clearly shown on ML 772, although this may be due to fading.

Gazette application number 72 was described as from Neta Whakamou, Pairua Te Rangikatatu, Honeri Henare ‘me etahi atu’. The land was described as Mangapapa from Otaehanga to Whanganui. The boundaries began at Totara, to the Whanganui River and included Kanae-o-whare, Marangai, Mairua, Okahu, Omaiti, Hanauru, the Otamapou River, Hanakuru, Te Arua, Otira, and Omarangi. This appears to have been in the locality just south of Kirikiriroa in the Retaruke and Whirinaki survey districts. This seems to have been the same as application 689 in the survey records, dated 12 November 1885 and described earlier. Again, no record has been found of Thorpe being asked to survey this application, nor is it clearly marked on plan ML 772.

Te Rangihuatau seemed to be saying that these applications had now been agreed to be included within the main Waimarino application. This possibly indicates the nature of Butler’s earlier discussions with various chiefs. He may well have been trying to persuade them to include their separate applications within the overall Waimarino claim. The advantages for the Crown in this seem clear, as one large block would be quicker and less

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<sup>843</sup> *Kahiti*, 21 January 1886, panui dated 12 January 1886, p 10 number 10.

<sup>844</sup> *Kahiti*, 17 December 1885, notice dated 31 October 1885p 271

cumbersome to purchase. The reasons why the chiefs may have been persuaded are not clear at this stage.

The Court seems to have accepted these claims were now part of the main case and called for objections to the main case. Only three objections were made. These were from Kiritahanga and Pata Hineuru, who both claimed from the ancestor Tamawhata, the son of Ururangi. The other objector, Taiwiri, claimed that Tamakana did not own the block alone and insisted that the ancestor Tukoia also be noted.<sup>845</sup> In response, Te Rangihuatau agreed to include the three objectors within his claim, and also agreed that Tukoia had a claim in a small area around Tieke.<sup>846</sup> This appears to have effectively closed down any further examination of the objections and ensured that Te Rangihuatau was accepted by the Court as the lead claimant with the accepted case to the block. The minutes also note that the Ngaporo lists were adjourned.<sup>847</sup> This was possibly a reference to the Ngaporo claim Thorpe had included on the plan. The Court then went on to hear evidence on the Popotea block, heard separately from Waimarino.<sup>848</sup> Paul Hamer has covered issues with Popotea in some detail in his report, so these are not addressed further here.<sup>849</sup>

Some of the applications that Thorpe had been asked to show on the plan do not appear to have been put forward at this time. For example, the Tahereaka claim does not appear to have been heard at all and nor does the Ngati Rangi application for Kirikiriroa. In the case of Tahereaka, Thorpe had noted that the chiefs had decided to wait until after Waimarino was heard. However, their claim was not being considered separately, but as part of Waimarino. It is possible that Butler may also have persuaded these chiefs to allow their applications to be subsumed within the larger Waimarino claim, on the understanding their names would be included in ownership lists and their interests protected in that way. They were later included in the lists of owners for Waimarino.<sup>850</sup> This enabled Butler to keep the larger block as intact as possible, although it is not clear how well the chiefs understood the process.

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<sup>845</sup> MLC-Whanganui MB 9 p 200

<sup>846</sup> MLC-Whanganui MB 9 p 200

<sup>847</sup> MLC-Whanganui MB 9 p 202

<sup>848</sup> MLC-Whanganui MB 9 p 202

<sup>849</sup> Hamer Paul, 'The Crown's Purchase of the Waimarino Block and Related Issues, and Supplementary Report, Treaty of Waitangi Policy Unit', 1992 pp 22-26

<sup>850</sup> Te Rangi Tawhana (owner 21) Te Kaporere Patuwairua (owner 209) Kuramate Te Ngatu (owner 392) in MA-MLP 7/6, ANZ

The Waimarino hearing was then adjourned for nearly two weeks while lists of owners were compiled for submission to the Court. As Te Rangihuatau was now the accepted applicant, all lists would presumably have also required his approval. At the same time, his apparent willingness to include the objectors and their concerns appears to indicate that he was more concerned with protecting the lands against possible outside claims, than exclusively claiming the block for himself and his party. It seems the process of compiling lists took some time and an extension of time was required.<sup>851</sup>

The Waimarino hearing continued again on 13, 15 and 16 March 1886. On 13 March, the hearing began with Kiritahanga claiming in the block near Raetihi, between Makotuku and Mangawhero. This was in the disputed southern area and appears to be related to the earlier objection that Te Rangihuatau appears to have accepted. Hanauera Kaioroto immediately objected to this. The Court adjourned for consideration of the ‘portion in dispute’, and instead called for lists of names.<sup>852</sup> The adjournment may have been to enable some kind of out of Court agreement to be reached about this dispute.

When the Court moved on to considering lists of owners, Te Rangihuatau asked for a delay of one hour to allow all his people to arrive.<sup>853</sup> The Court then seems to have gone back to considering the southern boundary dispute. Marama Tinirau also claimed land at Hukaroa near Makotuku. She asked for this part to be cut out of Waimarino.<sup>854</sup> She seemed to be supporting Kiritahanga. In her evidence, Marama Tinirau could not point out boundaries on the map but was confident they could be explained to a surveyor on the ground. It was not unusual for Maori who had little experience of the Land Court at this time to have difficulty understanding maps. However, admitting this in Court was often a serious disadvantage as the Land Court tended to assume this kind of unfamiliarity equated to a weak case.

Te Rangihuatau asked the Court not to cut out any land claimed by Marama and Kiritahanga, claiming that when the survey was made, care was taken not to include their interests.<sup>855</sup> This could hardly have been true, as Thorpe by his own admission received no help from local people, including Te Rangihuatau and his southern boundary in particular was clearly guesswork.

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<sup>851</sup> MLC-Whanganui MB 9 p 257

<sup>852</sup> MLC-Whanganui MB 9 p 277

<sup>853</sup> MLC-Whanganui MB 9 p 277

<sup>854</sup> MLC – Whanganui MB 9 p 277

<sup>855</sup> MLC-Whanganui MB 9 p 277

Kiritahanga then went on to describe the boundaries of the portion claimed, beginning at point A marked on the map known as Koutu at the junction of the Makotuku and Mangawhero streams. It then went to Pohokura on the Makotuku stream, then to Ruakaka, on to Mangatoatoa, Wharekahika, Wharepokai and Kopuanganga. It then went to Opuwhenua, Patoi, and Tuatara, marked with B. It then turned to Mangawhero in a southeasterly direction to a point called Totara, marked C on the plan. This was a stream running out of the Mangawhero and down that stream to the beginning.<sup>856</sup>

Evidence was then heard from Tareti Wairama concerning adjoining land beginning at point C on the map. It then went in a straight line to Tuatara, a place on the Patoi range, then along the range to the Mangaturuturu stream, and then from that stream to the summit of Ruapehu, then to the head of the Mangawhero and down that stream to the mouth of the Totara stream.<sup>857</sup> This was in the same area, but to the east stretching as far as the summit of Ruapehu. A marginal note in the minutes refers to land being cut out for these claims referring to the final Court judgment, which shows the area cut out for the Tareti te Waimarama claim as 14,977 acres and for Te Kiritahanga as 18,525 acres.<sup>858</sup> The Court minutes give no indication of why the Court agreed to accept these claims and cut out some (though not all) of the land claimed, in spite of the objections from Kaioroto and Te Rangihuatau. Possibly the Court may have accepted advice from Butler that accepting the claims would at least tidy up the uncertain southern boundaries.

These claims are not shown on the official plan ML 772, but are shown, with the letters referred to, on tracing SO 2351/12 on the survey file.<sup>859</sup> They adjoin each other along the southern boundary shown in ML 772, between Ruapehu to the east and the confluence of the Makotuku and Mangawhero streams to the west.

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<sup>856</sup> MLC-Whanganui MB 9 p 278

<sup>857</sup> MLC-Whanganui MB 9 p 278

<sup>858</sup> MLC-Whanganui MB 9 p 290

<sup>859</sup> LS-W 1, 2351 ANZ

## 5.9 Ownership lists for Waimarino

In the meantime, the Court began hearing ownership lists and objections to them. The Court minutes record that the hearing of lists seems to have been the major part of the hearing, indicating that this was where most owners believed the important part of the case lay. However, as the Court had accepted Te Rangihuatau's claim and as he had included the few objections within his claim, as conductor he had the right to object to or consent to lists and the minutes record he exercised this right, without providing further detail. It is not clear whether interested Maori understood or agreed to this when they failed to make objections to the main claim, or when those few who did object allowed themselves to be included as part of his claim. They may have been confident that he would include all those who were interested in his lists under his overall claim, as presumably for the Tahereaka claim. However, given the recording of his objections, for some, this confidence may have been misplaced. If Butler was keen to manage the hearing for his purposes, then having Te Rangihuatau in such a position was a decided advantage. If he was cooperative, then Butler had a very good chance of having lists that suited his objectives over the whole block.

The Court was occupied hearing lists of owners and objections to them for 3 ½ hours on 13 March.<sup>860</sup> It does not appear to have sat on 14 March, as this was a Sunday. On 15 March, Meiha Keepa asked for an adjournment until 6 April as many Maori were busy preparing for a large hui to be held on 18 March.<sup>861</sup> Wiari Topia also asked that, if there was to be an adjournment, it should be for two months, as there was great trouble in the district, and it was also a busy time for seasonal harvesting.<sup>862</sup> This seems to indicate that even amongst those willing to attend or aware of the Court hearing, there were considerable difficulties in being able to attend at this time. It also seems to indicate that the case was expected to carry on for some time, as might be expected for a large block. This interest in the hearing along with the relative lack of objections, suggests that most interest and concern seems to have focused on the ownership lists and who would be included. The Court ruled that the question of an adjournment would stand over until the next day.<sup>863</sup> However, it never had to make a final ruling on this question, as the following day was also the last day of the hearing.<sup>864</sup>

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<sup>860</sup> MLC-Whanganui MB 9 p 279

<sup>861</sup> MLC-Whanganui MB 9 p 279

<sup>862</sup> MLC-Whanganui MB 9 p 280

<sup>863</sup> MLC-Whanganui MB 9 p 280

<sup>864</sup> MLC-Whanganui MB 9 p 286-90

In the meantime, for the rest of 15 March, the Court considered lists of owners being handed in. Te Rangihuatau handed in additional lists.<sup>865</sup> The Court minutes indicate some uncertainty on the part of some hapu leaders about this process, possibly due to their lack of experience of the Land Court system. One chief (Tohiora Hirata) asked for some Ngati Waewae and Ngati Hinekohara lists to be returned to him as he believed some of the names actually had claims in another block and he thought the lists should be corrected. This was immediately objected to on the grounds that some of the names should not be struck out, and while some should go, others should be retained. However, Te Rangihuatau agreed the lists could be returned to Tohiora Hirata, presumably for correction.<sup>866</sup> There is nothing in the minutes to show how the Court responded to the objections that were made to having the lists returned to the chief. Presumably the Court went with whatever Te Rangihuatau preferred.

### **5.10 The Ngati Pare and Ngati Kaponga cases**

The Court went on to hear evidence on a list of Ngati Pare names objected to by Te Rangihuatau. This appears to have resulted in two separate claims being heard by the Court. They also appear to have involved some of the people who had earlier sent in separate applications for some lands within the Waimarino block. By now of course, they were in a potentially much weaker position as Te Rangihuatau had now been accepted as the main successful claimant. In the Ngati Pare case, the applicants appear to have disagreed with Te Rangihuatau and claimed under a different ancestor, Puku.<sup>867</sup> A memo was then included in the evidence noting that in reply to the Court, Te Rangihuatau stated that Tamakana was the ancestor for the whole block and no one in Court objected to this ancestor.<sup>868</sup>

The Court then went on to hear evidence for this Ngati Pare case. A witness for the case Kamuta Te Akamutua gave evidence that he lived at Paikaka and he gave the ancestral connection for Ngati Pare to the land from Puku, who he said was not descended from Tamakana.<sup>869</sup> This witness said he was not present when the hearing began as he had been at Murimotu attending to his visitors and cultivations. He also noted that he claimed differently from some others on the Ngati Pare list.<sup>870</sup>

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<sup>865</sup> MLC-Whanganui MB 9 p 280

<sup>866</sup> MLC-Whanganui MB 9 p 280

<sup>867</sup> MLC-Whanganui MB 9 p 281

<sup>868</sup> MLC-Whanganui MB 9 p 281

<sup>869</sup> MLC-Whanganui MB 9 p 281

<sup>870</sup> MLC-Whanganui MB 9 p 281

The conductor for the Ngati Pare claim, Paoro Tutawha, then described the area Ngati Pare claimed in the block. This began at Potahi then on a ridge to Pikiwahine, then on a straight line along the ridge to Arawaire then to the Waipapa stream and down the stream to Ameku and Opakea. At Omeka the boundary turned along the Waipapa stream to its head at Aramohoe then in an easterly direction. A steep cliff was called Te Okauhurea. The boundary turned there and went in a straight line back to the beginning. These places were apparently marked E-I in red on the map before the Court. (These letters are not evident on ML 772, but they are shown on SO 2351/12).<sup>871</sup> They show an area of land in the south west of Waimarino, just north of the Mangoihe block shown on ML 772. In response to this evidence, Te Rangihuatau agreed this area claimed by Ngati Pare could be cut out of the Waimarino block and left for future investigation.<sup>872</sup> The minutes show that this was accepted by the Court and 2309 acres were cut out for Ngati Pare.<sup>873</sup> The Ngati Pare claim is not shown on ML 772 but is shown in the southwest of the Waimarino block on SO 2351/66 (map 6 of this report).

The Court then immediately moved on to what was called the Ngati Kaponga case. This case seems to have been closely linked to gazette number 72, the Mangapapa-Otaehanga claim (survey application 689) one of the three applications Te Rangihuatau had claimed were now embraced within the Waimarino block, although that was also described as Ngati Pare.<sup>874</sup> It may have been re-opened as a result of disputes over lists. One of the applicants in that claim, Pairua Te Rangikatahu is recorded as conducting the case.<sup>875</sup> He was also one of those listed as a signatory to claim 72.<sup>876</sup> Pairua Te Rangikatatu gave evidence that his hapu were Ngati Hinewai and Ngati Kaponga. Kaponga was an ancestor in the portion of land he claimed called Mangapapa. The claim began at the Whanganui River at Kanae o te Whare, then to Otumapou on the river, then to Haehae then in a straight line east to Omahurangi then south to Opare, then to the beginning again.<sup>877</sup> Many of the places mentioned appear to be similar to those listed in the published claim notice number 72, including Kanae-o-whare, Haehae and Omarangi. The claim was recorded as being marked with the letters J-M before the Court.

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<sup>871</sup> MLC-Whanganui MB 9 p 282

<sup>872</sup> MLC-Whanganui MB 9 p282.

<sup>873</sup> MLC-Whanganui MB 9 pp 281, 290

<sup>874</sup> *Kahiti* 17 December 1885, no 72, p 271

<sup>875</sup> MLC-Whanganui MB 9 p 283

<sup>876</sup> *Kahiti*, 17 December 1885, p 271 no 72

<sup>877</sup> MLC-Whanganui MB 9 p 283

This is not shown on ML 772, or on any later survey tracings possibly because it was rejected by the Court.

Te Rangikatatu gave his line of descent from Kaponga and claimed through conquest and occupation. He also said his mother was from Whanganui. He described in some detail pa at Mangapapa and Hemotuke, settlements at Kaiwhaka, Mekotaku, and Pourere along the Whanganui River, a rat forest, cultivations over the area, eel weirs on the river including at Kanae-o-te-whare, Kairoa, Mangapapa, Motuke and Opura and the meeting house Te Urangaotera on the land.<sup>878</sup> He also stated that he had not been at the Court when Te Rangihuatau had opened his case. Some of these answers were made in reply to cross examination by Te Rangihuatau who as the accepted claimant had this right. Under cross examination by the Court, Te Rangikatatu admitted that he had confused some of the places on the map, and gave alternative names for them or said he had got them the wrong way round.<sup>879</sup> This may simply have been another indication of how difficult many Maori found maps at this time, (and how sketchy the map details were) but again it would not have impressed the Court. Tareti Wairama was also called to give evidence about this claim but was not sworn as she said she knew little about the land.<sup>880</sup>

The Ngati Kaponga case continued the next day, 16 March. Areta Te Whero was called as a witness for the case. She was apparently the sister of Te Rangikatatu.<sup>881</sup> She gave evidence that the hapu was Ngati Te Kaponga, a hapu of Whanganui. She described the descent lines from Kaponga and said they were also linked to Ngati Awa who had lands near White Cliffs. Further evidence was given on pa, settlements and cultivations on the land. The boundaries were also given as beginning at Whakarewa at Kanae o te Whare, then east to Tehinu, Onuku, Pohonui, Rongo o te Riri, Pukemakomako, Haehae, Omahurangi and then to the Whanganui River. It then went to Ohiwa, Otumapo and then down the river to the starting point.<sup>882</sup> Some of these place names are also included in the published notice number 72. This witness also had difficulties when asked to point out these places on the map but claimed knowledge of the land from having lived on it. Te Whero also said the boundaries did not go east as far as Owango shown on the map, or as far north as Kirikiriroa marked on the map. The claim was south of Kirikiriroa. The principal pa on the land was at Mangapapa with another at Pahitaua

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<sup>878</sup> MLC-Whanganui MB 9 pp 283-5

<sup>879</sup> MLC-Whanganui MB 9 p 285

<sup>880</sup> MLC-Whanganui MB 9 p 286

<sup>881</sup> MLC-Whanganui MB 9 p 289

<sup>882</sup> MLC-Whanganui MB 9 p 287

over the river from the block. The settlement of Hemotuke was on the block. Te Whero also admitted not knowing the boundaries of the claim before seeing them in the gazette and being unable to trace or mark out the claim on the map.<sup>883</sup> Again, the difficulty with maps may well have disadvantaged Te Whero.

Cross-examined by Te Rangikatatu, Te Whero claimed she knew the land and that Ngati Kaponga had been in constant occupation of it. Under cross examination by Te Rangihuatau she said she lived at Kanae o te Whare from birth until adulthood and that Mangapapa was a permanent place. She also knew of pa sites and battles that had been fought on the land. Te Whero refused to speak of these in detail 'or 'heaven alone knows what may happen'. Te Whero in cross examination by the Court also stated that the cultivations and the claim extended along the banks of the Whanganui River and not inland.<sup>884</sup> This witness, like a number of others, spoke in some detail of settlements and cultivations from some time previously but noted that in some cases old sites had now been deserted.<sup>885</sup> This evidence may indicate the population upheavals that had occurred since the wars. It also may indicate that many of those taking part in the hearing could connect with the land, but no longer actually lived there or had detailed knowledge of current settlements.

Te Rangihuatau then exercised his right of reply to the case. He denied that the ancestor Kaponga had interests in the land. He claimed that some of his descendants had some interests and were included in his lists. Others did not occupy or were beaten by Waikato and while they had intermarried with some local people, they had no rights in the land they claimed. He also claimed that Areta and her brother had been wrong with some of the place names. Cross-examined by Te Rangikatatu, he said he had lived at Mataiwhetu on the claimed part of the block. He had a burial ground there just across the river from the part of the block named Mangapapa.<sup>886</sup>

The Court then found unanimously that the Ngati Kaponga claim was 'bad' and therefore the list for that hapu could not be received by the Court. No reasons were given for this finding.<sup>887</sup> The Court also struck some names off a list that had been objected to by Hamuera

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<sup>883</sup> MLC-Whanganui MB 9 pp 287-8

<sup>884</sup> MLC-Whanganui MB 9 p 288

<sup>885</sup> MLC-Whanganui MB 9 p 288

<sup>886</sup> MLC-Whanganui MB 9 pp 289-290

<sup>887</sup> MLC-Whanganui MB 9 p 290

Kaioroto and where no one was present in Court to support them.<sup>888</sup> This appears to have been the last case the Court heard in conjunction with the Waimarino block claim.

As noted, a number of applications apparently made for Waimarino lands do not appear to have been heard at this time. This included the Tahereaka claim, which seems to have been subsumed into Waimarino by arrangement. It also includes survey application 723 by Ngati Rangi for Kirikiriroa. Survey application 693, gazette number 69 for Kawautahi land also does not appear to have been addressed. The applicants were the same as those for Opatu opposite Kirikau and the district claimed appears to have been in between the Kirikau block and the Aotea boundary within Waimarino. An earlier application for this same area had been made earlier in June 1883 just as the Rohe Potae agreements were being forged. The applicants at that time had been Hoani Paiaka, Te Tarapounamu and Te Pikikotuku.<sup>889</sup> At that time the application noted they were living at Koiro and the people represented included Hoani Paiaka, Tarapounamu, Piki Kotuku, Tanga Manurau, Mimi Merepeka, Te Kawhaki and Wakatokopipi. This indicates that these people may well have been sympathetic to cooperating with the Government, although not necessarily intending to sell. That application had been annotated on 10 September 1883, that the land claimed appeared to be north of Kirikau and Retaruke, and a survey could not be undertaken ‘at present’ on account of Native opposition. A note on the back of the form by John Annabell of the same date notes the land was in the Kaitieke survey district on the left bank of the Whanganui River.<sup>890</sup>

It is not clear why these applications were not addressed at this time. Possibly Butler had persuaded those involved that the overall Waimarino claim was sufficient to protect their interests in the meantime. It remained to be seen how effective any such protection might be.

### **5.11 The Court decision on the Waimarino case**

The Court noted that the original estimated area of the whole Waimarino block was 490,000 acres. Having agreed to cut out the claim of Tareti Te Waimarama of 14,977 acres, Te Kiritahanga of 18,525 acres and Ngati Pare of 2309 acres, a total of 35,811 acres, all in the southern parts of the block, the Court was left with an estimated acreage for Waimarino of 454,189 acres.<sup>891</sup> The Court ordered that the ownership lists as submitted and accepted before

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<sup>888</sup> MLC-Whanganui MB 9 p 290

<sup>889</sup> LS-W 46/4 duplicate application 497, 2 June 1883, ANZ

<sup>890</sup> LS-W 46/4 duplicate appln 497, 2 June 1883, ANZ

<sup>891</sup> MLC-Whanganui MB 9 p 290

the Court were to be entered on a certificate of title to be issued for Waimarino block containing an estimated 454,189 acres ‘as soon as a proper survey of the land has been made’. The land was also to be ‘inalienable’.<sup>892</sup>

The list of owners prepared from the lists submitted and accepted by the Court, and as recorded in the minutes, originally appears to have contained some 1010 names. Although evidence from the minutes indicates the original lists were handed in on a hapu basis the names were written up in the Court minutes as individuals with no record of hapu affiliations.<sup>893</sup> However, a list of owners compiled by Butler at the same time (presumably also from the original lists) includes some 26 hapu names.<sup>894</sup> These were Ngati Parae, Ngati Maringi, Ngati Hinewai, Ngati Kahukuropango, Ngati Mahuatahi, Ngati Hinekura, Ngati Kairatangiwharau, Ngati Kahukurapane, Ngati Matakaha, Ngati Poumua, Ngati Tauengaarero, Ngati Rangi, Ngati Te Wairehe, Ngati Tamakana, Ngati Ngarona, Ngati Tara, Ngati Tamakau, Ngati Tukaioara, Ngati Hinekohara, Ngati Manuka, Ngati Waewae, Ngati Kawau, Ngati Wakiterangi, Ngati Whati, and Ngati Ruakopire.

## **5.12 The recognised ownership of Waimarino**

It is not possible with just over one thousand names to analyse the Court-accepted owners for Waimarino in detail. It is also very difficult to be certain of individuals, as there are numerous misspellings in various versions of lists and sometimes different names are used or additional names. Some individuals also have very similar names. Of the chiefs who signed the application, Te Rangihuatau and possibly Tawhiri Matea appear in the lists, although Terehi (or Tekehu) o te Motu does not appear to be included.<sup>895</sup> Of the influential upper Whanganui chiefs mentioned earlier in this report, Te Pikikotuku, Winiata Te Kakahi, Topia Turoa, Wiari Turoa, Kingi Herekikie, and Topine te Mamaku also appear. Butler’s later dealings indicate that officials also regarded Hori Tamaiwhana, Matuahu Wairehu, Nini Tehanairo, Tohiora Pirato, Hamuera Te Kaioroto, and Wiremu te Kerewehi as leaders among the owners.<sup>896</sup>

Not surprisingly for a block penetrating into a border area, it also seems that numbers of those accepted as owners had connections with other tribal groups as well as Whanganui. For

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<sup>892</sup> MLC-Whanganui MB 9 p 290

<sup>893</sup> MLC-Whanganui MB 9 pp 295-310

<sup>894</sup> MA-MLP 7/6 , ANZ

<sup>895</sup> MA 7/6 owner numbers 104, 854, ANZ

<sup>896</sup> MA-MLP 7/6, owner numbers 57, 103, 123, 125, 553, 569, ANZ

example, a later petition from Te Moanapapaku described how he and other Taupo people had made a special trip to Wanganui to protect Taupo interests in Waimarino. In giving evidence on the petition, Te Keepa (Major Kemp) stated that Te Moanapapaku, Topia Turoa, Te Oti Pohe, Matuahu, and Paranihi te Tau among others were influential owners in the area from Tongariro to Ruapehu and on to Whanganui 'where they join me'.<sup>897</sup> The petition was complaining that simultaneous Land Court hearings at Wanganui and Taupo had prevented such people from adequately protecting their interests in both areas. Matuahu (owner 103), Te Oti Pohe (862) and Te Moana Papaku (369) were found to be owners in Waimarino. Of these, Te Moana Papaku refused to sell his interests in the block. Topia Turoa (648) was recognised at this time as an influential chief along the Whanganui River and into Taupo as well. Presumably, some people with Ngati Maniapoto or Ngati Raukawa connections would also have had interests into the area, although official records do not make this clear. More useful evidence on this is likely to be presented by tangata whenua.

The just over 1000 owners, many of them children, for the very large Waimarino block seems on the face of it, a very small number for the district. As noted in chapter 1, it has been estimated that around 3000 people lived in the Retaruke River valley alone in the 1880s.<sup>898</sup> It seems likely that the Manganui a te Ao valley had at least similar numbers at this time. For example, in 1883, Kerry-Nicholls had described breaking out of dense forest at the head of the Manganui a te Ao, and looking down that valley and seeing whares and cultivations stretching for miles along the river.<sup>899</sup> Villages along that river already mentioned in this report, include Ruakaka, Te Arero and Papatupu. Early maps of this time also show many small settlements along the upper Whanganui, Manganui a te Ao and Whakapapa Rivers.<sup>900</sup> There were also interior villages, such as Ngatokorua on the Waimarino plains, in the 1880s, as described.

The wars and subsequent poverty had caused population movements within the district. Some people, as would become evident in later purchasing, had moved to other districts or to lower Whanganui. Others had joined movements such as at Parihaka and had moved there. At the same time, however, numbers of people had made a conscious effort to stay in the district. Rochfort had noted the continuation of seasonal planting in his explorations. Cultivation

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<sup>897</sup> Petition no 155 of 1887, Te Moanapapaku, Te Huatahi and another, and evidence (no 3) on petition in Le1/1887/8 of 3 November 1887, ANZ

<sup>898</sup> Young p 23

<sup>899</sup> Kerry-Nicholls, J H, *The King Country, or Explorations in New Zealand; a narrative of 600 miles of travel through Maoriland*, p 271

<sup>900</sup> For example, SO 2351/66 and M1 772 and 776.

requirements were also mentioned during the Waimarino case. Kerry-Nicholls and Rochfort had also noted the continued existence of settlements on their travels. The prophet Te Kere also seems to have attracted large numbers of people to remain in the district and maintain traditional ways of life. Te Kere had relationship connections in the upper Whanganui area and, according to Young, had carved and established wharepuni on the Retaruke River at Kaitieke and just north of this towards Owhango above the Whakapapa River.<sup>901</sup> By 1885 his Pae Tiuihou movement had attracted many hundreds of followers and he had been involved in the opposition to the Government and the Land Court at the Poutu meeting in 1885. Newspaper reports, already cited, noted that in late 1885, Te Kere was holding meetings and had numerous followers in the district. He would later form new settlements of his followers at Kaitieke and Tawata on the Waimarino block as will be explained in a later chapter. Presumably at this time, numbers of his followers were also in the district. This alone indicates that just 1000 people seemed a low estimate of those who were likely to have interests in the area.

It is known that many of those with customary interests in the block were opposed to the Native Land Court and would have nothing to do with it. This included not only Te Kere and many of his followers but also many communities who supported the Kingitanga and boycotting the Court. There were also those communities who supported the Rohe Potae alliance and who either did not realise their Tuhua district was included in the block (believing the external boundary of the Rohe Potae) protected it, or who would not join in a Court investigation until the promised reforms were made. Many others may also have expected (as with Ballance's assurances) that the Native committees would have the chance to make initial investigations before the Land Court heard a case. There are some notable exclusions from the lists, including Te Kere. Ngatai te Mamaku was also excluded, even though the Government had acknowledged him as an influential chief of the area.

Many others may have wished or felt obliged to participate in the hearing, but were excluded because of errors, lack of adequate notice, or inexperience with the Court process. There was a relatively short time between the public notice of the hearing and when it took place, especially when many parts of the district were still inaccessible to the Court process and notification procedures. Although the Government was well able to contact chiefs such as Wahanui and Ngatai, it seems that Ballance's promises to inform them were little more than

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<sup>901</sup> Young, p 134

agreements to supply public notices. The block was technically considered included within Wanganui district for notifications, so possibly little notice was sent outside of this. This may have led to a lack of knowledge about the northern boundaries of Waimarino especially. For example, in July 1886, a complaint was made to the Land Court at Wanganui that some Whanganui people had joined with Ngati Maniapoto and were thought to be applying for lands in a number of interior blocks including Taumatamahoe and Waimarino under new block names.<sup>902</sup>

It is not possible to find out from official records how many of those who claimed to be owners in Waimarino and who were on original lists were subsequently rejected or omitted for some reason. It does seem that inexperience of the Court process, confusion or administrative error may have resulted in some omissions. For example, as will be described in more detail, it does seem that in some cases amendments to ownership names were later made when errors were brought to the Court's attention.<sup>903</sup> Whether the Court rectified all such errors is not known.

Later official records also reveal that there was confusion at the time over lists being handed in. For example, a later 1895 petition from a Ngati Haua hapu living in the Tuhua area, near Taumarunui, claimed that they had tried to hand in a list of names for Waimarino but this was 'inadvertently' not done because of their ignorance of Pakeha law. They asked for a reserve on the Waimarino block near Taumarunui where they had settlements, cultivations and urupa.<sup>904</sup> Butler responded to this by acknowledging that it was true that a list with the names of the petitioners and others of the Taumarunui area was withheld when other lists were handed to the Court. This list was in the charge of the chief Rangipuhia and was withdrawn by him at a meeting of the people outside the Court because some of those on the list were objected to as having no right [Butler's emphasis]. Butler agreed that 'I do not think he realised what the effect of his action would be'. He went on to note that the reserve they asked for was a 'considerable' area of land.<sup>905</sup> This indicates that not only was Butler present at many of the out of Court meetings held over Waimarino, but he failed to advise chiefs when they unwittingly took action that was likely to harm their own or their peoples' interests.

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<sup>902</sup> MLC-Whanganui MB no 10 p 338

<sup>903</sup> MLC Whanganui MB 10, p 90

<sup>904</sup> letters and petition to parliament July 1895, NLP 95/2168 MA1, 1924/202 v2 ANZ

<sup>905</sup> File note by Butler, 17 July 1895, NLP 95/2168 MA1, 1924/202 v 2 ANZ

Butler must have known that this meant that some people were highly likely to have their interests unrecognised by the Court.

It also seems that the formality and legalistic nature of the Land Court process may have resulted in the exclusion of some interests. There was only one point in the formal Court proceedings where objections to the claim could be accepted and this was right at the beginning. Possible objectors had to know to be there on that day or miss out. The Court session had been advertised as opening on 22 February 1886 but this still did not give a precise indication of the day the Waimarino hearing would start. Interested parties just had to wait the necessary days at Wanganui until the Court reached that point. As some chiefs pointed out during the case, it was a busy time for seasonal harvests and other important hui were taking place, distracting attention even for those who wanted to attend.

It seems that Butler's tactic in Opatu of seeking to reduce numbers of owner names as much as possible, may also have been used with regard to Waimarino. It also seems that in some cases, some names may have been put in to give credibility while others were excluded. For example, it seems while the influential Tuhua chief Ngatai te Mamaku was omitted, his now elderly brother Topine te Mamaku was included (owner 460A) although possibly as a late addition. A telegram from Butler to Sheridan of 7 May 1886, noted that Topine te Mamaku had 'previously' been added at 460A.<sup>906</sup> This insertion has not been found in the Court minutes and it is not shown as a correction to the original lists as other amendments were. The circumstances of the insertion and whether it was done with the knowledge of Topine himself is, therefore, not known. It seems possible that Butler may have regarded the insertion of Topine te Mamaku's name as politically wise and he may have been regarded by others as the senior representative of Ngatai and others. However, Topine was a very old man by this time and Ngatai was regarded as the active, influential chief, as will be seen in the following chapters concerning the purchase of Waimarino. Ngatai, along with other Tuhua people may not have objected to this, because he did not believe the block included the Tuhua area, as his subsequent letters to the Government indicate.<sup>907</sup>

The exclusion of important chiefs could also have severe consequences for their communities. The Government later received letters from Bell, the postmaster at Taumarunui who

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<sup>906</sup> NLP 86/144 with 86/158, MA1, 1924/202 v1 , telegram 7 May 1886, ANZ

<sup>907</sup> For example, letter Ngatai te Mamaku and 107 others, 9 June 1887, complaining of inclusion of Tuhua lands in Waimarino NLP 87/203 MA1, 1924/202 v1. ANZ

complained that his wife and family had missed out on their interests in Waimarino due to what he claimed was the mis-management and stubbornness of Ngatai. Lewis advised the Native Minister that it did seem hard that Mrs Bell and her children had missed out in the Waimarino block through the action of Ngatai. However, he could not see how the Government could help them. He claimed that if Maori would not look after their interests in the Land Court and suffered through the actions of their representative chiefs, they could not expect to look to the Government afterwards and he had advised Bell of this. Anyway, he assumed ‘no doubt’ Mrs Bell would have interests in other lands not yet through the Court and would ‘profit by past experience’. This was noted as seen by Ballance.<sup>908</sup>

The Government later appeared to recognise that significant sections of the people interested in Waimarino had not been included in the title. An official’s report on the 1895 Ngati Haua petition claimed that ‘every effort’ had been made to bring ownership of the Waimarino before the Court ‘in the most complete manner possible’ and Ballance, the Native Minister of the time ‘personally interested himself in the matter to that end’. However, through ‘a spirit of obstruction to the Court’ some of the leading men refused or failed to appear in support of the claims of themselves and their people. Nevertheless, a ‘searching inquiry’ was made by Judges O’Brien and Puckey ‘into the rights of all parties’ and the names of 1014 Maori ‘were selected as owners’. The bulk of those interests were then sold to the Crown.<sup>909</sup> This seemed to acknowledge that it was known in Government circles at the time that many ‘leading men’ and therefore their communities had not been included in the Waimarino title and the names that had were included were ‘selected’ as owners. The Government view, however, was as always, that refusal or failure to attend the Court and the loss of legal recognition of interests as a result, was their own fault.

Other chiefs of the Tuhua area also appear to have been named in the ownership lists as representatives of that area. Tuao Ihimaera was one of these, although he also appeared to believe that Tuhua lands within the Rohe Potae boundary were not included in Waimarino. For example, in 1887, he wrote to the Government complaining that land in the Aotea block had been included in Waimarino.<sup>910</sup> He and two other chiefs of the area, Taituha Te Uhi and Tanoa Te Uhi, were included as owners in Waimarino and refused all Butler’s attempts to buy their interests. As non-sellers they were eventually awarded a reserve of 1350 acres by the

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<sup>908</sup> NLP 87/150, MA1, 1924/202 v1, letter May 1887 and annotation by Lewis 2 June 1887, ANZ

<sup>909</sup> NLP 95/2168 report on 1895 petition, MA1, 1924/202 v 2 ANZ

<sup>910</sup> NLP 87/239 letter 9 August 1887, MA1, 1924/202 v1 ANZ

Land Court when the Crown award was made. The reserve was ostensibly for the three non-sellers, but both official and chiefs by now treated it as being for their people as well still living in the area, many of whom had not been included in the lists. In August 1887, Tuao told officials that around 300 of his people lived at Taumarunui and Tuhua and complained of the small reserve set aside for ‘them’.<sup>911</sup> Officials accepted these people had to make do with the award but insisted that the reserve had been set aside for the three owners named and nothing more could be done.<sup>912</sup> Tuao was still trying to obtain justice for his people in 1895, when he asked the Government to allow the Tuhua people 20,000 acres in return for the Government award of 20,000 and the money the Government had paid for it to others.<sup>913</sup> Officials noted Tuao’s request for 20,000 acres for the people he alleged had rights in Waimarino but were omitted from the title. However, they had been advised they only had themselves to blame as they’d had ‘ample opportunity’ to assert their rights.<sup>914</sup>

It seems from these records, that for a variety of reasons, significant numbers of people are likely to have missed out on having their interests recognised in Waimarino. It seems highly likely that Butler had a hand in this, in his effort to reduce numbers for purchasing. He may also have been assisted in this by those who believed they could boycott the Court, those who believed their district was protected within the Rohe Potae, the speed with which the investigation took place and the general lack of knowledge and understanding of the Court process. He may also have been helped by the fact that only a very sketchy survey for the investigation seems to have been necessary. A more detailed survey on the ground would have alerted many more people to the investigation, allowed opposition to it and may also have resulted in many more names. The relatively few and carefully selected names would have assisted with subsequent purchasing. However, this does not sit well with the Government assurances of protection for the Rohe Potae external boundary, the assurances that the Native committees could undertake initial investigations or that the Court would not be ‘forced’ onto the district.

Another notable feature of the Waimarino ownership lists as eventually accepted, were the large number of minors among the named owners. The exact number is difficult to determine because of the continuing amendments to the lists over the next year. However, based on the

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<sup>911</sup> NLP 87/300 letter 2 August 1887, MA1, 1924/202 v1 ANZ

<sup>912</sup> File notes on NLP 87/300 by Butler 9 September 1887 and Lewis 10 October 1887 MA1, 1924/202 v1 ANZ

<sup>913</sup> NLP 95/201 Tuao Ihimaera to Native Minister 17 March 1895, MA1, 1924/202 v 2 ANZ

<sup>914</sup> Butler file note 10 April 1895, NLP 95/201, MA1, 1924/202 v 2 ANZ

original list, it seems that around 275 or just around one third of the owners were minors. Minors ranged in age from 1 to 20 years but the majority of them (169) were ten years or under.<sup>915</sup> The proportion of children among owners seems quite high. It is also unclear why the chiefs placed so many children in the lists. Possibly they were looking forward to the future when current differences among the interior peoples might be overcome and they were intending to provide for that time. For example, one application to appoint a trustee noted the young owner was with the followers of the prophet Te Kere.<sup>916</sup> It seems possible he may have been included because his interests were acknowledged and some provision made for them, even if the adults refused to participate. If the chiefs were trying to be inclusive, however, this kind of view was not legally recognised. Only those actually named were legally recognised as having ownership rights and importantly rights to dispose of land. Their efforts, from whatever motives, were simply playing into the hands of Butler and his determination to purchase as much land as possible.

### **5.13 The requirement for a ‘proper’ survey of Waimarino**

At the end of the list of owners, the Court minutes note that the land in the Waimarino block was to be inalienable except by lease, and a ‘proper’ survey was to be made before a certificate of title could issue.<sup>917</sup> This appeared to confirm that the hearing took place on the basis of a compiled sketch plan only. This was considered adequate for title investigation, but a more adequate survey was required before title could be issued. This effectively left the land in a kind of legal limbo where, even the qualification that the land was to be inalienable except by lease, had to wait for the issue of the certificate and the proper survey. The minutes show no owner objection to the Court making the alienation qualification, possibly indicating that they expected to retain general ownership of the block, even if parts might be leased.

The assumption may have been that the ‘proper’ survey would be completed fairly quickly. However, it was a very large block where barely any work had been completed on the ground. In fact, the surveys for the ‘proper’ plan of Waimarino took some considerable time to complete and were only finished as the Land Court was ready to hear the claim for a Crown award in Waimarino, in January 1887, almost a year after the original Court order. This partition hearing was to enable the Court to award the Crown the interests in land that Butler

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<sup>915</sup> MLC-Whanganui MB 9 pp 296-310

<sup>916</sup> MLC-Whanganui MB 11 p 44

<sup>917</sup> MLC-Whanganui MB 9 p 310

already claimed to have purchased by early 1887. The restriction on alienation except by lease was also largely redundant until the survey was complete and the certificate of title issued, meaning Butler had a largely free run with purchasing in the meantime.

Most of the Crown purchase of Waimarino took place before any kind of proper survey was completed. This left owners without even the protection of being sure what land was involved and reliant on Butler's assurances of what the purchase would mean. As will be seen, in the northern Tuhua part of the block, substantial sections of communities and their leadership remained convinced that the sketch survey was a mistake and would be corrected by the 'proper' survey so the block would not intrude on the land they believed was already protected by agreement with the Government, within the Rohe Potae external boundary. They had good reason to hold this view. They had been promised consultation over their concerns, the government had promised to undertake negotiations in good faith, and it was usual practice for boundaries to be adjusted to take account of other block boundaries. In other cases, communities clearly refused to help surveyors, as will be seen. They may have hoped that if they did not cooperate the surveys could not intrude into their areas, but as with the sketch survey, Maori cooperation was not essential to have a 'proper' survey completed. Even as communities waited for the 'proper' survey to correct the mistakes they believed had been made, Butler was technically purchasing the land from under them. By the time the survey was completed, it was already far too late.

The survey work for the proper plan took place at around the same time as the purchase of Waimarino and was also completed at about the same time as the purchase. It is described in more detail in chapter 8 of this report.

#### **5.14 Continuing Native Land Court involvement in Waimarino ownership**

As noted previously, the Court minutes show that shortly after the Waimarino hearing finished on 18 March, Judge Puckey had to leave the Court due to illness.<sup>918</sup> On 19 March, Judge Puckey was still absent and the Court adjourned anyway until 24 March because most Maori were absent attending the large hui taking place at the time.<sup>919</sup> This was presumably the hui for which an adjournment for Waimarino had been asked. In early April 1886, Judge Puckey was recorded as being ill again and from 8 April, Judge O'Brien appears to have taken

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<sup>918</sup> MLC-Whanganui MB 9 p 315

<sup>919</sup> MLC-Whanganui MB 9 p 324

over the Whanganui sitting, while Judge Puckey moved to the Hokianga Court.<sup>920</sup> It seems that although it was felt necessary to have two judges sitting, one of them was clearly quite ill during the time the Waimarino case was heard. This illness had caused him to leave the Court just prior to and after the main Waimarino case. It is not clear whether, or how much this illness may have contributed to the obvious urgency with which the Waimarino case was heard and the apparent reluctance to investigate matters raised more deeply or to allow the requested adjournment.

In the meantime, although the Waimarino hearing officially ended on 16 March 1886, adjustments continued to be made to the listed owners sanctioned by the Court. Over the next year, while the Land Court sat almost continuously at Wanganui, issues concerning ownership of Waimarino, particularly over amendments to the list of owners, the appointment of trustees for minors and applications for successions continued to be heard at regular intervals. It seems there was continued confusion over the lists of owners in particular, and a number of amendments to correct errors and omissions were made, meaning the exact number of owners over the following year was never entirely clear. For example, in April 1886, Wi Kiriwehi raised the issue of whether Butler had correct copies of Ngati Rangi and Ngati Tara lists. He also asked the Court to add in some names mistakenly omitted, although there is no record of the Court agreeing to this.<sup>921</sup> Hoani Paiaka also noted that some of the lists he had handed in had included some place names to show where owners lived. However, these place names had been included as though they were owner names. The Court accordingly agreed to remove these names.<sup>922</sup> This correction can be seen in the names numbered 742-750 and crossed out in the original minutes.<sup>923</sup>

In May 1886, Judge O'Brien also ordered that four names for Ngati Matakata and one for Ngati Hinewai should be added to the list of owners. The Court clerk had mistakenly excluded them, thinking they had been erased from the original lists.<sup>924</sup> The Court also agreed to some changes in names, where it was persuaded these had been misspelled or contained other errors.<sup>925</sup> By far the most business requested regarding the Waimarino block owners during this time, was over the appointment of trustees for minors named as owners in the

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<sup>920</sup> MLC-Whanganui MB 9 p 376

<sup>921</sup> MLC Whanganui MB 10, p 11

<sup>922</sup> MLC-Whanganui MB 10, p 12

<sup>923</sup> MLC Whanganui MB 9, p 306

<sup>924</sup> MLC Whanganui MB 10, p 90

<sup>925</sup> For example, MLC Whanganui MB 10, p 339

block.<sup>926</sup> There were also some requests for investigations of land that had been cut out of the original large block. However, the Court refused to investigate these until fresh applications and surveys were made.<sup>927</sup>

At this stage, the Land Court appears to have left the ownership of the Waimarino block at just the lists of owners. There was no finding as to relative interests among the owners, presumably meaning all owners were regarded as having equal interests. There was also no finding of where the owners' interests might be located on the ground within the block. To achieve this owners had to go back to Court and apply for subdivisions whereby their interests on the ground would be legally decided and recognised. This was important if they were to be able to adequately use and manage their land.

It seems that this is precisely what a number of hapu did as soon as the main award was made. A number of applications for subdivisions made shortly after the main award can be found on the Waimarino block file. These applications for subdivision were all dated late March or early April 1886.<sup>928</sup> Application NLC 86/312 (1/204) from Hoani Paiaka and 84 others from Koiro was dated 31 March 1886. Application NLC 86/313 (1/205) from Matiaha Hurutara (and about 5 others) living at Kaiwhaiki, Upokongaro was also dated 31 March 1886. There were also applications from Tauoiri of Tieke (NLC 86/347, 1/200) dated 1 April 1886; from Tohiora Pirato and Matuahu te Whatarangi (and around 14 others) of Takapuna kei te Ahihau dated 31 March 1886 (NLC 86/362, 1/197); and Kote te Terepaenga, Te Whiti te Kaengaroa (and around 52 others) of Utapu dated 9 April 1886 (NLC 86/394, 1/192) and from Hipirini Pihopa, Huriwaka Rawiri (and an unknown number of others) of 17 May 1886 (NLC 86/779, 1/166).<sup>929</sup>

These applications for subdivision inevitably required owners to pay more in Court fees and survey costs, but they were necessary if owners intended to define their land and use and manage it effectively. These applications appear to indicate that this was the intention, as partitions were not necessary to simply sell off interests in land. Interestingly, one of the applications was from Hoani Paiaka and others of Koiro. These were presumably the same people who had supported a claim for Kawautahi lands within Waimarino not addressed by

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<sup>926</sup> For example, MLC-Whanganui MB 10, pp 12-343, MB 11 pp 43-244

<sup>927</sup> MLC Whanganui MB 9 p 312

<sup>928</sup> MA-Wanganui w 2140 wh 388A, ANZ

<sup>929</sup> MA-Wanganui w2140 wh 388A, ANZ

the Land Court. They may well have been persuaded to stay within the overall Waimarino claim on the understanding they could seek a partition of their own interests later.

However, the Land Court refused to hear all the applications for subdivision on the grounds that it could not until they were formally notified by gazette.<sup>930</sup> It was up to the Government to do this, but in contrast to the haste with which it had notified the application for hearing, officials do not seem to have got around to gazetting the owner applications for subdivision until almost a year later. The applications were eventually notified for hearing in the *Gazette* of 30 December 1886.<sup>931</sup> The notification was not particularly careful either. For example, application number 9 was notified as from 'Aperira' when actually it was from Tauoiri. Aperira referred to the month of April in the date on the application. By this time, the applications were largely redundant anyway, as earlier in December the Land Court had already notified a sitting of 24 January 1887 to hear the application of the Native Minister for partitions in a number of blocks including Waimarino.<sup>932</sup> This was based on Butler's claimed purchasing in the block.

Apparently, the government did not wish partition applications to be heard until the block had been effectively purchased. This gave Butler considerable advantages as it was easier for him to persuade owners to cooperate when the land involved was not clearly defined on the ground and he could also be much more flexible about payments he was making. It was also easier for him to select owners as representing certain interests and then prepare a later partition case that supported those who had agreed to sell. All the disadvantage lay with the owners who were still not clear what land in the block they could legally occupy and use, leading inevitably to internal tensions. It was also much more difficult for them to keep track of Butler's activities in particular areas.

It seems that legally, Waimarino owners also had a defined period during which they could seek a rehearing of the case. No official correspondence has been found concerning attempts to activate this right. However, it does seem that attempts were made, as a number of gazette notices were issued notifying the dismissal of such applications. For example, the Chief Judge of the Land Court, J E Macdonald, issued a notice of dismissal of an application from Te Heuheu Tukino for a rehearing of the Waimarino claim dated 6 October 1886.<sup>933</sup> No reasons

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<sup>930</sup> MLC Whanganui MB 10, p 255, 18 June 1886.

<sup>931</sup> *NZ Gazette* 1886, vol 2, no 69, 30 December 1886 pp 1725-6, notice dated 20 December 1886.

<sup>932</sup> *NZ Gazette* 1886 vol 2 no 67, 23 December 1886 pp 1693-4, notice dated 20 December 1886.

<sup>933</sup> *NZ Gazette*, no 54, 14 October 1886, p 1317 notice dated 6 October 1886.

were given for the dismissal. Later in October 1886, the Chief Judge also dismissed an application from Neta Te Whero and others for a rehearing of the Mangapapa part of the Waimarino claim. This was the claim the original Court had found was 'bad'. The notice of dismissal of this application was dated 20 October 1886.<sup>934</sup> In February 1887, Judge Macdonald issued a notice dismissing several other applications for rehearings of the Waimarino claim. The notice referred to several applications, from Te Rangihuatau and another, Matiaha Hurutara, and Ngatai te Mamaku and others, each of these asking for a rehearing of the Waimarino claim.<sup>935</sup> The notice of dismissal of these applications was dated 1 February 1887, after the partition hearing for Waimarino was already notified.

No reasons were given for the dismissal of any of these applications and no information was provided in the notices as to when the applications for rehearing may have been made. They do appear to have represented a considerable number of those who had taken part in the original hearing, indicating that perhaps they were not fully aware of the implications of what they were doing at the time and they were concerned about subsequent events. Perhaps of most interest, one of these applications for rehearing was from Te Rangihuatau, the leader of the 'winning' case.

For the next almost twelve months the Land Court continued to make adjustments to ownership lists. At the same time, applications for subdivision or rehearing apparently languished or were dismissed. The work on completing the proper survey plan also stretched over almost a year, delaying the issue of a final order and with it any legal protections such as a restriction on alienation. In the meantime, Butler began purchasing in Waimarino in earnest, as will be explained in the next chapter.

## 5.15 Conclusion

It is unfortunate that so little correspondence survives for the period covering the Waimarino application to the Land Court in late 1885 and the subsequent Court investigation of March 1886, as these events seem critical to later events in Waimarino. What official records survive indicate that the Government had decided to purchase Waimarino lands even before the application was made. The Government was also intent on treating the large Waimarino

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<sup>934</sup> *NZ Gazette*, 1886, no 57, 4 November 1886, p 1442, notice dated 20 October 1886

<sup>935</sup> *NZ Gazette* 1887, vol 1 p 227 no 9, notice 10 February 1887, notice dated 1 February 1887

application as the main claim in the area, even though other applications for lands within the block had also been received.

The survey files also indicate how rough and lacking in detail the survey sketch plan for the Waimarino claim was. Although the block was very large and very little field work had been conducted in the area, apart for purposes such as the railway and general topographical surveys, the sketch map was still completed within just a few weeks. It also received very little input from Maori communities of the area which may well have had implications for the later confusion over which land was actually included in the block. The survey process highlights how closely Land Court surveys were expected to support land purchasing and the advantages the Crown obtained from being able to decide which applications would be considered the main claim for an area, and which would either be considered counter-claims or entirely separate. The surveys also show how carefully surveyors were to ensure there was no conflict between Land Court boundaries, except notably, in the case of the external Rohe Potae boundary. The lack of any apparent concern in the official record that surveys protect Maori interests also raises issues of to what extent such protections as sketch surveys and authorised plans were effective for Maori.

Although direct evidence is lacking for Waimarino, circumstantial evidence suggests that having decided to purchase the block, officials such as Butler took a considerable interest in managing the claim for investigation and persuading communities to cooperate over this. He may have presented as a senior official imparting neutral advice, but much of his effort appears to have been directed towards facilitating the later purchase of the block. He seems to have been involved, for example, in persuading many communities to be included within an overall large Waimarino application. Given his reported activities in other blocks such as Opatu, he may also have been involved in ensuring relatively few owners were submitted for the block and that just a few influential (but most likely to be cooperative) names were chosen to represent certain interests in the block. He may also have been involved in ensuring such a high percentage of owners were children.

The lack of evidence also makes it difficult to establish why chiefs and communities may have decided to cooperate with Butler. They may have been persuaded that they could trust government assurances of good will and protection. Many may also have been eager to participate in a managed form of development and settlement, and the prosperity that was expected to flow from that. They may have been persuaded that an overall application would serve to protect their lands, including for some from the Kingitanga and Ngati Maniapoto

influence. This would then allow them to sort out internal divisions within themselves, much as was the alliance intention in the Rohe Potae. This appears to have happened with the Tahereaka claim, for example. They may also have expected significant reforms before the title case was heard. While some of the communities may have been willing to make some land available for settlement, it is also not clear that the application meant they wanted to sell anywhere near the whole block. In fact, in the 1885 meetings, even the most cooperative chiefs such as Te Keepa had indicated a preference for only making available relatively small areas of land.

Whatever the expectations, the Government ensured the title case was heard within a very short time from the application, and the case itself took just a few days. The Government also defeated attempts to immediately follow the case with partitions of various community interests. All applications for rehearing were also dismissed. This raises issues of Government good faith in seeking trust of communities knowing their preferences and then manipulating the Court process to further the interests of extensive purchasing, while denying or undermining the few legal protections open to owners.

The ability of officials, such as Butler, to manipulate the Land Court process in the interests of purchasing and the apparent willing Court collusion in this, also highlights how peripheral the reforms of the Land Court process to date had really been, much as the alliance chiefs had feared. This was precisely the kind of ‘interference’, the alliance chiefs had been so critical of and determined to avoid and that Ballance had claimed to reject.

The Waimarino hearing in March 1886, for what was now an estimated 450,000 acres of land, in an area known to be a border region with many intersecting tribal interests and of long standing strategic importance took under four days and was notable for the relative lack of objections to the principal claim when such a large block was involved. This again seemed to confirm the close management Butler was already seeking to impose in the interests of facilitating purchasing. This is further confirmed by the overwhelming impression of urgency from the minutes, rather than a careful detailed investigation and consideration of interests.

The Court minutes for the Waimarino title investigation are brief and, in many cases, no explanations are provided for decisions. The Court seemed unwilling to explore interests in any detail for the block and only took evidence where this seemed absolutely necessary. Most of the case appears to have been concerned with the lists of owners, but these are barely commented on in the minutes. The Court was asked for an adjournment, indicating that some

owners expected the process of submission and acceptance of lists to take some time. However, the Court evaded having to rule on this when the hearing finished after a very short time. The Court, when it did hear competing evidence, failed to explain the reasons for decisions, describing the Ngati Kaponga case, for example, as ‘bad’ with no further explanation.

The management of the case meant that very little evidence of occupation and interests in the very large Waimarino block was actually heard or recorded. The interior especially, as shown on map ML 772, remained a large blank. However, even around the Manganui a te Ao and the other rivers where settlement was already known, very little evidence of settlement and interests was provided. The final list of just over 1000 owners, many of them children, also seems to have been relatively small for such a large area of land, given other evidence of the time.

It seems that considerably more than 1,000 people lived in the block at this time, and it seems highly likely that significant interests were effectively excluded from recognised ownership of the block. Some of these may have boycotted the Land Court, as it is known that many remained opposed to the operation of the Court in the upper Whanganui area at this time. Ballance had promised them that the Land Court would not be forced on them, but failed to explain how even one application effectively ‘invited’ the Land Court process in after which it could only be ignored at the risk of losing all legal recognition of interests.

Others with interests may have been excluded for a variety of other reasons. Those within the external Rohe Potae boundary appear to have genuinely believed that they need to take no notice of the proceedings as their land was already protected. Others are likely to have missed out on finding out about the hearing, given the urgency with which it was notified and held. There may also have been considerable confusion about where the block boundaries lay, not helped by the urgency with which the sketch plan was compiled and the lack of field work on the ground. Given their relative inexperience with the Court, many communities may also have relied on their chiefs to carry out the work of submitting lists and having them recognised. The Court process in fact seemed to rely on this even while creating a new system of individual rights and responsibilities. If the chiefs made mistakes or were objected to, or they refused to participate, their communities would also be excluded from the lists.

The title investigation also seems to highlight the lack of understanding about the Court process. There were very few objections to the case, while most of the focus seems to have

been on ownership lists. This seems to indicate that many communities believed they were being included within an overarching claim which would include them all for protection, but after which they could have their various interests defined. In fact, the lack of objections allowed much evidence of interests to be excluded and gave Te Rangihuatau (and through him Butler) a very powerful role in the process. Unfortunately, because neither the Court process, nor Butler, acknowledged the existence of other possible interests in the Waimarino block, they are largely invisible in the official record at this time.

It seems that the title investigation for Waimarino hardly met the objectives stated by many of the Whanganui and Rohe Potae chiefs who had made it clear to the Government that they wanted a careful, measured and collective means of confirming legal title and enabling continued management of their lands, preferably by Native committees, and without outside interference. On the other hand, the investigation did appear to support the facilitation of extensive purchasing in the block. Even so, a large part of the block was still owned by communities who had been traditionally reluctant to cooperate with the Government. The extent to which the investigation did actually support purchasing is explored further in subsequent Government actions over the block.

## **Chapter 6 Preparations for the Waimarino block purchase, March-April 1886**

### **6.1 Introduction**

The Native Land Court investigation of the large Waimarino block had taken a short time, under four days. It had also taken place in the context of land purchase commissioner Butler's preparation for purchasing the block. Shortly after the ownership of the Waimarino block was legally determined, Butler moved to the next stage of preparing for purchasing. The preparations indicate the strategic importance of the Waimarino block to the Government, both for land purchasing in the railway area and for undermining the Rohe Potae and the Kingitanga.

The Government placed considerable effort into preparations to ensure the Waimarino purchase would be successful. Efforts were made to ensure Butler had adequate assistance for his purchase work. He had the advantage of being a senior, respected official, likely to be trusted by Maori who wanted someone experienced and trustworthy to cooperate with. However, he was relatively inexperienced in land purchasing. He needed an assistant who not only knew the upper Whanganui communities, but could also advise him on tactics that might assist him to make a rapid purchase of the block. The purchase tactics of the 1870s had been strongly criticised by Maori, so Butler's choice of assistant for this would be illuminating.

The Government also seems to have placed considerable effort into ensuring its longer term consultations over proposed legislative reform had maximum impact in the Whanganui district, ensuring Butler was provided with a sympathetic environment in which to at least begin his purchasing of Waimarino. The main vehicle for this was the large hui to be held at Aramoho in March 1886, just as the Waimarino investigation of ownership hearing was completed and before purchasing in Waimarino was officially approved in April 1886.

### **6.2 Butler's continued preparation for the Waimarino purchase**

As soon as the title to Waimarino was determined in March 1886, Butler appears to have stepped up preparations to purchase the block. These preparations included the careful presentation of Butler as having a more significant role than just land purchase agent. He was already well known to Maori in his senior official role in negotiations, with ready access to

the Native Minister. His new title was Land Purchase Commissioner. This was very close to the proposed Government ‘commissioner’ who was supposed to act as a neutral official in the proposed legislative reforms (what became the Native Land Administration Act 1886) which were to be discussed in more detail at Aramoho and which were promoted as assisting Maori who wanted to place some of their land in new economic uses.<sup>936</sup>

Additionally, Butler was also given the role of Maori population census enumerator for the Whanganui census district in March-April 1886. This appeared to fit well with his role as senior government official and ‘commissioner’ for Maori of the district. It may also have given Whanganui Maori further reason to assume he was a senior, respected official. The census duties were also very useful for land purchasing, however, as they enabled Butler to find out information critical to his later purchasing. The Whanganui census district did not match entirely with the Waimarino district. Nevertheless, his census duties would still enable Butler to identify many families and individuals who might have interests in Waimarino. He would learn their names and where they lived, their relative wealth and influence and any financial or other difficulties they might have, all useful information for land purchasing.

Census details at the time not only included names and locations of families and individuals, but also such matters as stock owned and land in cultivation. For example, the *Wanganui Herald* reported in April 1886, just before Butler began purchasing in Waimarino, that Mr Butler, ‘Native Lands Purchase Commissioner’, had just finished his duties as enumerator for the Maori census. The *Herald* went on to report his provisional census data for Maori of Wanganui County, including the stock they owned and the amounts of land they were cultivating in crops.<sup>937</sup> Butler could also keep track of where those, normally resident in the district, may have relocated if he wished to pursue them for purchasing. For example, in 1886, he noted that a considerable number of Maori usually living along the Whanganui River were away at ‘Parihaka, Taupo and other places’ when the census was taken.<sup>938</sup>

It seems to have been common practice for land purchase agents to also have census duties at this time, another example of government willingness to blur land purchase and other more supposedly neutral official duties. This not only gave the land purchase agents access to useful census information, presumably the more unscrupulous among them could also take

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<sup>936</sup> Williams, pp 222-223

<sup>937</sup> *Wanganui Herald*, 21 April 1886, p 2

<sup>938</sup> *AJHR* 1886 G-12 p 12, cited in Rose, K, ‘Whanganui Maori and the Crown: Socio-Economic issues’, draft report, 2004 p 140.

advantage of opportunities offered by their joint roles to manipulate data to support their own claims of fewer numbers of owners for land purchase requirements. No direct evidence has been found of Butler or other agents using census information for purchase activities although it seems highly unlikely they would have failed to take advantage of at least some of the information they were collecting. Not surprisingly, the practice provoked considerable concern within Maori communities and, predictably, this was reflected in antagonism to census taking. For example, Butler reported in 1891, that he had been obliged to estimate the Maori population along the Whanganui River, as ‘all information was refused the sub-enumerator’.<sup>939</sup> In 1906, the sub-enumerator at Taumarunui was obliged to obtain a letter of authority from the Maniapoto Maori Council before he was accepted in the district, but even then he found it impossible to take a thorough census.<sup>940</sup> Other sub-enumerators continued to report Maori reluctance to give their names for the census and the suspicion in Whanganui Maori communities that census and land purchase activities were connected lasted into the twentieth century. By this time, census officials were reporting widespread Maori concern that the census was being used to find out what the Government could secure in land; ‘Government swindles, as they term it, taking their names to steal their lands’. A Waimarino sub-enumerator also reported Maori concern that ‘the Government would step in and take their lands away from them’, while others found Maori had given them names of ‘trees and lands as substitutes for themselves’.<sup>941</sup>

Butler also seems to have selected an assistant to help him with purchase work for Waimarino in March 1886. Butler could rely on his image as a senior, neutral official in the early stages of the purchase at least, but he was relatively inexperienced in actual land purchasing. He needed the assistance of a more experienced agent and someone who had contacts in the upper Whanganui district. He did not seek another government appointment, however. Instead, he selected a private agent, John Stevens, to be paid on commission for the Waimarino purchase. John Stevens, it will be remembered, has already been mentioned earlier in this report in connection with his previous land purchase work, privately and on commission to the Government, in the Rangitikei and Manawatu districts in the 1870s. He was based at Bulls, and seems to have been familiar with Maori of the Manawatu area and with their relatives in the upper Whanganui and Tuhua areas. As a private agent he may also

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<sup>939</sup> Cited in Rose, p 140

<sup>940</sup> Cited in Rose, pp 182-183

<sup>941</sup> Cited in Rose, pp 182-3

have continued purchasing in the Whanganui area when the government office at Wanganui was closed down in the early 1880s. It seems likely, therefore, that he had useful recent knowledge of the upper Whanganui communities and the possibilities of purchasing among them.

John Stevens was also well experienced in 1870s style land purchase tactics, especially those that were most successful in forcing a sale. These kind of tactics had been strongly criticised by Whanganui Maori and Ballance had claimed to distance himself and his Government from them. Possibly it suited Butler to have Stevens remain as a private agent on commission so he could then claim some distance between them, if concerns were raised about the Stevens's past. Nevertheless, it remained to be seen how far Butler would adopt or tolerate those previously discredited tactics, if they appeared to offer advantages for the Waimarino purchase.

The use of Stevens to assist in the Waimarino purchase would be officially approved in April 1886.<sup>942</sup> By this time, however, it seems Butler had already reached some agreement with Stevens and, as will be seen, they were both present at the Aramoho hui which began on 18 March 1886. In seeking approval for a contract for Stevens in April 1886, Butler would also reveal that he expected him to be required for just six months on the Waimarino purchase. The commission for Stevens for Waimarino was agreed to be around 2 pence per acre for the purchase, working out at around an estimated £3000 for what was expected to be six months work.<sup>943</sup> This contract was eventually signed with Stevens on 24 April 1886. It provided for a commission of 2 pence per acre on all Waimarino land that was acquired with the assistance of Stevens within six months. The original sum estimated for this appears to have been around £2518.<sup>944</sup> This contract indicates that the Government and Butler expected the Waimarino purchase to go ahead with some urgency. Again this seems to have cut across the desire of Whanganui Maori to have careful, rather than rushed, discussions and agreements over opening land for settlement, particularly when these might also soon have the added protection of the long awaited legislative reforms due later in 1886.

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<sup>942</sup> urgent telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144 on MA1, 1924/202 vol 1, ANZ

<sup>943</sup> urgent telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144 on MA1, 1924/202 vol 1, ANZ

<sup>944</sup> MA-MLP 3/5 pp 617-8, 620, 623, correspondence April-May 1887, ANZ

Stevens was eventually paid a commission for the Waimarino purchase of £3284 2 6.<sup>945</sup> This was based on a revised area of 485,500 acres and work extending beyond the original contract period, until 5 April 1887.

The commission of 2 pence per acre for private agents was not unusual at this time. What made it unusual was the large block involved, and the expectation that such a large area could be purchased so quickly. As a result, Stevens expected to earn around £3000 for just six months work. This was an enormous amount of money at the time. In comparison, a relatively well paid Native Land Court judge could expect to earn around £600 per year. For example, Judge Laughlin O'Brien, one of the judges who would hear the original Waimarino title investigation case, was paid £600 as a Native Land Court judge for the 1885/86 year.<sup>946</sup>

Butler also appears to have continued seeking the cooperation of selected influential chiefs for his activities in the Waimarino block during March 1886. By April, he was able to report that he had engaged in long conversations with the leading men of the Waimarino block, who had previously been 'quite opposed to selling' but were now 'giving away a little' enabling him to be confident that with their cooperation, the 'whole block' could be purchased in a 'reasonable' time.<sup>947</sup> It is not clear how Butler induced them to 'give way' from their previous opposition to selling. He does not explain this in detail but the key seems to have been in the expectations that were created, should Waimarino communities agree to 'cooperate' with Butler. One important means of creating these expectations and understandings was the important hui that took place in the Whanganui district in March 1886, where conveniently, Butler and Stevens also had significant roles.

### **6.3 Government undertakings at the Aramoho hui, 18-31 March 1886**

The large hui was held over a number of days at Aramoho, just along the river from Wanganui township, beginning on 18 March 1886. This hui was already planned, being another in the series of consultative meetings between Maori communities of the North Island and the Government, with particular focus on the proposed reforms of the Native Land Disposition Bill, 1885. As described in the previous chapter, this hui for Maori of Whanganui and the lower western North Island had been foreshadowed at the Hastings, Waipatu,

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<sup>945</sup> MA-MLP 3/5 pp 617-8, 620, 623, correspondence April-May 1887, ANZ

<sup>946</sup> MA series 26/13 salary register, ANZ

<sup>947</sup> urgent telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144 on MA1, 1924/202 vol 1, ANZ

meeting. It had been planned for mid-March 1886, to enable further discussions and consultation to take place before the Parliamentary session expected to begin in May 1886, and expected to finally pass what was then still the Native Land Disposition Bill.<sup>948</sup> As well as discussing the proposed legislative reforms, this hui also seems to have been critically important in persuading many influential Whanganui leaders, including some from upper Whanganui, to trust in and cooperate with the Government, including over Waimarino.

This hui had been referred to in the Native Land Court minutes for the Waimarino hearing, when an adjournment from the hearing was requested to enable local Maori to prepare for it.<sup>949</sup> Wiari Topia had also mentioned there was ‘great trouble’ in the district at this time.<sup>950</sup> It is not clear what this ‘trouble’ was, although it may have referred to divided opinion in the district over whether to engage in Court hearings, especially over Waimarino, and in a wider sense, whether to cooperate with the Government over its proposed reforms. The hui was presumably important in enabling these concerns to be heard and discussed. It was also an opportunity for the Government to persuade influential Whanganui leaders to trust and cooperate with it.

It is not clear whether officials deliberately tried to ensure that the Waimarino hearing was completed in time for the planned Aramoho hui in mid-March. However, it certainly worked out well for land purchase strategies. Many of the owners in Waimarino were still present at this time and their attendance at the hui enabled Butler to contact many of them while they were in one place. Even more importantly, the hui might persuade some of these owners to trust Butler over Waimarino. This also held true for a number of upper Whanganui chiefs who had not participated in the hearing, such as Ngatai, but who were nevertheless regarded as influential in the upper Whanganui/Tuhua district and had been invited to the hui. If they could be persuaded to agree to work in partnership with the Government over managing future development and settlement of Maori lands, they might also assist Butler in Waimarino. The hui was likely to provide a particularly positive environment for Butler and Stevens to begin their work.

Information about the full Aramoho hui is, unfortunately, sparse. The hui appears to have covered several days from 18 March but, apart from when Ballance attended, it was barely

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<sup>948</sup> *Wanganui Herald*, 17 March 1886, p 2

<sup>949</sup> MLC-Whanganui MB 9 p 279

<sup>950</sup> MLC-Whanganui MB 9 p 280

reported by newspapers or in surviving official documents. This makes it difficult to gain a clear idea of the debates that occurred between Maori themselves over participating in the Government offers of consultation and joint management. However, it is possible to gain an idea of the main issues discussed from the coverage of Ballance's attendance.

The actively pro-Ballance newspaper, (Ballance owned it and was occasional editor at this time<sup>951</sup>) the *Wanganui Herald*, provided the most detailed coverage of the meeting and the issues discussed, along with the most detailed account of government inducements to Maori to cooperate with it. The *Herald* also noted the importance of the Waimarino block at this time. On 15 March 1886, it reported that the Land Court sitting at Wanganui had now put through three quarters of a million acres at the present sitting, including the Waimarino block of around 490,000 acres, which had just finished passing the Court that day. This land was thought to be of 'great importance' with a forty-mile frontage to the central railway. It was also believed that while the Court still had a large amount of business to get through it was likely to adjourn shortly for a while, as Maori wanted to get back to their plantations. According to the *Herald*, Judges Puckey and O'Brien had been working quietly but well and had succeeded in getting through their work without much opposition.<sup>952</sup> The *Wanganui Chronicle* reported similar news on 18 March 1886, adding that 'large purchases' of land in the district had already been completed recently by the new 'Crown Lands Commissioner' Butler.<sup>953</sup> The *Herald* also reported that Butler, Lewis and Sheridan were active in the Waitotara area purchasing the Rawhitiroa block of 35,000 acres.<sup>954</sup>

It seems likely that the Aramoho meeting did begin on 18 March 1886, although its early days were not reported in great detail. The *Herald* reported on 19 March, that the Aramoho meeting had already begun, with the main business at present being 'a big feed'.<sup>955</sup> Both papers reported the arrival of several influential chiefs for the hui, including Ngatai of the upper river area. For example, on 18 March, the *Chronicle* reported that 'Ngatao' and other influential chiefs from Tuhua were expected in Wanganui in anticipation of the visit by the Native Minister the following week.<sup>956</sup> This suggests these Tuhua chiefs were not yet present at the Waimarino hearing, although they may have believed it did not include Tuhua.

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<sup>951</sup> Melvor, Timothy, *The Rainmaker; a biography of John Ballance, journalist and politician, 1839-1893*, 1989.

<sup>952</sup> *Wanganui Herald*, 15 March 1886 p 2

<sup>953</sup> *Wanganui Chronicle*, 18 March 1886 p 2

<sup>954</sup> *Wanganui Herald*, 19 March 1886, p 2

<sup>955</sup> *Wanganui Herald*, 19 March 1886, p 2

<sup>956</sup> *Wanganui Chronicle*, 18 March 1886 p 2

However, they were apparently expected to attend the planned hui, giving Butler an opportunity to negotiate with them, as well as those who had attended the Court.

The *Chronicle* reported that Ballance arrived at Wanganui from Wellington on 20 March, and it was understood he would attend the Aramoho meeting when he received notice the people there were ready to meet him.<sup>957</sup> The reports also noted the kind of pressures being placed on influential chiefs, in the form of the many private meetings being held around the main hui at this time. These presumably included meetings Butler later reported he had held with Waimarino chiefs to persuade them to give way on their refusal to sell land and to cooperate with him over the Waimarino block. While he was waiting to be invited to attend the hui, Ballance also appears to have taken the opportunity to meet privately with chiefs of the upper river area. For example, the *Herald* reported on 22 March, that Ballance had met with ‘Ngatae’, one of the most influential chiefs on the Whanganui River, that morning and held a long interview with him. The results of this were not known, as the meeting was private.<sup>958</sup> The *Chronicle* also noted that a number of other influential chiefs were present in the town, including Topia Turoa and efforts were being made to obtain subscriptions to defray the cost of the hui.<sup>959</sup>

The *Herald* also reported a number of influential chiefs arriving for the hui. These included Renata Kawepo, who was reported as arriving on 23 March as the political business of the meeting was due to begin.<sup>960</sup> Kawepo was a Hawkes Bay chief who had been instrumental in organising the Hastings hui. The *Herald* also reported that Hori Ropiha and Topia Turoa were among the chiefs visiting Wanganui for the meeting. The paper reported that these two influential chiefs had visited England with Tawhiao, and their attendance at the meeting was considered important.<sup>961</sup> As described earlier, both of these chiefs had also been present at the Poutu meeting at Taupo in late 1885, where most of those present had agreed to acknowledge the Queen’s authority, but not that of the colonial government. They had also agreed to refuse to engage with the Land Court and to allow no surveys, leases or sales of lands.<sup>962</sup> Ropiha was also a spokesman for Te Kere.

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<sup>957</sup> *Wanganui Chronicle*, 22 March 1886 p 2, 23 March 1886 p 2

<sup>958</sup> *Wanganui Herald* 22 March 1886 p 2

<sup>959</sup> *Wanganui Chronicle*, 25 March 1886 p 2

<sup>960</sup> *Wanganui Herald* 23 March 1886, p 2

<sup>961</sup> *Wanganui Herald* 24 March 1886 p 2

<sup>962</sup> *AJHR* 1886 G-3 p 1

It seems that since then, the Government had made a very active effort to win those chiefs over to cooperation with ‘the law’. This seems to have been based on an appeal to cooperate with the Government to ensure the peaceful, united and mutually beneficial development of both races. The emphasis on peace and unity was already part of the philosophy of Te Kere and Ropiha. Topia’s participation in peacemaking and unity among the people of the river also tied in closely with this. The Government also appears to have appealed to these chiefs to cooperate over working within an improved system, rather than staying outside it.

The *Herald* reported that Hori Ropiha had met with Ballance in Wellington in the previous week after which he had expressed himself satisfied with the Native Minister’s policy.<sup>963</sup> In an editorial of 25 March 1886, the pro-government *Herald* described the present Government policies as they may have been explained to Maori in more detail. The editorial contrasted those Maori who still held themselves ‘aloof’ from the government as losing benefits, while those who took part in a more enlightened policy of allowing roads, progress and settlement, could look forward to an ‘immense’ increase in the value of their lands. They would speedily acquire benefits themselves and gain prosperity from the resulting large settlements of Maori and Pakeha. The editorial noted that the older chiefs like Wahanui were not yet reconciled to change, but the younger men were no longer content to deny themselves the ‘benefits’ of engaging with the rest of the population. The current government had no wish to ‘over-reach them’, but would jealously protect Maori from the land sharks who had been allowed to traffic in Maori lands and to demoralise them by ‘transactions which would never stand the light of day if fully exposed’. The *Herald* claimed that the present government had stopped all that as well as bringing Maori under ‘one law’ and peace to the country by wise and firm rule coupled with a desire to do justice to both races. The previous Minister Bryce had offended many, while Ballance smoothed the way and had been successful by being firm and fair and insisting on the fullest justice to all parties.<sup>964</sup> This indicated a determined government effort to disassociate itself from the previous system of land purchase, while appealing to Maori to join with it in cooperating within a new more protective and reformed system they could now trust. At the same time, the Government was seeking to isolate the Kingitanga (and now Wahanui) as out of touch, isolated and a barrier to shared progress and prosperity.

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<sup>963</sup> *Wanganui Herald* 24 March 1886 p 2

<sup>964</sup> *Wanganui Herald* 25 March 1886, editorial, p 2

#### 6.4 Concerns of the Aramoho hui

Ballance finally attended the Aramoho hui on 26 March 1886. The *Herald* reported that the chiefs and people attending had been busy discussing the Land Disposition Bill all week and were now ready to discuss it with Ballance.<sup>965</sup> On 27 March, the *Herald* carried a long report of Ballance's attendance at the meeting, headed 'Important Native Meeting at Aramoho'.<sup>966</sup> It seems that Ballance attended the meeting accompanied by T W Lewis, the Under Secretary of Native Affairs, (and also the Land Purchase Office) and T W Lewis junior, the new private secretary to the Minister. Mr John Stevens (already preparing for the purchase with Butler) acted as official interpreter at the meeting and a number of other Europeans were present.<sup>967</sup>

The *Herald* described Maori attending the hui as including Wi Pere and Puke Te Ao, both Members of Parliament, Renata Kawepo, Ngatae, Kemp, Hori Ropiha, Tukarangi Mete Kingi, Topia Turoa, Topini, and other old and influential chiefs.<sup>968</sup> Te Keepa was the first to speak and began by welcoming Ballance and thanking him for coming. He referred to the difficulties the meeting had in discussing the proposed Land Disposition Bill. For example, he described uncertainty over whether leased lands, thermal springs lands, customary lands or public trustee administered lands were also included. Paori Kuramate, the chairman of the Whanganui Native Committee, spoke next and acknowledged the presence of many important chiefs including Topia Turoa, Hori Ropiha, Renata Kawepo at this important meeting. A number of speakers followed, many noting their appreciation at being consulted by the Government, and the way the Native Minister appeared to be winning around many leaders who had previously refused to deal with the Government.<sup>969</sup>

However, as with the hui held at Hastings earlier in 1886, this hui was also very clear in noting serious concerns about the Land Court, loss of Maori land and the need for reform of legislation concerning Maori land. For example, Hanita te Aweawe, while congratulating Ballance, was also reported as asking for the Native Land Court to be discontinued. He wanted the Native committees enabled to handle Maori land with the Land Court to ratify their decisions when they were made. Ropati Raniperi also agreed that the present Maori

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<sup>965</sup> *Wanganui Herald* 25 March 1886 p 3

<sup>966</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>967</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>968</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>969</sup> *Wanganui Herald* 27 March 1886 p 2

policy was an improvement from the past, but agreed with Te Aweawe about the Native Land Court.<sup>970</sup>

A number of other speakers were also reported as asking for the Land Court to cease operations until appropriate legislation was passed. Aperahama Tahunuiarangi also asked for Maori assessors to sit on the Resident Magistrate bench for cases between Maori and Europeans. The chief Nikitini then asked when the proposed legislation was likely to become law. He pointed out the Land Courts were still sitting and land purchase commissioners were buying land. He noted (with some perception over Waimarino as it turned out) that by the time the proposed Bill became law, there might be little land left for it to cover. He wanted the Courts stopped until the Bill became law. Takarangi Mete Kingi also spoke in support of the Native Land Court being stopped in the meantime. The Maori Members of Parliament, Wi Pere and Te Ao, also spoke in favour of halting the Court until the Bill was passed, agreeing that by the time it was passed there might be no land left. Te Ao also complained of the recent difficulties at Taupo and about the Grace brothers whose conduct was 'not satisfactory'. He complained about European interference at Taupo, saying Maori should be able to decide themselves whether to put lands through the Court.<sup>971</sup>

Hori Ropiha was reported as also wanting the Land Court to stop work, but noting he was pleased with what he understood was Ballance's policy of enabling Maori to conduct their own business regarding land. He told the hui that, at Wellington, he had promoted all Maori troubles being included in the 'amnesty' arranged between himself and the Native Minister. (This was apparently a reference to a private meeting he had held to discuss matters with Ballance in Wellington the previous week). He asked that the Land Courts should cease, public houses on Maori land should be done away with and leases that were not right should be corrected. Maori should also have control of gold prospecting on their land and the sale of arms and ammunition to Maori should be relaxed. Ropiha told the meeting that if these difficulties were not settled, he was willing to go back to England for redress, but he did not feel the need to, as the 'questions were now settled'.<sup>972</sup> Ropiha seems to have become convinced of the Government's sincerity through the meeting held in Wellington the previous week, where he was apparently assured that Maori would be able to conduct their own

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<sup>970</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>971</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>972</sup> *Wanganui Herald* 27 March 1886 p 2

business over land. No documentation has been found of this meeting, but the winning over of Ropiha was a major success for the Government at this time.

Topia Turoa who had also accompanied Tawhiao to London, read out a report of the visit to the meeting. This included what was reported as a long letter from London, dated June 1885, detailing Gorst's work with Tawhiao's petition. The Secretary for the Colonies was apparently unsympathetic to interfering with the New Zealand Government, but others had been more sympathetic to looking more closely at what was happening in New Zealand. Topia was reported as looking forward to more progress with this. Clearly, the hui was considering a number of possible approaches to the difficulties being identified.

The *Wanganui Chronicle* also reported those speaking at the hui, as including Major Kemp, Paori Kuramate, Te Kania, Takirau, Tahana te Whataupoko, Hanata te Aweawe, Arapeta Haeretauterangi, Ropata Ramapiri, Hori Ropiha, Renata Kawepo, Wi Mahwe, Aperahama Tahunuiorangi, Te Kaioroto, Nikitini, Mete Kingi Takarangi, Topia Turoa and the two Maori Members of Parliament, Wi Pere and Te Puke Te Ao.<sup>973</sup> These speeches were reported as taking about 2 ½ hours. A number of the speakers, including Renata Kawepo, Wi Pere, Te Puke Te Ao and Paori Kuramate (chairman of the Whanganui Native Committee) had also been present and spoken at the Hastings hui.<sup>974</sup> References to the upper Whanganui chiefs indicates that considerable efforts had been made to include them, and their presence was regarded as important to the meeting.

## **6.5 Ballance's assurances to the Aramoho hui**

Ballance was reported as speaking to the hui, in reply, for about an hour.<sup>975</sup> He began by noting that he had been criticised for paying too much attention to chiefs and in the past governments had tried to ignore them. However, he defended his recognition of chiefs, describing them as the natural leaders of their people. He claimed they were protectors and guides for their people and they needed to decide at this meeting whether the proposed laws were for the good of their people generally. He reminded them he had visited Maori communities since he became Minister and he claimed his government was anxious to

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<sup>973</sup> *Wanganui Chronicle*, 27 March 1886 p 2

<sup>974</sup> *AJHR* 1886 G-2

<sup>975</sup> *Wanganui Chronicle*, 27 March 1886 p 2

promote the welfare of Maori people. He also wanted to unite the two races, and believed his recent meeting with Ropiha was important in that.<sup>976</sup>

Ballance acknowledged that the main grievance the hui had raised was the Land Court. However, he claimed that he could not make everyone happy with Court judgments when one party always had to lose before the Court. He also questioned whether Native committees could do any better and in some places, where there were intersecting interests, it might not even be clear which committee should hear a case.<sup>977</sup> This reply was disingenuous about the Land Court as Ballance must have been aware by now that Maori concerns went deeper than having one side lose and possible difficulties over committee boundaries. Ballance also seemed to resile, at this meeting, from his earlier willingness to consider having committees conduct the initial inquiry with the Court as an appeal body. This was possibly the result of the recent government success in encouraging applications to the Court.

Regarding the criticisms about Taupo, Ballance claimed that Ngati Tuwharetoa were satisfied that their 'external' boundaries had been fixed. He claimed Rewi and Taonui attended the celebrations over that boundary and were also satisfied. In this, Ballance was following what had become the government strategy of treating 'external' boundaries as really no more than block or iwi boundaries. This attempted to deny the possibility of an 'external' boundary that was wider than simply a block or an individual iwi boundary as the alliance had been seeking.

Ballance also explained that the Land Court had sat at Taupo because Tawhiao had been trying to have the chiefs hand their land over to him. Ballance claimed this was 'improper' and he had told Wahanui so. He claimed the people themselves should have title to the land, not Tawhiao, and the Government's duty, therefore, was to resist Tawhiao. He explained that this was why the Land Court sat at Taupo when it did, and all the principal owners of Ngati Tuwharetoa were satisfied with what the Court had done.<sup>978</sup> Ballance was apparently referring to the efforts that had been made to seek a recommitment from interior iwi and hapu to the Kingitanga and Tawhiao, such as at the Poutu meeting of 1885, near Taupo, previously described. Ballance's explanations over this appeared to acknowledge that the Government was using the Land Court process to support its policies in the district, including to undermine the Kingitanga and the Rohe Potae. It is noticeable that Ballance was now also including

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<sup>976</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>977</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>978</sup> *Wanganui Herald* 27 March 1886 p 2

Wahanui in his criticism of the Kingitanga. This was presumably because Wahanui had refused to agree to the Land Court process until more extensive reforms were made, reforms that Ballance was now not prepared to make. Ballance was not reported as making any direct response to the criticisms about the Grace brothers.

Ballance went on to refer to Topia's visit to England. He argued that Topia was wrong to believe they might get progress there. He explained that those in England who might seem favourable to the petition were now in opposition and they would do nothing when they became government. Ballance claimed they were not sincere and he described the Aboriginal Protection Society as 'busybodies' who would do nothing of benefit to Maori. He was reported as agreeing with Topia that the Treaty of Waitangi was binding on Maori and Europeans. However, he claimed that the government had observed the Treaty and the Treaty placed mana in the Queen, not in Tawhiao. He stated that in future there would only be one government in the colony and that was the New Zealand Government. He denied that there could never be two governments. Ballance also noted that Hori Ropiha was keen to promote unity between the races and he also claimed that the Government wanted Maori help to make laws together and 'assist us to make laws for their welfare'. He believed that the New Zealand Parliament was sufficient for that, and it was anxious to listen to Maori representatives, while the present Bill owed a great deal to their work. Later, Ballance spoke against Ropiha going back to England about grievances. He argued Maori should seek redress with the New Zealand Parliament, where he claimed, they would have more chance than in England.<sup>979</sup> It seems from this that Ballance was offering a very clear choice to Maori leadership. He was asking them to reject any attempts at 'home rule' as futile, while offering them the promise of a real and effective role in government and in making laws that affected them, while claiming that this was also the best way to achieve peace and unity between the races.

With regard to the proposed legislative reforms, Ballance claimed the government had already agreed to many amendments to the proposed Bill asked for by the Waipatu, Hastings, meeting. He acknowledged Maori objection to the word 'disposition' in the Bill and suggested the title should be the Native Land Administration Bill instead. He described other amendments agreed to, apart from the title, as the abolition of the proposed boards, allowing district committees to assist the commissioner in the allocation of money from lands, striking out references to the public trustee and the deletion of clauses relating to surveys and other

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<sup>979</sup> *Wanganui Herald* 27 March 1886 p 2

rates. He promised that such matters would now be agreed by the commissioner and the committee for a block.<sup>980</sup>

With regard to liquor, Ballance said he was inclined to agree that no public houses should be allowed on Maori land before it went through the Land Court. He reminded the meeting that the government had implemented prohibition in the King Country and in doing so had saved Ropiha a great deal of trouble, enabling him to devote himself to other districts, including Wanganui where Ballance had heard his services were required at present.<sup>981</sup> It seems that Ballance was acknowledging what had become a significant liquor problem among Maori attending the Land Court at Wanganui at this time. Numerous reports in the *Wanganui Herald* and *Wanganui Chronicle* of this time support this, with many reports of police magistrate cases, for example, involving actions against Maori as a result of their drunkenness. There are also numbers of reports of civil actions against Maori for unpaid debts, many possibly associated with attendance at the Court, such as for lodgings and supplies such as food and liquor.<sup>982</sup> Even at this hui, it seems drunkenness was at times a problem, with a report of wardens evicting some attendees for having had too much liquor.<sup>983</sup> The ready supply of liquor to Maori attending Land Court hearings, especially when agents were also attempting to purchase interests, had long been identified as a major concern by Maori leadership and numerous requests had been made to governments to assist with this. While Ballance noted the application of prohibition in the King Country at the request of leaders there, he was not reported as making any promises to directly assist Maori over this in the Whanganui district.

Ballance also referred to gold prospecting and claimed the Government had given Maori control over this. He noted, as an example, that before prospecting parties were sent to the Waikato, the resident magistrate at Thames made arrangements with Maori over what would be done if gold was discovered. He claimed that this showed Maori had control.<sup>984</sup> He also agreed that restrictions on arms and ammunition for Maori should be relaxed as much as possible as most Maori could now be trusted.<sup>985</sup> Ballance was also reported as agreeing with

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<sup>980</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>981</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>982</sup> For example, *Wanganui Herald* 23 March 1886 p 2 re action vs Eruera Taika for debts

<sup>983</sup> *Wanganui Herald*, 27 March 1886 p 2 report of meeting

<sup>984</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>985</sup> *Wanganui Herald* 27 March 1886 p 2

the proposal to place Maori assessors on the Resident Magistrate bench and as promising to have this carried out.<sup>986</sup>

Ballance went on to warn the meeting over what was now the proposed Land Administration Bill. He explained that there was very strong opposition to it in Parliament and among those interested in free trading in Maori land. He promised the Government would do its best, but warned that unless Maori agreed to it, there would be very little chance of having it passed. He claimed that it would take the combined force of the Maori people, the Government, the South Island members and some of the North Island members before it would become law. It would also depend very largely on the efforts of Maori to make it law.<sup>987</sup> Ballance was placing a great deal of pressure on Maori with this to overlook any doubts they might have and to cooperate to ensure the proposed measures passed. Presumably, Ballance was confident that he could gain the numbers, if the Maori members supported him, to pass the proposed measures and Maori had to trust in this. However, his warnings highlight a difficulty for Maori in trusting the reforms would pass as agreed. It remained to be seen whether Ballance would make good on all his promised reforms or use the possibility of Parliamentary opposition as an excuse to allow some of them to lapse.

Ballance reminded the meeting that he had met the Whanganui people before, including at Ranana and claimed the government had made considerable progress since then with developments that would benefit them. For example, they had asked for a road from the river to the railway line and since then work had begun on a road from Pipiriki. He reminded them that the Ranana meeting had agreed to the railway but at that time the government still required Waikato to agree. He explained that since then he had achieved that following a large meeting, and the railway was now being built. Ballance hoped that before many years passed it would be completed. He also reminded the meeting that while the government had been building roads and rail, a new river steamer was being operated by a company. He claimed this all showed that progress was being made in the district and it showed the value of discussing matters, even while they might have some differences. He contrasted this to what he described as the ‘uselessness’ of isolation followed by Te Whiti and Tawhiao, even while he admitted they did not advocate breaking the law. He also reiterated that the Government greatly valued the friendship of Maori.<sup>988</sup>

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<sup>986</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>987</sup> *Wanganui Herald* 27 March 1886 p 2

<sup>988</sup> *Wanganui Herald* 27 March 1886 p 2

The hui apparently broke for lunch at this point. Those sitting at Ballance's table were reported as including W J Butler 'land purchase agent', TW Lewis, Under Secretary and T W Lewis junior, Ballance's private secretary.<sup>989</sup> This indicates that Butler was still being treated as a senior official by Ballance, with ready access to the Minister. It also means that Ballance and Butler had the opportunity to discuss matters and share information concerning the Waimarino purchase at this meeting. Presumably they also had other opportunities for discussions while Ballance was in Wanganui at this time.

After the lunch break, Te Keepa (Kemp) was reported as giving Ballance a copy of the proposed Land Disposition Bill, with comments and corrections on it prepared by the meeting.<sup>990</sup> A number of speakers continued discussions of concern in the district. For example, Ballance was asked why land duty had to be paid by Maori but not Europeans. Wi Pere spoke of the evils of liquor. Haimona Te Ao o te Rangi noted that it was the third time Ballance had come to Wanganui to attend meetings with Maori and they were considering what he had said. He objected to trig, but not chain surveys, and complained that he had to pay when his land was surveyed and also when it was put through the Court. Haimona te Rangi explained he was from the head of the river and they had come 'to learn' from the meeting as the upper river people had been asked to do. He stated that he supported the objectives of the two races being united, peace, and placing grievances before the government. He referred to the river that united them all and informed Ballance that many people were there to see him about difficulties with land. He also wanted liquor kept away.<sup>991</sup>

The chief Paiaka was reported as noting both good and evil with the Land Court. Pikikotuku was reported as speaking of troubles with the Land Court and with liquor. He also complained of his land being given away to others and warned there would be trouble if this continued.<sup>992</sup> Te Keepa Tahakumutia also spoke of the Court taking land that did not belong to those who claimed it. He spoke particularly of the wrong done to those interested in the Mangapapa and Kaitangiwhenua blocks, which he claimed were sold by stealth.<sup>993</sup>

In reply to these concerns, Ballance was reported as admitting that it was true there was a difference in law between Maori and European regarding land duty and he claimed the time

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<sup>989</sup> *Wanganui Chronicle*, 27 March 1886 p 2

<sup>990</sup> *Wanganui Herald*, 27 March 1886 p 2 ; *Wanganui Chronicle*, 27 March 1886 p 2

<sup>991</sup> *Wanganui Herald*, 27 March 1886 p 2

<sup>992</sup> *Wanganui Chronicle*, 27 March 1886 p 2

<sup>993</sup> *Wanganui Herald*, 27 March 1886 p 2

was coming when the duty would be abolished. However, he claimed that Maori did not have to pay the property tax and that would cost them 20 or 50 times as much. With regard to surveys, Ballance replied that Maori did not pay for trig surveys and these had to be done before the surveys using chains. He also agreed that a great wrong had been done to many Maori at Kaitangiwhenua and ‘he regretted the circumstance’. With regard to concerns about liquor, Ballance also told the meeting that he was not in favour of prohibition, although he knew that some in his ministry were, especially Stout. He noted that Hori Ropiha was currently providing a very useful service in this and was greatly respected. Somewhat facetiously, he claimed that if liquor was stopped, then Ropiha could no longer be so useful. He urged all Maori to take the pledge or their race was doomed.<sup>994</sup> Ballance also claimed to have reduced Land Court fees ‘very much’ since he took office. He claimed that if any Maori were too poor to pay the costs they were remitted.<sup>995</sup> This was an interesting statement given that official records indicate that costs were generally recovered by awards of land and it was the loss of land, including through heavy costs, that was a major concern of Maori. Presumably, in referring to remittance of costs where they were too poor, he was referring to those Maori who had no land left at all.

The hui continued the next day, Saturday 27 March 1886, when discussion centred on the proposed Land Disposition Bill and the comments the hui had made on it.<sup>996</sup> John Stevens continued to be the interpreter over this. Major Kemp apparently told Ballance that the views of the meeting were contained in the document he had been given and he asked for Ballance’s response to these.<sup>997</sup> Many of the concerns appear to have been similar to those expressed at the Waipatu, Hastings meetings. The *Chronicle* and *Herald*’s accounts of Ballance’s replies portray them slightly differently. The *Chronicle* portrays Ballance as more impatient and dismissive, possibly to appeal to its settler readership. The *Herald* seems more concerned with presenting government policy positively, and therefore reports Ballance’s replies as having a more sympathetic tone, although noticeably less accommodating than at the Waipatu meeting.

Ballance apparently began his reply by acknowledging that there was considerable Maori concern about the title of the proposed Bill. The contentious word was apparently

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<sup>994</sup> *Wanganui Chronicle*, 27 March 1886 p 2

<sup>995</sup> *Wanganui Chronicle*, 27 March 1886 p 2

<sup>996</sup> *Wanganui Chronicle*, 29 March 1886 p 2

<sup>997</sup> *Wanganui Chronicle*, 29 March 1886 p 2

‘disposition’, which Ballance was reported as claiming had ‘different’ meanings in Maori and English. He agreed the word should be changed and suggested ‘administration’ would be a better and more acceptable alternative.<sup>998</sup> The problem was, presumably, more to do with the connotations of the word. ‘Disposition’ was too close to disposal or alienation for Maori, while ‘administration’ was more acceptable being more closely linked with keeping and managing land, rather than ‘disposing’ of it.

Ballance then told the meeting that he had ‘looked over’ the proposals (according to the *Chronicle*) or read them ‘carefully’ (according to the *Herald*) and he had to confess he could not understand them.<sup>999</sup> They seemed ‘wonderfully complex and mixed up’ (*Herald*) or ‘very much mixed up’ (*Chronicle*).<sup>1000</sup> He noted they wanted the Bill to also apply to leased land. However, he explained the government could not interfere with agreements already made and the Bill excluded leases until they expired. Ballance also rejected the hui request to lift the Thermal Springs Act over some lands. He said they would need to ask the people affected, as they regarded that Act as a protection.<sup>1001</sup>

Ballance also noted the meeting wanted a repeal of section 121 of the Public Works Act. It is not clear exactly what section was meant in this. Presumably, the reference was to the Public Works Act 1882 as this was the only recent Public Works Act with over 100 sections. The reference to section 121 may have been a misprint or misreporting of the section. The most likely section of concern at this time was section 127 of the Public Works Act 1882. This provided that any land taken, purchased, or acquired for a railway was to be deemed part of the railway, notwithstanding that it might be situated more than five chains from the middle line of the railway. This also seems to have been referred to by a later speaker who while he agreed good was likely to come from the railway, also expressed concern that up to five miles of land could be taken either side of it.<sup>1002</sup> The hui appeared to be concerned that while a chain wide had been agreed for the railway, any more land required should be subject to continuing discussion and consultation, not simply taken by legislative provision.

In reply, Ballance argued that it was not reasonable to stop the railway if agreement to it could not be gained from everyone. Europeans were not asked if they agreed. A railway was made

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<sup>998</sup> *Wanganui Chronicle*, 29 March 1886 p 2

<sup>999</sup> *Wanganui Herald* 29 March 1886, p 2; *Chronicle*, 29 March 1886 p 2

<sup>1000</sup> *Wanganui Herald* 29 March 1886, p 2; *Chronicle*, 29 March 1886 p 2

<sup>1001</sup> *Wanganui Herald* 29 March 1886 p 2

<sup>1002</sup> *Wanganui Herald* 29 March 1886 p 2

and then compensation was paid. Even so, he had taken a different course with Maori and had consulted over the railway. This meant he had paid more respect to Maori than to Europeans in the same situation.<sup>1003</sup> Ballance was presumably referring to his negotiations over the exploration, survey and building of the Main Trunk railway, where the government had little choice but to negotiate and had withdrawn from negotiations as soon as possible. In response to the later comment, Ballance indicated that he understood the section provided for five chains rather than five miles to be taken. However, even this was out of date, as an 1884 amendment to the Public Works Act appears to have already substituted ten chains for five chains, and made additional takings for railway purposes easier.<sup>1004</sup>

Ballance does not appear to have been willing, by now, to address the main concern of the hui over the railway, which seems to have been to have continued consultation over additional land required for the railway. He claimed the Government had already treated Maori differently from Europeans by consulting at all. He seemed reluctant now to do any more than the initial negotiations, certainly not to continue further negotiations. This seemed to cut across his assurances of the previous day that he valued discussions with Maori, even if there was not always agreement.

Ballance was then reported on his response to the meeting proposals for Native committees, which he was reported as describing as ‘most obscure and confused’.<sup>1005</sup> Unfortunately no evidence has been found of these proposals, but the reporting indicates that the hui still regarded committees as having an important role. Ballance was reported as criticising the lack of detailed proposals for electing committees in the proposals. He was also critical of proposals that seven owners from each block were to consult with the committees. This was presumably intended to give owners more direct control over their committees. However, Ballance claimed that if all the owners of a block in the interior happened to live at Wanganui, seven of them would be obliged to travel into the interior. If there were ten blocks then seventy would have to travel. He claimed the system might mean that all Maori might be appointed to committees and would have to travel the country. This could not work and would be a burden to the Maori people.<sup>1006</sup>

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<sup>1003</sup> *Wanganui Herald* 29 March 1886 p 2

<sup>1004</sup> Public Works Act 1882 Amendment 1884 sections 23-24

<sup>1005</sup> *Wanganui Herald* 29 March 1886 p 2

<sup>1006</sup> *Wanganui Herald* 29 March 1886 p 2

Ballance's claims over the proposals appear to be deliberately misleading. Ten blocks did not necessarily mean seventy different owners. As he well knew, many owners had interests in more than one block. Ballance highlighted the inconvenience of having to travel under the proposals, but neglected to mention the same inconvenience under the Land Court system, which already obliged large numbers of owners to travel large distances in many cases, and often for long periods. Those interested in Waimarino who actually lived on the land had recently been obliged to suffer precisely this inconvenience. Ballance also neglected to mention that many owners might not actually live far from their blocks. Ballance seemed uninterested in attempts to make committees more responsive and accountable to the wishes of owners. He seemed to find them useful only in so far as they could assist the government-appointed commissioner to manage land for settlement purposes.

Ballance was reported as agreeing to a proposal that enabled owners who wanted to sell to go to the commissioner and then sell at a market price. The commissioner would take the money and with the help of the committee divide it for the owners. However, he criticised a proposal that would enable Maori to sell land to anyone, claiming it would bring in land sharks and encourage the 'scramble' for land to be worse than ever. Ballance questioned how that could benefit Maori.<sup>1007</sup> Presumably, this clause was an attempt to evade the Crown monopoly and create a more open market price for land that was sold. However, Ballance chose to regard it as an attempt to allow land sharking into the district. His portrayal of land sharking and a land scramble as being quite opposed to his proposals for a Crown-controlled system that would provide for a 'fair' price and managed settlement was a critical assurance to the meeting, providing it with two quite distinct options. However, in setting up this comparison, the Government was making significant undertakings that its system would be fair, jointly managed and based on good faith in return for its monopoly in land dealing in the railway area.

Ballance noted that some other proposals of the meeting, such as striking out remedial clauses concerning costs, had already been agreed to at Hastings. He explained that the Bill, as it had been amended by agreement at that meeting, now provided for a government-appointed commissioner who would administer lands at the wish of the owners of a block. The opinions of the owners would be represented through committees. If any owner did not want their land dealt with in this way they could have their land cut out of the block. If owners wanted their

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<sup>1007</sup> *Wanganui Herald* 29 March 1886 p 2

lands sold or leased, they could say so to the commissioner and then the land would be sold the same way as Crown land, on the open market and for the highest price. The commissioner would collect the money and with the assistance of the committees divide it among the owners. If the commissioner did not deal honestly, then the government would be responsible.<sup>1008</sup> This was a critical explanation to the meeting because those involved with Waimarino had every reason to believe that that is the way ‘commissioner’ Butler intended to operate. Their agreement to ‘cooperate’ with him is just as likely to have been an agreement to engage in this new system, as to sell all their interests in land in the kind of purchase Butler was really preparing to implement in the district.

Ballance was also reported as acknowledging that Maori had made it clear that they wanted Native committees to act in the place of the proposed government ‘commissioner’. However, he argued this would not guarantee them a fairer system or a fairer distribution of their moneys. He asked whether they would prefer a responsible government officer to administer and deal fairly with this, or a committee. He also warned that Parliament would not agree to committees having such powers and that he would not jeopardise his reputation by having anything to do with such a proposal.<sup>1009</sup> The *Chronicle* (but not the *Herald*) reported Ballance as saying that overall he found the majority of their proposals ‘unsound’.<sup>1010</sup>

Once again, Ballance appeared to be offering the meeting a clear choice. This time between their own committees, who he claimed they might not always be able to trust, and by comparison a new government-controlled system which he undertook would provide a ‘fair’ system of managing land and a ‘fair’ system of distributing any money to be made, a system that was guaranteed to be fairer even, than their own committees. This system would be overseen by ‘responsible government officers’ the ‘commissioners’. The Government again undertook to be responsible for their honesty. Again this seemed to be a critical assurance in the context of agreements to cooperate over Waimarino.

Although Ballance continued to make such important assurances, his dismissal of hui proposals on issues such as further consultation and Native committees, and his far more open criticism of these than in his previous meetings, clearly caused some anger and concern. Tatana Tuwhataupoko of Ngati Toa, for example, was reported as stating that the Native

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<sup>1008</sup> *Wanganui Herald* 29 March 1886 p 2

<sup>1009</sup> *Wanganui Herald* 29 March 1886 p 2

<sup>1010</sup> *Wanganui Chronicle*, 29 March 1886 p 2

Minister did not seem friendly to them and that he had beheaded their Bill. The Native Minister seemed to want the Government to manage the land and the money from it. Therefore, Tatana wanted no law to apply to his land and he could manage it himself. He noted that this was guaranteed by the Treaty and that was why they had changed the name of the Bill.<sup>1011</sup>

Other speakers then replied to Ballance's criticisms further and explained the reasons for their proposals. Some agreed the replacement of 'disposition' with 'administration' was acceptable. A number wanted the Bill to apply to leases as they claimed some were unjust and dishonest. Others wanted the Bill to apply to reserve land as well and it was claimed that the Public Trustee was leasing land for higher prices, while Maori received only a small rental. Others explained that they wanted the Thermal Springs Act to only apply to those people who had made an agreement with the government. There was also some concern that the government appeared to be doing much better out of the thermal lands than the owners. It was also explained that Maori wanted to be able to sell to private buyers because they paid higher prices than the government. With regard to leases, even where the land was valuable, it was not attracting full rentals because lessees were put off by having to pay land duty and complete all the paperwork involved for Maori land. This was causing rents for Maori land to be effectively set at a lower value than they should be. Kemp was also reported as supporting committees working with the commissioner and the Bill covering leases when they expired. The size of a block, and the number of owners could also be taken into account when committees were appointed to manage the distribution of rents.<sup>1012</sup>

Ballance replied that he hoped the meeting would take his criticisms in good part and he was being no friend unless he said what he really thought. He again denied that the Government would take land for five miles either side of the railway, although he made no effort to discuss the concern that extra land, other than that agreed, might be taken. He claimed the Waikato had agreed to 'give' the land required for the railway but the government always intended to pay fair compensation when land was taken.<sup>1013</sup> This was misleading. The interior tribes had agreed to 'give up' land for the railway one chain wide, as noted earlier. However, they had not agreed to gift it, even though this possibility had been discussed. The alliance had

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<sup>1011</sup> *Wanganui Herald* 29 March 1886 p 2

<sup>1012</sup> *Wanganui Herald* 29 March 1886 p 2

<sup>1013</sup> *Wanganui Herald* 29 March 1886 p 2

required payment for the land and for the railway to be fenced on both sides when they agreed to the construction of the railway.

Of even more importance, Ballance seemed prepared at this hui, to continue discussing land to be taken for the railway as though this was still the major form of acquisition being considered. The meeting was a perfect opportunity to explain and seek support for the Government's new policy of extensive land purchasing in the railway area, in the spirit of open discussions and consultation Ballance claimed to support. However, he failed to do this. There are no reports of Ballance explaining to the hui that he had already declared to Parliament that attempts to implement takings and compensation on a large scale for the railway would be 'insane'. Nor that the whole issue of land taking and compensation for it had become overshadowed by the Government adoption of a new policy likely to be of even more concern to the district. This was the Government decision to purchase extensively in the railway area, including land required for the railway line.

Ballance was reported as agreeing that Native committees could assist the government commissioner and reminding them that the commissioner could do nothing unless the owners, through their committees, set the process in motion. Ballance finished speaking to the hui by expressing satisfaction at hearing the concerns of the meeting and welcoming any further suggestions they might make.<sup>1014</sup> He then left the meeting to make further visits to Maori communities in the North Island, to explain his proposals and gain support for them. This included the Wairarapa to discuss the lakes issue, and then further visits to the East Coast and northern districts to discuss the proposed Bill. The Aramoho hui itself appears to have continued until 31 March 1886.<sup>1015</sup>

Ballance's visit to the hui was closely followed by an editorial in the *Wanganui Herald* that seemed to confirm the 'inducements' the Government was making to Maori to persuade them to cooperate over government policies.<sup>1016</sup> The editorial described the hui as a 'most important' conference between the Native Minister and Maori. Discussions had included features of the proposed Land Disposition Bill being considered in the current Parliamentary recess. The editorial noted that Maori had not liked the title because they believed it had the meaning of the Government taking over the land and disposing of it. It also claimed that land

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<sup>1014</sup> *Wanganui Herald* 29 March 1886 p 2

<sup>1015</sup> *Wanganui Herald* 1 April 1886 p 2

<sup>1016</sup> *Wanganui Herald* 30 March 1886 p 2

sharks had obviously infiltrated the meeting and had the clause inserted allowing anyone to buy land. However, it claimed Ballance had seen through this.<sup>1017</sup> No mention was made of Maori concerns about the Government paying a fair price under a monopoly system.

The editorial went on to note that in the past, the notorious practices of land sharks and agents were well known. This was apparently a reference to the previous 1870s system of land purchasing. The *Herald* claimed that those land sharks had been involved in many dubious practises including forging signatures, gaining signatures of dead men, purchasing from non-owners and failing to pay Maori the amounts promised. It claimed they had effectively plundered Maori owners and the people trying to buy land to settle on. According to the *Herald*, the objective of the proposed Bill was to protect Maori from land sharks and their ‘pilot fish’, the Pakeha-Maori land agents. It described these Pakeha-Maori as a tight circle who almost made themselves members of hapu and were better able to express themselves in Maori than their mother tongue.<sup>1018</sup>

The *Herald* also claimed the proposed Bill would protect the rights of even the weakest owners. It noted the Government intended to stop robbery, jobbery and wholesale breaches of trust. However, the editorial warned that if Maori land purchasing was opened to anyone again, then the result would be the wholesale alienation of Maori land to rings and syndicates and the gradual pauperisation of Maori who, divested of their lands and squandering their money, would become 'a serious burden to the state'. In contrast, the editorial claimed that the present Government wanted to leave Maori with ‘enough land for their comfortable support’ while ensuring the ‘surplus’ went to ‘profitable European occupation’. Maori would also be paid a ‘fair price in open market’. Settlers would be able to secure land with good title at a fair market value and the money would be handed over to the Maori owners. ‘Nothing could be fairer’ to both races and more likely to bind them in peaceful bonds of friendship. The *Herald* went on to report that Ballance knew the way Maori had been ‘plundered’ in the past and he was determined to stop such ‘land sharks’ and their ‘pilot fish’.<sup>1019</sup>

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<sup>1017</sup> *Wanganui Herald* 30 March 1886 p 2

<sup>1018</sup> *Wanganui Herald* 30 March 1886 p 2

<sup>1019</sup> *Wanganui Herald* 30 March 1886 p 2

## 6.6 Conclusion

Butler continued preparations for land purchasing in Waimarino, while the Native Land Court investigation was in progress and immediately afterwards, during the rest of March 1886. This preparation included continuing discussions with influential chiefs in the district, and the selection of an assistant, John Stevens to help with the purchase. These preparations also reveal that the purchase was intended to be implemented with some urgency, with John Stevens, for example, being expected to be required for only six months.

The preparations were also likely to have been assisted by the hui held at Aramoho from 18 March until later the same month, which was one of the series of consultative hui Ballance had agreed to attend, to explain government proposals for proposed new legislative reform concerning the future management of Maori land in particular, as well as wider issues of Maori cooperation with the Government for the future benefit of both races.

It seems evident that these matters were being widely discussed within Maori communities at this time, especially over what might be the best approach for ensuring governments continued to consult with Maori over issues of mutual concern and that legislation concerning the establishment of legally recognised title to Maori land, and the future management of such land, better protected Maori interests and aspirations to participate more fully and effectively in new economic developments such as those anticipated from the construction of the Main Trunk railway. There were a range of views among Whanganui leadership over this while some leaders, such as Hori Ropiha, appeared willing to pursue a number of alternative strategies, as they seemed most useful at the time.

The Aramoho hui reflected this range of opinion and also seemed to have made a determined effort to include many influential upper Whanganui chiefs in these discussions. These included chiefs of recognised influence in upper Whanganui who had not been found to be owners in Waimarino, such as Ngatai te Mamaku. A number of chiefs who were recognised owners in Waimarino also attended and spoke at the hui, including Topia Turoa, Paiaka, Te Pikitotuku and Te Keepa Tahakumutia. The upper Whanganui chiefs had been welcomed to the Aramoho hui to come and 'learn' as the chief Haimona te Rangi had said. The hui also reflected the continuing concerns of district leaders, especially about the continuing operations of the Native Land Court and their preference to have a wider role for Native committees. This was even though large areas of Whanganui lands were passing through the Court at the time, including the upper Whanganui lands within the Waimarino block. This

continued concern, in spite of the applications to the Court, suggests that the involvement of Whanganui communities with the Court again at this time was not necessarily an indication of their satisfaction or support for the Court process. Instead, it may have been an indication of how difficult it was to remain out of the Court process, when the Government was determined to apply pressure to ensure it operated in the district.

Ballance appeared less accommodating to hui concerns at this meeting than he had seemed previously. He appeared more firmly in favour of the Land Court as it was operating and less inclined to further strengthen the role of Native committees in title investigation, although he continued to claim they would have a partnership role with the government commissioners in the proposed new system for management and development of Maori land. Ballance also seemed keen to persuade the hui to choose between a number of options that he presented to them over participating in expected benefits from developments in the railway area. These appear to have been critically important to the context to early purchasing in Waimarino.

Ballance appeared eager to distance his Government from earlier land purchase tactics, while claiming that the proposed new system of land management with government commissioners acting along with Native committees would be 'fair' and would enable a 'fair' share in expected benefits. He appeared to be promising that this cooperation with the Government would result in protection, assistance, continued consultation and participation in increased peace, unity and prosperity for both races. Land development would also be proceeded with in a managed, careful way, in partnership with the Government, while there would be protection from land sharks and syndicates and the offer of fair, market prices. At the same time, the Government would ensure Maori continued to retain enough land for their 'comfortable' support. They would also be consulted over legislative measures that might affect them.

Ballance asked the hui to choose this new system of 'fair dealing' and 'cooperation' in land development, with resulting benefits and peace for both races, over what he appeared to claim was the alternative option, the 'useless' isolationist, backward and anti-progress policies of the Kingitanga and those who supported separate Maori districts. He now seemed to be including Wahanui (and presumably the Rohe Potae alliance leadership) in this. These were the chiefs the Government seems to have felt it could not win over, although it does seem to have placed a great deal of effort into winning over some of the influential leaders of the movement, such as Hori Ropiha, who was a senior follower of Te Kere and closely linked to Tawhiao. The Government's claimed commitment to peace and unity between the races may

also have been aimed at persuading some of those who were followers of leaders such as Te Kere, who was also strongly supportive of such aims.

Ballance also warned that a refusal to support cooperation with this government also risked Maori achieving no reforms at all, and being left with the current unsatisfactory Land Court and land management system in the face of imminent major developments such as the railway. This risked land sharks and syndicates being able to gain entrance to the railway district, with all the underhand tactics acknowledged by the *Herald*, to have caused so much tension, marginalisation and concern in the 1870s.

Ballance also asked the hui to choose the new proposed system of joint government commissioner and Native committee management of land development, under a responsible and benevolent Crown controlled system with regard to the railway area. Again, he claimed the alternative would be Native committees trying to manage land on their own, without Crown oversight and responsibility, and subject to pressures from private land sharks and an unmanaged 'scramble' for land. Ballance's assurances of fair and benevolent government dealing over lands, and continued open and good faith consultation with Maori over this, were critical to the options as he presented. Such assurances and alternatives are also likely to have been seriously considered by those chiefs with interests in Waimarino lands.

There were some matters arising from the hui, that with hindsight, raise issues about the real intentions of the Government. Ballance presented himself and his government as being committed to the proposed reforms and entirely dismissive of past practices. Waimarino communities may well have felt reason to believe that the Government would not therefore engage in actions and policies that undercut those assurances, even if the proposed legislative reforms providing for them were not yet passed. The necessary legislation was regarded as imminent, and a form of the provisions would be passed that year (although with much less effective reform than promised). Nevertheless, the promised reforms had not yet been passed and Ballance failed to explain to the meeting what his government's policy would be in the interim. Many of the apparently rejected land purchase tactics, for example, were still legal and there was no legal mechanism in place yet for the kind of consultations over land through the commissioner system that Ballance was proposing. It could be done, but there was no legal requirement for it to be done as yet. The chiefs might have been impressed with Ballance's claims and willingness to implement new systems, but in March 1886 these were not in place, and the issue was whether in the interim, the Government would honour the spirit of the assurances it was making, or whether it would choose to take advantage of the

trust such assurances were creating, to implement tried, true and still legal, but admittedly unfair, methods of land purchase.

Ballance also seemed willing to allow the hui to believe, and to encourage the belief, that the Government was more interested in acquiring the land for the railway route than in engaging in an extensive land purchase programme. The Government was clearly interested in having additional Maori land made available for settlement, in a jointly managed way, but this was not the same as purchasing as rapidly and extensively as it could over very large districts around the railway. The hui understanding of government intentions appears to be reflected in the attention given to issues around land to be taken for the railway. However, by now issues of taking were largely irrelevant to government concerns. Ballance had already explained to Parliament, although he did not do so to this hui, that the Government now intended to absorb much of the required railway route in extensive purchasing, not land takings. In the spirit of consultation, this hui was an ideal time to explain this new policy to Whanganui Maori, many of whom had interests in the railway area. However, reports indicate that Ballance failed to do this. It is not clear, that at this stage Whanganui Maori, including those with interests in Waimarino, fully and clearly understood the new government policy of extensive and rapid purchasing in the railway area, including in the recently investigated Waimarino block. This also raises the issue of whether the apparent urgency to purchase in Waimarino was not also an attempt to begin such extensive purchases quickly, while chiefs might still be cooperative and before they realised the fairer reforms were not being applied, and before such legislative reforms were passed.

Butler and Stevens both attended the Aramoho hui and were seen to be closely linked to the official government party there. They had not yet received official instructions to begin purchasing in Waimarino, and perhaps Ballance used this to avoid making any reference to the new purchase policy. However, if so, this was misleading as clearly purchase preparations for Waimarino were already well underway. The hui also gave Butler and Stevens a significant opportunity to collect information and identify and begin relationships with important chiefs. As will be shown in the next chapter, Butler was already also making some payments he would later record as advances in the purchase of some interests in Waimarino. At this time, even though Ballance must have been well aware of these activities, he failed to take the opportunity, when so many owners and influential chiefs were present, to notify the hui of the intended role of these two agents and to engage in open and public discussion of their intentions and government policies in the block. This was even though Ballance claimed

to be supportive of such open discussions between Maori and the Government over matters affecting both. It seems that at this hui, Ballance was seeking critical Whanganui district support, based on undertakings of fair dealings and good faith. However, he was being less than honest about his Government's intentions regarding Whanganui, and in particular, Waimarino lands.

## **Chapter 7 The Government purchase of the Waimarino block 1886-1887**

### **7.1 Introduction**

By March-April 1886, the Government was making preparations to purchase the Waimarino block. This included the important Aramoho hui of March 1886, where the Government sought Whanganui Maori cooperation with its policies and legislative proposals in return for promises of fair and open dealing, joint development of lands, and continuing consultation. As part of this the Government distanced itself from previous land purchasing tactics of the 1870s.

The official instructions to begin purchasing in Waimarino were made shortly after the hui in April 1886. The purchase proposal, as approved, confirmed the Government intention to purchase the whole Waimarino block, with certain reserves to be set aside for sellers. It also confirmed that the purchase was to be conducted with urgency and at a price considered 'cheap' to the Government. Like the Land Court investigation of title, the government purchase of the Waimarino block would be relatively brief. Official purchasing for the large block began at almost the same time as the title investigation ended, in March-April 1886, and it was completed within a year. The partition hearing for the claimed Crown purchase interest took place in March and April, 1887.

The purchase took place in a series of stages, outlined in this chapter. It began with a further Easter meeting, after the Aramoho hui, at which Butler appeared to successfully gain the cooperation of the influential chiefs, Topia and Wiari Turoa and their people. Whatever the understandings of these chiefs, their signatures were important sales of interests in the block. Butler and Stevens followed this with continued purchasing in Wanganui township, taking advantage of the continuing requirements to attend Land Court hearings. They then embarked on a series of purchasing trips into the upper Whanganui, Taupo and Tuhua interior districts. As early as mid-August 1886, officials believed they had purchased interests equivalent to more than half the Waimarino block. At this time, Native Minister Ballance also formally applied to the Land Court for a hearing of the claimed Crown interest in the Waimarino block, as a result of purchasing. The Court determination of this award was set for early 1887, and the months from August 1886 until then were spent 'mopping up' owner interests in Waimarino to support the Crown case.

There are significant gaps in the surviving official documentation of preparation for and conduct of the Waimarino purchase. The records that do survive also tend to focus on purchase progress and generally do not report in detail other aspects of the purchase such as tactics used. Additionally, file evidence indicates that officials, and at times the Native Minister, preferred to discuss the purchase in face to face meetings, which were not recorded. File evidence also indicates that the Native Minister Ballance continued to meet with influential chiefs at times during the purchase and discussed concerns with them but these were also not generally recorded. In these cases, the official records simply note that no written reply was generally required. The Parliamentary Native Committee papers for many of the early petitions concerning Waimarino, including minutes of evidence, have also not survived. The research for the purchase is largely based on the official purchase file for Waimarino, along with surviving land purchase accounts records and the records Butler created in order to make the promised purchase reserves.

## **7.2 The official Waimarino purchase proposal**

Although, Butler had already begun preparing for the Waimarino purchase, he sought and received the permission of Native Minister Ballance to officially begin purchasing in the Waimarino block on 10 April 1886.<sup>1020</sup> This was just a short time after the Native Land Court determination of title and the Aramoho hui. In requesting official approval, Butler set out his purchase proposal.<sup>1021</sup> It seems likely he would have already discussed this generally with Ballance, possibly at the time of the Aramoho hui. However, he required official approval to gain the necessary financial commitments to undertake the purchase.

Butler proposed that the whole Waimarino block be purchased and out of this, some purchase reserves should be made for the sellers. The block was estimated at around 450,000 acres at this time, although no ‘proper’ survey had yet been completed, and Butler proposed that 50,000 acres of the block should be set aside ‘as individual reserves’ [Butler’s emphasis] for the owners in different parts of the block.<sup>1022</sup> Knowing there were around 1000 owners, Butler calculated the 50,000 acres to be set aside as about 50 acres per owner. He could base his calculations on an estimate of equal shares per owner because the Land Court had as yet made

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<sup>1020</sup> Telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144, MA1, 1924/202 v 1, ANZ

<sup>1021</sup> Telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144, MA1, 1924/202 v 1, ANZ

<sup>1022</sup> urgent telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144 on MA1, 1924/202 vol 1, ANZ

no determination of relative interests (even though owners were attempting to do this through partition applications). The allowance of around 50 acres per owner was very similar to, and possibly based on the minimum 50 acres per person, required from the time of the 1873 Native Land Act. This, however, had been no more than a generalisation intended to ensure no Maori were left entirely landless. Butler also seemed to be anticipating ‘individual’ holdings of 50 acres, rather than the traditional collective ownership of Maori. Presumably, these were intended to be used for accepted economic uses such as farming, cropping or resource utilisation such as forestry, if they were to support their owners.

The proposed 50 acre reserves were likely to assist with the purchase, if they were explained in terms of participating in the benefits expected from the imminent railway development. The idea of Crown granted, individual 50 acre blocks with secure title, may have seemed very attractive for those owners considering economic opportunities. One of the difficulties of the Land Court system of creating title was the initial creation of blocks with undefined interests, requiring further expensive partitions and surveys before ownership could be determined on the ground. The Government provision of specific blocks, with secure legal title, safe from other claims and ready to be used immediately, might have seemed a way of avoiding the usual costs and delays associated with partitions. For families of four or five individuals, the combined 50 acre grants may also have seemed to offer substantial areas for family farms. The reserves seemed to be offering a way to keep useful land while also gaining cash payments for land in excess of this.

However, Butler gave no indication of how he had decided that 50 acres was adequate, (let alone ‘comfortable’ as Ballance had promised) for the needs of owners in the Waimarino block, which was relatively isolated, and where it was known that large areas were steep and marginal for economic use. This was even though he presumably had access to official reports, indicating that the Waimarino lands would generally require farm holdings of 1000 acres or more to be viable, even if ‘here and there’ small farmers might settle on less.<sup>1023</sup> Butler must have also known that the large Waimarino block was likely to contain urupa, mahinga kai, settlements, cultivations and other areas and resources of traditional and cultural importance. Yet, like purchase agents of the 1870s, he gave no indication in his proposal that he had considered the likely difficulties arising from assuming the 50 acres would serve two, often incompatible purposes; for modern economic uses and for customary and cultural

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<sup>1023</sup> *AJHR* 1884, sess II, C-1, appendix 2, p 31, report of L Cussen

purposes. Presumably the 50 acres per individual was also supposed to include such areas as waahi tapu, urupa, mahinga kai, and settlement sites, although how these would be equally and fairly spread across individual 50 acre blocks was not explained. The individual blocks would also presumably require access such as roading, although no mention is made of the necessity to provide additionally for roading so presumably this would also need to come out of the entitlement. If the 50 acre average had to also allow for such purposes, then the land actually available for modern economic uses for individuals was that much less. It was also possible that land that was valuable for purposes such as traditional mahinga kai, might not be considered at all valuable for other purposes such as farming, or farming might require the destruction of mahinga kai such as draining wetlands. It seems from his focus on individual reserves that Butler felt no requirement to provide separately for such purposes as waahi tapu. That would become the owners' problem once it was realised. The creation of individual blocks geared to new economic uses also had the advantage for the Government of helping to undermine customary authority over and collective management of resources in favour of individualism and the replacement of old ways with new. However, the imposition of such reserves and the assumptions they were apparently based on, seemed to cut across Ballance's promises of consultation, good faith and protection.

In terms of costs, Butler estimated the whole purchase would cost the Government a total of around £70,000. He proposed that the owners be paid a total of £50,000 for the block.<sup>1024</sup> A further £10,000 would be required to pay for the services of chiefs and expenses in completing the sale. An additional £10,000 on top of this would allow for writing off the approximately £7000 of previous advances made in the area (presumably under the land purchasing regime of the 1870s) and for paying the commission of a private agent, John Stevens, to assist Butler with the purchasing the Waimarino block over the next six months.<sup>1025</sup> The proposal therefore came to a total purchase cost for the Waimarino block for the Government, of £70,000 for 400,000 acres. As Butler noted, this worked out at 3/6 per acre.<sup>1026</sup> This, however, was the estimated total cost to the Government. It was not the amount expected to be paid to owners, which at £50,000, was actually 2/6 per acre. The extra shilling

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<sup>1024</sup> Telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144, MA1, 1924/202 v 1, ANZ

<sup>1025</sup> urgent telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144 on MA1, 1924/202 vol 1, ANZ

<sup>1026</sup> urgent telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144 on MA1, 1924/202 vol 1, ANZ

per acre was the additional estimated cost of buying the Waimarino lands over and above what was paid to the owners.

As noted in previous chapters, the Government had paid purchase advances for some parts of what became the Waimarino block in the 1870s, although under different block names. It is possible that these advances may have been used to help pressure some owners into making the original application to the Court. However, Butler now appears to have decided not to attempt to enforce these agreements in the case of Waimarino. Instead, he appears to have believed that, with the new lists of owners, he could begin a rapid new purchase of the whole block. This may have been considered easier than attempting to deal with the previous numerous small blocks and it also avoided having to deal separately with the northern Tuhua part of the block and the opposition this was likely to provoke. Butler's estimate that Stevens would only be required for six months also indicates that the purchase was expected to be a very rapid one.

Butler noted that the general opinion of people (presumably Pakeha) who had seen the Waimarino block land was that 'it would be cheap at the price named'.<sup>1027</sup> He presumably meant at the price of 3/6 per acre, although of course this was the cost to the Government and was not all intended to go to the owners. The owners were further expected to bear the other cost of expenses associated with the 'cheap' purchase by receiving a lower actual price per acre. This presumably took into account the 50,000 acres in individual reserves they were expected to receive. It could be argued that the extra £10,000 set aside for the services of chiefs and other expenses, might have raised the actual purchase price paid to Maori for Waimarino, as many of the chiefs were also owners. However, the accounts journals of the time indicate a wide variety of expenses claimed on the Waimarino block, presumably as part of this extra expenses sum. Some of these may well have been extra payments to chiefs, but a significant portion does not seem to have involved any form of direct remuneration for owners.

The records show, for example, that some of the expenses were in connection with negotiations leading up to the purchase in the December 1885-January 1886 period.<sup>1028</sup> It is not clear that the chiefs involved in these negotiations understood or agreed they were doing

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<sup>1027</sup> urgent telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144 on MA1, 1924/202 vol 1, ANZ

<sup>1028</sup> MA-MLP 7/10 pp 11-12, ANZ

anything other than meeting with Butler at his request. Their agreement to meet with him was not necessarily an indication of their support for selling the block. Other expenses charged against Waimarino could also hardly be claimed as of direct benefit to owners. For example, in the first few months of the purchase, expenses such as alterations to the Land Purchase Office, the removal of Butler and his possessions from Wellington to Wanganui and that of McDonnell to the Wairarapa, provisions such as tents and supplies, the Land Court fee for the Waimarino hearing, periodic cleaning of the Land Purchase Office and equipment hire were all charged to the Waimarino account.<sup>1029</sup> Some of the individuals recorded as being paid various amounts for their assistance, such as for canoeing on the Whanganui River or delivering mail, were also not necessarily owners.

Butler's view that a price of 3/6 per acre was 'cheap' for the Government, confirmed Ballance's earlier comments at Kihikihi, in February 1885. At that time, as noted, Ballance had claimed that 'at present' land that was inaccessible and without road or rail access was worth about 'three or four shillings an acre'. He had assured the meeting that land with rail or roads would get as many pounds per acre.<sup>1030</sup> The Waimarino lands straddled the railway route and were expected to be linked with roads as well. The railway had not been built as yet, but its construction was expected to be imminent. Some Waimarino lands were also known to contain valuable stands of timber and resources such as gravel likely to be required for road and rail construction. The lands may not have been worth three or four pounds per acre as yet, but they certainly appeared to be worth more than 3/6 per acre. By the Government's own reckoning the estimated cost of the proposed 'purchase' was indeed 'cheap'. This raises the issue of Ballance's claims to support a 'fair' market price for Maori. It also raises the issue of whether the Government had bowed to settler pressure to obtain land as cheaply as possible and to exclude Maori from the anticipated rise in land values expected from the railway development. This pressure has previously been noted, such as settler claims of 'extortion' when the Kawhia Native Committee had set prices for timber and gravel that were intended to enable Maori to more adequately participate in the benefits of the railway development.

Butler noted that the surveyor, Marchant, was expected to begin the survey of the Waimarino block at any time.<sup>1031</sup> This presumably was a reference to the 'proper' survey of the block that

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<sup>1029</sup> MA-MLP 7/10, for example, p 11 voucher 588, p 12 voucher 618, p 12 voucher 619, p 13 voucher 638, p 13 voucher 663, p 20 voucher 890, p 36 voucher 299, ANZ

<sup>1030</sup> *AJHR* 1885 G-1 p 17

<sup>1031</sup> Telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144, MA1, 1924/202 v 1, ANZ

the Land Court required before the final certificate of title could be issued. The progress of the ‘proper’ survey eventually took about as much time as the purchase, as will be detailed in the next chapter. Butler also noted that applications for subdivision from the owners in Waimarino were all in. However, he advised against waiting for them to be made or ‘considerable time must elapse’ before the purchase could begin.<sup>1032</sup> This further indicated that the proposed Waimarino purchase was considered a matter of some urgency.

Butler also reported that he had already engaged in long conversations with the leading men of the Waimarino block, who had previously been ‘quite opposed to selling’ but were now ‘giving away a little’.<sup>1033</sup> He did not describe just how he was persuading them to give way, but presumably he using similar assurances of fair dealing that Ballance had promised at Aramoho. Butler was confident that with their cooperation, the ‘whole block’ could be purchased in a ‘reasonable’ time.<sup>1034</sup> This confirmed not only that the Government was looking for a quick purchase but that it intended to purchase most of the block. This was far in excess of the smaller railway corridor the owners may still have been expecting. It also confirmed that many of the leading owners in the block were not intending to sell, until Butler persuaded them to ‘give way’.

Butler’s requested this approval on 10 April 1886. This was just 25 days after the Court had made its award for Waimarino on 16 March 1886. It was well within the 40 days private agents were now required to wait after an investigation before entering any deals with owners. This was presumably meant as a protection for owners to seek legal advice or make initial management decisions free from outside pressure. However, as previously noted, the Government had legally exempted itself from this requirement and now it seemed to feel no obligation to observe the spirit of the protection. Although Ballance had promised a ‘fair’ system in the railway area where the Crown had the monopoly on dealing in land and he had promised good faith in undertaking deals, it is not at all clear that just over three weeks before beginning to officially purchase in such a large block as Waimarino, was a reasonable time period for those interested to take advantages of protections such as the right to seek a rehearing free from outside pressure, or enough time to decide the future management of the block, particularly when partition applications had still not been heard. Nevertheless, it seems

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<sup>1032</sup> Telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144, MA1, 1924/202 v 1, ANZ

<sup>1033</sup> Telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144, MA1, 1924/202 v 1, ANZ

<sup>1034</sup> urgent telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144 on MA1, 1924/202 vol 1, ANZ

that Butler and the Government now considered that the urgency in purchasing now overrode this kind of protection.

Butler sought approval to begin buying on the proposed terms with some urgency, noting he wanted to start before the owners began leaving Wanganui. He asked for the necessary purchase deed to be prepared and for an imprest of £15,000 to begin purchasing. Native Minister Ballance personally approved the proposed terms and agreed to the urgency. Butler was instructed to ‘proceed with all speed’ by urgent telegram of the same day.<sup>1035</sup> Again, this was well within the 40 day period private purchasers were required to observe. It is also evident that Native Minister Ballance was fully aware of and approved the terms of purchase, even where they seemed to cut across his earlier assurances. He would continue to remain closely in touch with developments with the purchase.

The Land Purchase Office was also instructed to urgently provide Butler with all the assistance he required in purchasing the Waimarino block.<sup>1036</sup> The office accountant, Patrick Sheridan, noted that while £63,000 (less £7000 written off advances) was to be allowed for, in fact a new liability of only £22,000 was required, as returns showed that portions of the block already under negotiation already carried a liability of £41,000.<sup>1037</sup> Official correspondence does not reveal how, or if, these liabilities were used to pressure some owners to enter new purchase agreements in Waimarino. However, as such records of earlier advances were clearly kept, and were being noted, they may well have provided an opportunity for Butler and Stevens to at least begin negotiations with some owners over the block.

Butler also indicated that while waiting for the Court investigation to be completed for Waimarino, he had been engaged in other purchases in the Whanganui district. In the same telegram of April 1886, he noted that final Court orders had been made for the Ngaurukehu, Pohomuatore and Ahuahu blocks, containing a total of about 50,000 acres. He noted all these blocks had survey liens on them and the first two were near the proposed railway. He believed they could all be acquired for a reasonable price.<sup>1038</sup> This, like Butler’s other reports of this time seem to reflect what had become Government purchasing policy in the railway district. This included identifying blocks of land near to, or straddling the railway route, and purchasing as much of this land as possible. It also indicated a willingness to employ a tactic

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<sup>1035</sup> telegram Lewis to Butler, 10 April 1886, NLP 86/144, MA 1, 1924/202 v1, ANZ

<sup>1036</sup> urgent telegram T W Lewis to Sheridan 10 April 1886, NLP 86/144, MA1, 1924/202 v 1 ANZ

<sup>1037</sup> urgent telegram 27 April 1886, Sheridan to Morpeth, NLP 86/144, MA1, 1924/202 v1 , ANZ

<sup>1038</sup> Telegram Butler to Lewis 10 April 1886 NLP 86/122 attached to 86/144, MA1, 1924/202 v 1, ANZ

that had been successful in the 1870s, the use of survey liens to assist with purchasing. This was in spite of the known concerns of Maori communities about this kind of tactic.

Butler's apparent willingness to wait for a Court investigation of title before beginning purchasing in Waimarino indicates a new policy approach, in some instances, from the previous system of pre-investigation dealings of the 1870s. However, it is not clear that this change was entirely driven by concern to more effectively protect Maori interests as Ballance had claimed. Instead, as will be noted, it seems that this may have been a means of overcoming some of the acknowledged difficulties of the old land purchasing system. In some cases, it now seemed preferable to have a rapid, managed Court hearing and then attempt to purchase from the lists of owners approved by the Court.

This new preference for purchase following a quick Court hearing may also have been encouraged in cases where sketch surveys could be provided to the Court based on prior information, such as from surveys undertaken in the interior for trig, central railway and the external Rohe Potae boundary purposes. This enabled the hearing to proceed on such sketch plans, while avoiding the delays and obstructions that had become evident when new surveys were required. As in the case of Waimarino, the 'proper' survey could then be completed once the boundaries and owners were already decided. Land purchase officers in the Whanganui and other 'railway districts' now also had the significant advantage of pursuing these policies without having the concern that they might be undermined by private competitors. This gave them more time to allow the Court investigation to take place, before targeting owners provided in the lists approved by the Court.

A Land Court investigation prior to purchasing also had the advantage of providing purchase officers with a legally recognised list of owners they could confidently deal with. This enabled the purchase itself to be more carefully managed and avoided possible problems with unforeseen claimants. In addition, if purchase agents were able to influence and manipulate owner lists for the hearing process, they could create possible advantages for later purchasing. This meant that land agents still had strong incentives to influence evidence placed before Land Court hearings, much as they had done under the 1870s purchase system, but now it was to facilitate later purchasing rather than confirm an earlier purchase. In fact, the vigilance of land purchase officers at the Land Court investigation of title appears to have been considered very important to successful later purchasing, especially in sensitive blocks.

Although, officially, government purchasing began in the Waimarino block on 10 April 1886, when permission was received, Butler's own expenses records show that he had already begun making payments to certain chiefs before this, which he would charge to the Waimarino purchase account, and record as initial advances on purchases in the block. These would be followed by later payments to 'complete' the purchase of those interests. For example, the land purchase accounts journals show that on 20 March 1886 (just four days after the award was made) and well before official approval was received or the purchase deed drawn up, Butler made payments 'on account' for Waimarino, to the chiefs Te Peehi Opetini and Te Kaioroto, totalling £20.<sup>1039</sup> The records also show that the chiefs Matuahu Wairehu, Hori Tamaiwhana, Nini Tehanairo, and Tohiora Pirato were all paid advances of £20 on 5 April 1886.<sup>1040</sup> Te Rangihuatau (who had signed the Waimarino application and was conductor for the successful case) was paid an advance of £11.10 a few days later on 8 April 1886.<sup>1041</sup>

These payments were all made before Butler received instructions to begin the purchase, and before the purchase deed was drawn up. However, they were recorded as part payment for interests in Waimarino, with the same chiefs all receiving later payments varying from £35 for Hori Tamaiwhana, to larger amounts of £90 and £100 for Matuahu and Nini Tehanairo respectively.<sup>1042</sup> Tohiora Pirato received an even larger payment of £150.<sup>1043</sup> The second payment for Te Rangihuatau was £52.<sup>1044</sup> These were recorded as completing the payments for those chiefs for their interests in Waimarino. In some cases Butler also continued to make payments to some of the same chiefs for other kinds of services. For example, Tohiora Pirato was paid £1 in early May 1886 for 'services re purchase of Waimarino'.<sup>1045</sup>

It does seem that a number of these chiefs may well have wanted to cooperate with the Government, and therefore Butler, over what they believed were improved proposals for joint cooperative management of Maori lands as Ballance had now been promising since 1884. However, it is not clear that at this early stage, before the purchase was even officially approved, these chiefs were knowingly and willingly accepting payments for their interests in Waimarino or that they understood Butler was intending to purchase a very large part of the

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<sup>1039</sup> MA-MLP 7/10 p 23 voucher 481, ANZ

<sup>1040</sup> MA-MLP 7/6 owner numbers 57, 103, 123, 125, ANZ

<sup>1041</sup> MA-MLP 7/10 p 31 voucher 155, ANZ

<sup>1042</sup> MA-MLP 7/6 owner numbers 57, 103, 123, ANZ

<sup>1043</sup> MA-MLP 7/10 p 31 voucher 159, ANZ

<sup>1044</sup> MA-MLP 7/10 p 31 voucher 156, ANZ

<sup>1045</sup> MA-MLP 7/10 p 35, voucher 297, ANZ

block. It is just as likely they believed they were receiving legitimate payments from him for their expenses in agreeing to meet with him, or in acknowledgement of their influence. For example, as will be described, Butler later reported that he only really persuaded the chief Matuahū and his people to sell in September 1886.<sup>1046</sup>

### 7.3 The price per owner share in the Waimarino block

It appears to have been left up to Butler, as long as he did not exceed the overall amount approved, to decide on what basis he would pay owners for their interests or shares in the block. These were still not located on the ground, so each owner had a presumably equal as yet undefined interest in the block. Butler appears to have followed the normal practice of land purchase agents with regard to Māori land in calculating the price per share he was prepared to pay. With around 1000 owners for the Waimarino block of 400,000 acres (less reserves) he appears to have calculated a notional interest per owner equivalent to 400 acres. Paying owners the approved £50,000 for the 400,000 acres worked out at 2/6 per acre. For 400 acres each, this worked out at £50 per share. This gave Butler a notional average price of £50 per share for each owner in the block, if he was not to overrun the approval for £50,000 for the whole block.

Given that the Land Court had not determined relative interests in Waimarino, and therefore he could still calculate every interest as equal, and also given that he had a further £10,000 to pay additional sums to chiefs and for other assistance, it might be expected that Butler would have been able to pay each owner close to £50 per share and still obtain the land ‘cheaply’. However, Butler’s own records show that he decided to set a lower standard price per owner of £35.<sup>1047</sup> It is not entirely clear how Butler came to his standard £35 per share. However, by taking the 3/6 per acre the purchase was expected to cost the government and dividing that by half, this comes to £35 per share. (400 acres x 1.75 shillings divided by 20 = £35) Butler appears to have decided that he would try for a standard purchase price of roughly half the expected to cost to the Government. Whether or not this was a standard formula for purchase agents in deciding average prices for shares is not clear. It certainly gave Butler a very generous leeway for making much larger payments to some individuals, while still staying within the £50 average per owner. It also raises the issue of the promise of ‘fair’ and ‘market’ prices for owners promised by Ballance.

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<sup>1046</sup> Butler report 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

<sup>1047</sup> MA-MLP 7/6

No evidence has been found of Butler proposing this share price to the Government and having it officially approved. It seems to have been understood that it was up to the land purchase officer, as long he kept within the approved amount, to settle on what was thought possible given the circumstances of each purchase. In this case, Butler seems to have been confident that he could gain significant shares for just £35. This was a large lump sum at the time, especially for those upper Whanganui communities who had suffered dislocation and poverty after the wars. It would also have been difficult for individuals to understand precisely how the amount being offered was fixed. The promises of ample reserves, in combination with considerable confusion about what land any particular individual was actually selling, may have made the lump sum seem attractive. This was one of the difficulties of dealing separately with individuals over their interests, rather than publicly and collectively where the full implications could be discussed, as Maori communities had made clear. Again this seemed to cut across government assurances.

Nevertheless, as will be described, Butler's share price was later tacitly approved by a Parliamentary select committee reporting on a Waimarino petition.<sup>1048</sup> The evidence indicates that Butler was in close contact with Ballance and senior land purchase officials, Sheridan and Lewis at this time. It seems likely they would have been well aware of his decision to set this share price, even if they were not required to officially approve it. In the meantime, they appeared to prefer not to know as long as purchase agents were discreet.

At the later Tauponuiatia inquiry in 1889, William Grace, who was much less discreet than Butler, gave evidence that it was common practice at the time to have the Government set a price and then pay most owners less than this, holding back the balance as bonuses for favoured sellers. The bonuses were paid and put down as incidental expenses. At the time, purchase officers had expected some large sales to be made and that money would be available for bonuses, 'as in Waimarino'.<sup>1049</sup> Later, he would also explain that he had received no special instructions as a purchase agent and thought he could make such agreements to help purchasing. He knew of agreements, such as in Waimarino, where a bonus of 500 acres was to be paid in land to some of the owners after the whole block was purchased.<sup>1050</sup>

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<sup>1048</sup> *AJHR* 1886 I-2 p 28 report 21 July 1886 on petitions nos 50, 51 and 17

<sup>1049</sup> MA 71/1 p 20, ANZ

<sup>1050</sup> MA 71/1 p 28, ANZ

At the time, however, senior land purchase officials were eager to distance the government from the activities Grace was claiming as commonplace, particularly as there was evidence that Grace has used bonuses not just to directly encourage sales but to assist the land purchase by encouraging certain owners to not to press claims in certain blocks. Officials immediately claimed that newspapers had misreported Grace, and noted that the commission was not taking evidence verbatim.

One of the Taupouiatia commissioners and a previous Trust Commissioner from the 1870s, Haultain, expressed some surprise at this sensitivity. He acknowledged that the Commission did not have facilities to take evidence word for word, but he insisted that Grace had given evidence before him to the effect that he believed he could pay chiefs for services if he could obtain other interests for less than authorised. He had also said he had done so on previous occasions. Such payments were charged under contingencies and it is clear that Grace intended to do the same in the case of the agreement that had come to light before the commission. Haultain further noted that he did not see this as a particular criticism of the land Purchase Department and he considered that paying bonuses to chiefs for services rendered in purchase negotiations was ‘perfectly legitimate’. It was not uncommon in earlier government purchases, and was still commonly used by private purchasers in large blocks.<sup>1051</sup>

Land Purchase officials still denied that such tactics were authorised. Under Secretary Lewis insisted that Grace’s actions were ‘irregular and unauthorised’. The supervision over Mr Grace was exactly the same as was exercised over Mr Butler or any other officer disbursing public money. No land purchase officer had the authority to deal with payments in such a manner, or to make the kinds of arrangements with storekeepers as indicated in Grace’s evidence.<sup>1052</sup> Land purchase accountant, Sheridan, also claimed that Grace had no authority to make bonuses agreements as claimed and it did not come to light until after Grace had left the government service.<sup>1053</sup> A draft reply to a question in Parliament for Minister Mitchell, denied that there was any truth in the statement by Grace that the government had authorised the system described or such agreements had been made with the knowledge and authority of the government. Such actions were described as ‘very irregular and reprehensible’.<sup>1054</sup>

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<sup>1051</sup> Haultain to Lewis, 8 October 1889, NO 89/2476 with Ma 71/6 ANZ

<sup>1052</sup> Lewis report to Native Minister 16 August 1889 and memo to Native Minister 3 September 1889, MA-MLP box 26, NLP 89/240 and attachments. ANZ

<sup>1053</sup> MA-MLP box 26, NLP 89/240 and attachments ANZ

<sup>1054</sup> Draft reply to Cadman in reply to question of 20 August 1889, MA-MLP box 26, NLP 89/240 ANZ

These protests did not sit well with the surviving evidence in Waimarino, where Butler clearly paid more to certain chiefs than others and linked continued promised payments to whether or not certain chiefs continued to assist him, not just to their status. It was a moot point as to whether Butler was paying for services only out of his extra money or with the amounts he was saving as well by not paying the full £50 per share. His expense records are not arranged to show this, suggesting he made no such distinction. As will be seen later in this chapter, Grace was also right about Butler agreeing to pay some chiefs additionally in land. Although officials gave the impression Grace was acting outside what was considered normal, they had already found out in 1887, that Butler had made at least two written agreements to certain individuals to grant them extra land if they agreed to sell their interests. Even in Grace's case, Lewis and Sheridan seemed to be protesting too much. Grace applied to be employed as a land purchase officer again in late 1889 for the Rohe Potae area and he was hired in 1890, initially on a temporary basis. Sheridan noted to the Native Minister when Grace applied that he had done his 'very well when in the service before' and the Pouakani case was the only irregularity against him. In that case, Sheridan was satisfied Grace had been guided by a 'wrong sense of duty' and the advice of his brother then in the House.<sup>1055</sup>

#### **7.4 Urgency with the Waimarino purchase**

In making his written proposal, Butler had advised that, in the interests of urgency, purchasing should begin without waiting for subdivisions to be made in Waimarino. As previously noted, the Court continued to refuse making these partitions during the purchase on the grounds that such applications had not been notified by the Government. This assisted the purchase in a number of ways. For some owners, it seems possible that if they were not clear of where their shares were actually located on the ground they were more likely to sell them. While interests remained undefined it may have been easier for them to believe, or be persuaded, that areas of particular value would anyway be included in the reserves. On the contrary, when partitions were made and interests were defined on the ground it was easier for owners to see what exactly might be included (and lost) in the sale. This was not only land, but associated resources such as totara forests. It is also not clear that many of the owners of the time understood that government agencies would assume that waterways adjoining or enclosed within certain lands might also be considered sold with them. Partitions may have made this clearer and may also have enabled owners to make more informed decisions on

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<sup>1055</sup> MA-MLP box 27 NLP 89/346 attached to 90/172

what they wished to sell or retain. When interests were located on the ground, owners also gained a much better idea about the extent of land involved, while mention of acreages alone may have meant little to them. This lack of clarity was likely to help Butler persuade owners to sell. The lack of legal subdivisions also made purchasing less complicated, as there was no need to take account of partition boundaries.

Butler had also noted that the proper survey was still to take place and in fact, as will be seen, it was not to be completed until early 1887. This also gave Butler some advantages. Many Maori remained unfamiliar with maps at this time, but once progress took place with a survey on the ground they became much more aware of what land was involved. While the survey continued to progress only slowly, owners may have remained unclear what they were really selling and some communities may have believed that much of their land was still not included in the Waimarino block. This seems to have been particularly true of the northern part of the block, especially that part that had been included in the Rohe Potae boundary. The apparent government willingness to recognise this boundary may also have been grounds for further confusion, as many northern communities seemed to believe that the ‘proper’ survey would correct the northern boundary so it no longer penetrated the Rohe Potae. This again raises issues of what the owners really understood about their negotiations with Butler at this time, and whether it was understood that the Government was not as yet legally required to implement the promises it had made for future dealings when it came to the current Waimarino purchase.

The haste with which the Waimarino sale was begun and pursued after the Aramoho hui not only raises issues of Government good faith in possibly hurrying the purchase through before promised reforms were made. It also raises issues of Ballance’s good faith in making assurances to Parliament that implied he did not support such tactics. In Parliament in 1884, Ballance had spoken of what he had called the ‘free-traders’ in Maori land. He described their support for providing individual Maori owners with all powers necessary to deal with their land, enabling Europeans to purchase small pieces from a block from particular individuals, ‘until gradually they shall have acquired the freehold of the whole block’. Ballance had stated then that if the purpose was to simply alienate Maori lands then ‘no better plan than that could possibly be adopted’. At that time however, Ballance had seemed to argue in favour of alternative policies that rejected trying to divide and conquer Maori and wresting land from them ‘without their full and intelligent consent’ in favour of enabling them to ‘consider the matter fully and clearly, and with knowledge of all the circumstances’ so they could deal with

their land for their own benefit and not for the benefit of private dealers and speculators.<sup>1056</sup> Ironically, in pursuing purchases in the railway area, Ballance now seemed to have moved over to the camp that supported haste, internal divisions and acquiring the whole block by individual dealing. The major difference now, was that the government appeared to be taking the role previously occupied by the ‘private dealers and speculators’.

The urgency adopted by the government appeared to preclude the kind of reasoned, carefully managed opening of the block that owners had made clear they wanted. The haste also seemed to preclude any effective role for a Native committee in managing the Waimarino block as people of the district had indicated they preferred. There is no indication in Butler’s proposal of any kind of anticipated joint management of the purchase with a Native committee. The apparent government decision to push purchasing ahead of the applications for subdivision also precluded careful discussion over the use and management of the block, based on identified interests on the ground.

This determination to push ahead quickly with the purchase also appeared to support the application of pressure to selected individual chiefs while precluding the possibility of more reasoned collective community decision making. Butler seemed to be acknowledging that he had already begun this type of approach with certain chiefs in his purchase proposal. This also seemed to cut across Ballance’s apparent support in Parliament in late 1884, for recognising the authority of the tribe or hapu, as well as the chief, in dealing with their land. Then he seemed to be advocating some kind of recognition for as he had described it, the united intelligence of the tribe in council. In other words, some kind of collective or corporate decision making. He had described this as being more ‘right and sound’ than approaching individual chiefs, who he knew might still be subject to pressure at their weakest moments, no matter how able they were. At that time, Ballance had criticised placing those chiefs in situations where they might be liable to temptation and wrongly persuaded to alienate or part with their property.<sup>1057</sup> However, just a few years later, Ballance seemed to be supporting Butler’s tactics of targeting chiefs in support of a rapid purchase, rather than careful, public, community discussions of government proposals for Waimarino based on knowledge of the full extent of the proposed purchase.

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<sup>1056</sup> *NZPD* 1884 vol 50 pp 314-5

<sup>1057</sup> *NZPD* 1884 vol 50, p 315

## 7.5 The Waimarino purchase deed

As part of his proposal, Butler asked for a purchase deed to be drawn up so that he could begin purchasing as soon as possible. The purchase deeds prepared at this time have survived. The original parchment purchase deed for Waimarino (deed 659) contains a statement of purchase terms, as presumably read out and explained to owners, when payments were made and signatures acquired.<sup>1058</sup> The deed states in Maori and English, that the owners agreed to sell their interests in the Waimarino block containing some 455,000 acres ‘or thereabouts’. In return, the Crown was to make ‘good and effectual’ grants of such parcels of the land not exceeding in aggregate 50,000 acres in such localities and to such of the said vendors ‘as may be agreed upon by her said Majesty and a representative chief of each hapu’. This may well have been explained as providing the owners with sufficient land for their ‘comfort’, and large enough in aggregate to contain areas most important to them. The provisions for agreements between the Crown and representative chiefs of each hapu over the reserves may also have seemed to be incorporating the kind of consultation Ballance was promising along with the continued recognition of chiefly authority Maori had been asking for.

The deed noted that the contents had been read and explained to the vendors in the Maori language by interpreters of the Land Court (both Butler and Stevens were licensed interpreters). There was also provision for each vendor to sign and have their signature attested by two witnesses, as required. Additional pages were attached to the first page as the list of signatures grew, meaning that some pages of lists could be separate from the actual wording of the deed. The deed also had a schedule attached describing these terms and showing a sketch plan of the Waimarino block.<sup>1059</sup> This plan shows the outline of the Waimarino block, presumably based on the sketch plan provided to the Court. The block is shown bounded by largely natural features, mainly rivers and mountains. Only a very few place names are shown, including Taumarunui to the north and outside the block, Kirikiriroa on the Whanganui River and Te Kohatu near Ruapehu. Some bordering blocks and claims, including Retaruke, Kirikau, Opatu and Raetihi are also shown. Given that many owners were unfamiliar with maps at this time, it is not clear how it was explained by Butler.

The final purchase deed for Waimarino appears to be made up of four copies of the purchase agreement with pages of signatures of owners and witnesses attached. At the time of signing

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<sup>1058</sup> ABWN 8102 w5279 box 105 folder 121/7, Wgtn deeds 655-659, deed no 659, ANZ

<sup>1059</sup> ABWN 8102 w5279 box 105 folder 121/7, Wgtn deeds 655-659, deed no 659, ANZ

there appears to have been no place made for dates to be completed for each signature acquired. However, these appear to have been added later in pencil, possibly from Butler's own records.<sup>1060</sup> The date of the deed itself appears to have been left blank originally and was finally inserted on 5 April 1887, when the partition award for the Crown was made.

The first copy of the purchase deed, with a schedule and map attached, is by far the largest. The dates on this copy show some of the earliest purchases of interests and continue until April 1887. This agreement contains a total of 14 pages (some containing signatures on both sides) and 645 signatures. The first signatures are that of Topia Turoa and Wiari Turoa, whom Butler appears to have regarded as particularly influential to the purchase. Most of the signatures on this agreement are witnessed by Butler and Stevens, although there are some other witnesses as well.<sup>1061</sup>

The second copy of the agreement, also with a schedule and map, has less signatures and makes up pages 16-18 of the deed. The 58 signatures attached, date from August 1886, through until early 1887, and the copy appears to have been made to enable signatures to continue to be collected at Wanganui township while Butler and Stevens travelled into the interior to collect signatures on the original copy, as will be explained. A third copy of the purchase agreement, also with a schedule and map, appears to have mostly Taupo names and may well have been taken separately to that district. It has 37 signatures and they appear to have been collected from October 1886. This appears to have been a copy made for W H and L M Grace to collect signatures, while Butler and Stevens were occupied elsewhere. A fourth copy, also with map and schedule has only 5 signatures and appears to have been used in Maniapoto territory to collect signatures, possibly around Otorohanga, as the Land Court operated there and the government agent, G Wilkinson, located near there is a major witness, while neither Butler nor Stevens are witnesses on this copy. It only has five signatures. All these copies together now make up the whole deed as legally recognised. Each one is signed by Judge Puckey, as being produced before the Land Court in April 1887, as proof of the Crown purchase for the partition hearing.<sup>1062</sup>

It seems possible, that with different copies of the deed in existence, owners may never have been fully aware of who else had sold and the actual total purchase price being paid. Some

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<sup>1060</sup> For example, see Butler's journal MA-MLP 7/6, ANZ

<sup>1061</sup> ABWN 8102 w5279 box 105 folder 121/7, Wgtn deeds 655-659, deed no 659, ANZ

<sup>1062</sup> ABWN 8102 w5279 box 105 folder 121/7, Wgtn deeds 655-659, deed no 659, ANZ

may also have never seen the attached map and schedule. There are further issues, which will be addressed through this chapter, regarding understandings of the terms of the deed and what they implied.

One of the first possible areas of confusion may have been in the deed's provision for the government to make 'good and effectual' grants of reserves up to the aggregate of 50,000 acres, in places to be agreed between the government and a representative chief of each hapu. The implied consultation between the government and community leadership over the reserves seemed to provide for the kind of negotiations Maori communities had been seeking, including some recognition of customary forms of authority. This is likely to have appealed to communities keen to join with the government to manage lands for the benefit of all and it may well have created an expectation of recognition of chiefly and hapu authority. It is not clear from the deed wording that the government representative would be Butler himself, and his decision making over reserves would be closely linked to facilitating the purchase process and protecting the Crown interest in the block, although, as will be explained, this seems to have been what occurred.

The purchase deed focus on the aggregate of reserves and on recognising chiefly authority was different to Butler's purchase proposal which had emphasised individual reserves. This gave Butler the option of either emphasising the aggregate reserves and chiefly recognition for those most interested in continuing collective authority, or he could emphasise the individual 'good and effectual grants' for those most interested in possible economic development. This did little to clarify potential confusion between reserves for individual economic benefit and communal purposes that owners might want to protect and retain. It is also not clear whether owners understood that the deed provided only for up to 50,000 acres but made no assurances of any minimum and no guarantee that each owner would receive the full 50 acres. This was also to have important implications, as will be explained further.

Ballance had explained the promised reforms as allowing those who did not want land used for development to cut that land out or not place it before the commissioner. Butler may have explained that the reserves meant that owners were really keeping that land aside. It is not clear that owners realised that Butler was in fact seeking to buy the whole block and then the government would grant back land up to the 50,000 acres. This was quite different to retaining some land under customary authority and effectively tipped the balance of power in favour of the Crown, as it ultimately could decide when and where and how much it would grant back. This would also have important implications, as will be described.

## 7.6 The Easter hui and cooperation with the Government, April-May 1886

The purchase process for Waimarino from April 1886 until early 1887 when a Crown award was made for the block, is better documented than the early pre-purchase preparation period and much of the land purchase file for the block survives.<sup>1063</sup> Even so, the official correspondence naturally focuses on the government view of the purchase. The file also seems to record only part of the purchase story, most notably progress with purchase, rather than how exactly the purchase was being conducted. Additionally, it seems the file is only a partial record in that there were numbers of meetings discussing the purchase between officials and the Minister, and between officials and at times the Minister with groups of Maori. These took place throughout the purchase and while they are often referred to in file documents, no detailed record appears to have been filed concerning these meetings, or any promises and assurances that may have been made at them.

Other than reporting that he was ‘persuading’ or ‘inducing’ owners to sell, Butler was not very forthcoming about the tactics he was using in his written reports. Some aspects of the sale, such as the purchase of minor interests, are also poorly recorded. Use has been made of supplementary records such as accounts records to try and fill out some of the missing story of the sale but large gaps still remain. The concerns of communities and leaders with interests in the block also tend to have less prominence in the official record, although some instances of concern and interpretations of the deed were the subject of written letters to officials and the Minister and therefore recorded, and petitions have also been used to identify some of the concerns of the time over the purchase.

The purchase file does not refer to the Aramoho meeting, although newspaper reports indicate that both Butler and Stevens attended, and it seems likely that government assurances and promises at this meeting were significant in Butler’s success in persuading a number of influential chiefs to overcome their opposition and agree to cooperate with him over the Waimarino deed. Butler and the government appear to have regarded Topia and Wiari Turoa as two of the most influential chiefs among the recognised owners in Waimarino. This was in contrast to significant, but apparently less influential chiefs such as Te Rangihuatau who had made the original application for Waimarino and conducted the successful claimant case. This appears to confirm the way the Land Court system enabled certain local leaders to be

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<sup>1063</sup> MA1, 1924/202 vols 1 and 2, ANZ

persuaded to make applications for hearings and then this could be used to drag in more influential chiefs. These more influential chiefs may not have even participated in the original applications, but they appear to have felt obliged to participate in the process once it started to protect and assert their own mana and to participate on behalf of their people.

As noted in the previous chapter, Wiari Turoa had also already been involved in a series of meetings with Butler in December 1885-January 1886, according to Butler's expenses claims. It is not entirely clear how the chiefs involved viewed these payments. They may have regarded as no more than due recognition of their importance and the expenses they faced in taking part in negotiations, including for their travel and accommodation. They may also have regarded them as advances to cover expenses involved once they agreed to cooperate with Butler. However, Butler recorded their payments as being for their interests in the Waimarino block.<sup>1064</sup>

Butler also made additional payments to a few chiefs shortly after the purchase was approved. According to his records, Topia Turoa, was paid a total of £165 over two payments on 14 April 1886 and a few days later on 20 April 1886. Butler's records also show that Wiari Turoa was also paid £100 for his interests in Waimarino on 20 April.<sup>1065</sup> The names of Topia and Wiari Topia are also the first two shown on the deed of purchase for Waimarino, with the third being Topia Turoa on behalf of a minor. They are shown with J Stevens and W J Butler as attesting witnesses.<sup>1066</sup> Although both were purchase agents, John Stevens signed as a Justice of the Peace and W J Butler as a licensed interpreter. This reveals another feature of the supposed protections of the land purchase system. The purpose of having a witness to a signature was supposed to be to provide a witness of good character to ensure there was no fraud. However, because there was no requirement that land purchase agents could not also be witnesses, it was easy for the Government to ensure they held positions such as Justice of the peace or licensed interpreters to make sure they could also witness signatures, when they clearly were not neutral or independent.

Once Butler had the cooperation of these chiefs and another influential upper Whanganui chief, Te Pikikotuku, he rapidly acquired the signatures of a significant number of their people over the Easter weekend of 1886, and the days immediately following it. This was the

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<sup>1064</sup> MA-MLP 7/6 ANZ

<sup>1065</sup> MA-MLP 7/6 owner numbers 648, 649

<sup>1066</sup> ABWN 8102 w5279 box 105 folder 121/7, Wgtn deeds 655-659, deed no 659, ANZ

period from around 22-30 April 1886. It was also shortly after Butler's records show that he had paid Topia and Wiari Turoa for their interests on 14 and 20 April 1886. It seems likely there was a large meeting held at this time, at which large numbers of their communities followed Topia and Wiari in signing the deed, although no record has been found of this. However, Butler's accounts records show he paid A Filmer (agent of the Whanganui River Steamship Company) the fares of 26 Maori to Aramoho on 22 April 1886, 'as per instructions'.<sup>1067</sup> This indicates that this Easter hui may have also been held at Aramoho. Possibly the instructions were from Patrick Sheridan, the chief accountant of the Land Purchase Office as Sheridan and Butler are the witnesses whose signatures appear on the deed for most of the other interests purchased over these nine days.<sup>1068</sup> The Native Land Purchase accounts show that Sheridan was also paid expenses for travelling, charged against Waimarino for the period 19-28 April 1886.<sup>1069</sup>

Butler's records show that he paid around 100 additional adult owners for their interests in Waimarino over the nine days from 22-30 April 1886.<sup>1070</sup> He purchased 49 of the interests on 22 April, which was the Thursday before Easter. On Good Friday, 23 April, he recorded the purchase of just two interests. Over the next few days he purchased a further 49 interests taking the total of adult interests purchased to 100. This early group of signatures also appears to have included some influential names such as Hoani Paiaka, Te Pikikotuku, Te Rangi Whakarurua, Karaitiona, and Te Peehi te Opetini. There may well be some discrepancies in the precise dates, because as previously noted, the original deed did not have a place for dating each signature. The dates are pencilled in later and appear to refer to date of payment, which was often but not always the date of signature. Nevertheless, it seems likely that a significant group of adult signatures was acquired at this period and this was an important step for Butler and Stevens in their purchasing.

This also seems to be the view of the *Wanganui Herald* whose correspondent seems to have been alerted to events. The *Herald* reported on 22 April 1886, that it had learned from a Press Association telegram that arrangements for the purchase of the Waimarino block, through which the central railway route ran for some miles, had been completed by Native Land Purchase Commissioner Butler, in Wanganui the previous day. Butler had apparently

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<sup>1067</sup> MA-MLP 7/10 p 36 voucher 300, ANZ .

<sup>1068</sup> ABWN 8102 w 5279 b 105 pp 1-3, ANZ

<sup>1069</sup> MA-MLP 7/10 p 27 voucher 25, ANZ

<sup>1070</sup> MA-MLP 7/6 ANZ

telegraphed the Minister of Public Works that Topia and Wiremu Turoa had given their consent and had agreed to sign the deed of sale.<sup>1071</sup> The paper appeared to be reporting Butler's belief, that obtaining these important signatures effectively indicated the purchase had taken place. However, the paper also noted that 1100 names had to be obtained for the block, and it was expected that these would be procured by Butler and Stevens who intended making a special journey up the river for the purpose.<sup>1072</sup>

This appears to be one of the few times where Butler sought cooperation in an open public meeting of owners. It followed shortly after the earlier hui with Ballance and may well have been influenced by that. Butler had also been careful to obtain the prior cooperation of important chiefs, knowing full well they were likely to persuade their close relatives and communities to also cooperate based on trust in their chiefs. This highlights how willing government officials were to use the influence of chiefs when it suited, although at other times they were quick to champion the 'rights of individuals'.

It is not entirely clear what the chiefs involved at this time understood or expected by agreeing to cooperate with Butler and sign their names to the deed. They seem to have understood they were signing a purchase deed, but it is not clear what they understood that to mean. As noted, the deed was more complicated than a simple agreement to transfer land. It also promised a substantial reserve and further consultation between chiefs and the government. They may have believed they were agreeing to submit the block to the government 'law' so that it could be administered under government provisions as was proposed under the new legislation. They might well have expected some of this to be sold, especially for the railway and settlements associated with it. They may also have expected some kind of future partnership over developing their lands by agreeing to work with a 'commissioner', presumably Butler, setting aside some land for sale or lease and encouraging settlement and increased prosperity, while retaining a 'comfortable' amount for their own needs. This assumed a much more neutral and cooperative role for Butler than might be expected of an old-style land purchase agent. They may have trusted that as government commissioner, Butler would protect their interests even if they didn't entirely understand all the implications of the deed they were signing. Their cooperation seems to have included a

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<sup>1071</sup> *Wanganui Herald*, 22 April 1886, p 2

<sup>1072</sup> *Wanganui Herald*, 22 April 1886, p 2

significant degree of trust in the government. In turn, they may have expected that their trust would be repaid by government protection and good faith.

Whatever those signing or agreeing to cooperate with Butler understood they were doing, they do not seem to have expected that in agreeing to trust in the government and by signing their names, they were agreeing to part with their recognised interest in the vast majority of their lands at a ‘cheap’ price, without any say in the future management of them and without the good and effectual reserves that might allow them to retain adequate lands and to participate in new economic opportunities. This was the kind of marginalisation and alienation they had been so critical of under the old 1870s land purchase system and that they had tried so hard to avoid. As will be explained, when Topia Turoa began to understand what was really involved, he became a bitter opponent of Butler, although he could not now remove the signatures of himself and his people from the deed.

### **7.7 Early purchase tactics, minors, trustees and duplicate names**

The third signature on the Waimarino purchase deed was by Topia Turoa for the interests of a minor, Manataruke Turoa, presumably a relative. She was a girl, aged 12 years and Butler recorded making a payment for her interests on 21 April 1886.<sup>1073</sup> This gives a clue to Butler’s next major purchase tactic, which was to purchase as many shares of minors among the Waimarino ownership lists as possible. Although technically there were just over 1000 owners, a large number of these were minors, as previously noted. If Butler could have trustees who were already owners appointed for those minors, and then persuade the trustees to sign for all those minors they represented as well as themselves, he could effectively considerably reduce the numbers he needed to actually sign the deed.

It was possible to have trustees appointed to minors and those trustees to sell the interests of minors they represented under measures introduced in the 1870s to encourage purchases, as noted previously. The Maori Real Estate Management Act Amendment Act 1877 amended an 1867 Act and according to the short title the measure was required because it had become ‘expedient’ that trustees appointed under the 1867 Act should be enabled to dispose of such land to the Crown.<sup>1074</sup> As previously noted, later amendments enabled the trustees to also sell to private persons. More protections for minors were introduced as part of the legislative

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<sup>1073</sup> ABWN 8102 w 5279 b 105, 3<sup>rd</sup> signature and MA- MLP 7/6 owner number 1002 , ANZ

<sup>1074</sup> Preamble to Maori Real Estate Management Act Amendment Act 1877

measures in response to the 1883 Rohe Potae petition so that the Native Land laws Amendment Act 1883 required the payment of moneys as a result of land sold by trustees to be paid to the Public Trustee.<sup>1075</sup> The trustees had to be appointed by the Native Land Court. When Butler persuaded some of the adult owners in Waimarino to sign on behalf of minors he already seems to have been making preparations for this. This can be seen in the minutes of the Land Court for trustees appointed and in Butler's and the land purchase office records of payments, as required, to the Public Trustee who could not pay out without the written authority of a judge of the Native Land Court.<sup>1076</sup> The Native Land Purchase Office therefore had to notify payments to the Public Trustee when purchases were made of interests of minors and these can be traced in the accounts records, including for Waimarino.

In the same period of around 20 to 30 April 1886, Butler also purchased the interests of 65 minors by having adult trustees sign for them. Two of these interests were purchased on 20 April before any trustees appear to have been formally appointed. However, on 21 April 1886, the Land Court minutes show that W J Butler, land purchase officer, submitted a list of 207 minors with names of trustees he asked the Land Court to approve.<sup>1077</sup> A chief, Wiremu Kiriwehi was sworn in as a witness to inform the Court if there were any objections to the proposed trustees.<sup>1078</sup> Wiremu te Kiriwehi Matatoru was one of those chiefs whom Butler had apparently already persuaded to cooperate over the deed. The records show he was paid an advance for his own interests on 27 April and full payment on 19 May 1886.<sup>1079</sup> He was also one of the trustees proposed for appointment to minors in the block.<sup>1080</sup> Just over a decade later, in 1898, Sheridan, would also recollect that Wiremu Kiriwehi 'was paid for assisting in the purchase'.<sup>1081</sup> Sheridan also thought in 1898, that Kiriwehi might not be a reliable witness, a possible indication that he had not always acted as Butler might have wished. Regardless of Kiriwehi's motives at the time, and whether or not he later became disillusioned with Butler, it seems that government officials regarded the larger payments to chiefs as being not only for their interests as was recorded, but as payments to assist with the purchase. Those receiving payments were therefore no longer regarded as objective, but as paid help to promote or assist with the purchase. This highlights one of the features of the Land Court process, where

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<sup>1075</sup> Native Land Laws Amendment Act 1883 section 14

<sup>1076</sup> Native Land Laws Amendment Act 1883, section 14

<sup>1077</sup> MLC-Whanganui MB 10 p 12-24

<sup>1078</sup> MLC-Whanganui MB 10 p 12

<sup>1079</sup> MA-MLP 7/6 owner number 569, ANZ

<sup>1080</sup> MLC-Whanganui MB 10 pp 12, 19

<sup>1081</sup> Sheridan, file note 22 March 1898 on letter 2 March 1898 regarding petition for minor, NLP 98/663 MA1, 1924/202 v 2 ANZ

officials could manipulate the system by having Maori act as witnesses ostensibly because of their knowledge and status, but actually acting in the pay of officials and effectively promoting their objectives.

Regardless of any manipulation of Court witnesses, the Court process itself tended to favour Butler and Stevens in their recommendation of trustees. While they could ensure that cooperative witnesses approved their lists, the Court would generally approve the recommendations unless anyone appeared to object. This would have required those who wanted to oppose such recommendations to be prepared to attend Court at almost any time over the following year to object as recommendations were periodically submitted. The requirement to attend the Court for many months made this most unlikely.

It appears there were no objections to the trustees proposed by Butler on 21 April, and trustees as recommended were appointed for 207 minors. These included the two minors whose shares Butler had already paid for the day before.<sup>1082</sup> It should be noted that in many cases those appointed trustees appear to have been adults of the same family or closely related and there was no reason why they should not have been trustees or that they should have been objected to. It was also true that Butler could not always be sure that those appointed trustees would sell to him. A few of the trustees appointed from this list never sold the interests of the minors they represented.<sup>1083</sup> Nevertheless, Butler could try and persuade those cooperative to him who were related to minors to be trustees. Additionally, just the act of appointing trustees substantially reduced the number of individual owners he had to persuade. Even though there were supposedly protections for minors, it seems to have been another weakness in the Land Court process, that the Court could accept proposals for trustees from individuals it knew were land purchase agents and who had no other interest in seeing trustees appointed other than for land purchasing purposes.

The appointment of trustees does seem to have advantaged Butler. For example with just five trustees who were also owners, Topia Turoa, Te Peehi te Opetini, Hoani Paiaka te Pikikotuku, Kahu Karewao and Wiari Te Haiho who all sold their interests in April 1886, Butler gained the interests of 26 additional minors they acted as trustees for.<sup>1084</sup> This enabled him to effectively acquire 35 shares from just five owners. By the end of April, over a largely ten

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<sup>1082</sup> MLC –Whanganui MB 10 Ngarau Huatahi p 16 and Te Porere te Piki p 21

<sup>1083</sup> For example, Miriama Haare as trustee for Te Utomate Haare (owner 696), Te Patate Hoani (owner 698 and Te Monuwa Hoani (owner no 697), MB 10 p 20 and MA-MLP 7/6 ANZ

<sup>1084</sup> MA-MLP 7/6 ANZ

day period, Butler had managed to purchase the interests of 165 owners in Waimarino, including both adults and minors.

Butler continued to very actively seek the interests of minors through the rest of the purchase. For example, the records show that the interests of another 73 minors in Waimarino were purchased in the following month, May 1886.<sup>1085</sup> It also seems that Butler and Stevens continued to actively seek to have trustees they recommended appointed to represent minors. For example, on 1 May 1886, Butler submitted and the Land Court accepted another list of proposed trustees for a further 24 minors in Waimarino.<sup>1086</sup> On 4 May 1886, John Stevens submitted and had accepted by the Land Court proposed trustees for another six minors in Waimarino.<sup>1087</sup> The records show that the interests of three of these minors were purchased the same day the trustees were appointed 4 May, and two more of them were purchased three days later on 7 May.<sup>1088</sup> After this time, the Court minutes no longer record who was making the recommendations for trustees for minors in Waimarino. For example on 12 and 17 May 1886, the Court minutes simply note that recommendations were made for trustees for a further nine minors in Waimarino.<sup>1089</sup> While in some cases, later recommendations were clearly being made by family members and this often was an attempt to protect their interests, it also seems highly likely that Stevens and Butler continued to be involved in at least some of these continuing proposed appointments of trustees.

It also seems that in their haste, as already noted, Butler and Stevens were purchasing minor interests before trustees were formally appointed and before they were officially gazetted as was apparently required. It also seems the Land Court was also being asked to approve the release of the moneys from the Public Trustee to those claimed to be trustees in some haste. For example, in a letter of 12 May 1886, the land purchase office sent a memo to R J Gill, now a judge of the Land Court, requesting him to formally authorise various payments made by Butler as a result of purchasing the interests of minors in the Waimarino, Kaimanuka and Maungakaretu blocks. The amount for Waimarino was by far the largest at £3420.<sup>1090</sup> It represented payments to 96 Waimarino minors, most of them at £35 per share.<sup>1091</sup> In early June 1886, T W Lewis also wrote to Judge O'Brien asking 'by direction of Mr Ballance' that

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<sup>1085</sup> MA-MLP 7/6 ANZ

<sup>1086</sup> MLC-Whanganui MB 10 p 62, pp 23-24

<sup>1087</sup> MLC-Whanganui MB 10 p 68

<sup>1088</sup> MA-MLP 7/6, Whanganui MB p 68

<sup>1089</sup> MLC-Whanganui MB 10 pp 106,127

<sup>1090</sup> MA-MLP 4/3 p 244 memo to RJ Gill 12 May 1886, ANZ

<sup>1091</sup> MA-MLP 4/3, p 245 list of minors, ANZ

he would approve the sale to the Crown of the interests of certain minors in the Waimarino block and to authorise payment to their trustees as per the enclosed receipts. He informed Judge O'Brien that the government would of course take any risk consequent upon information of any kind whatsoever, such as for instance the anticipation of an order in council confirming the appointment of the trustees and any other proceedings necessary to bring the purchase of the land to the 'very earliest possible conclusion'.<sup>1092</sup> The names attached referred to 19 Waimarino minors whose interests were purchased from 10-20 May 1886.<sup>1093</sup> Most of these minors had trustees appointed by the Court from 21 April to 17 May 1886. Two of them appear to have had trustees appointed and been sold on the same day, 17 May 1886.<sup>1094</sup> The appointment of a trustee for one of the minors, Te Waka Waiora (owner number 967) is not clear, although this may have been a result of name misspellings or other error. What does seem clear is that there are often very close associations between the appointment of trustees and purchasing, and the urgency with which purchasing was conducted may well have helped to undermine or negate what little protections were available.

It seems that the 19 Waimarino owners who were subject to the urgency request were paid a total of £675, an average of £35 per minor. This is indicated by payments of this amount by the land purchase office to the Public Trustee on 11 June 1886.<sup>1095</sup> Butler's own expense records show he made out this amount for the land purchase office to pass on to the Public Trustee for the 19 minors on 25 May 1886.<sup>1096</sup> The various Native land purchase records show further periodic payments to the Public Trustee for the interests of minors purchased in Waimarino as was legally required. In many cases, as would be expected, the dates Butler recorded making the payments were earlier than the dates shown when the land purchase office passed the amounts on to the Public Trustee. A further payment for 31 Waimarino minors was made to the Public Trustee to the value of £1,100 in June to early July 1886.<sup>1097</sup> A little while later, a further payment for £485 representing 13 Waimarino owners was recorded as paid by Butler on 30 June 1886 and paid on to the Public Trustee by the land purchase office on 23 July 1886.<sup>1098</sup> Such periodic payments to the Public Trustee for

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<sup>1092</sup> MA-MLP 3/5 p 413, outwards letter Lewis to Judge O'Brien 5 June 1886, ANZ

<sup>1093</sup> MA-MLP 7/6 and MA-MLP 3/5 p 413, ANZ

<sup>1094</sup> MLC Whanganui MB 10 p 127 trustees for owners 405 and 404 and MA-MLP 7/6 for those owners. ANZ

<sup>1095</sup> MA-MLP 4/3 p 250 memo to Public trustee 11 June 1886 ANZ

<sup>1096</sup> MA-MLP 7/10 p 38 voucher 396, ANZ

<sup>1097</sup> MA-MLP 4/3 p 254 memo 12 July 1886, ANZ; MA-MLP p 47 voucher 693 ANZ

<sup>1098</sup> MA-MLP 4/3 p 255 memo 23 July 1886, ANZ, MA-MLP 7/10 p 49 voucher 752 ANZ

Waimarino minors appear to have continued well into 1887.<sup>1099</sup> This was well after the Crown award had been made and the purchase deed already accepted by the Court.

Once the Court appointed recommended trustees, it was very difficult for concerned owners to overturn any they believed were incorrect. It was especially difficult when many were not aware when recommendations might come before the Court so they could personally attend to object. The very rapid way in which many purchases occurred immediately trustees were appointed also made corrections difficult. Although there is no direct evidence of this, the close association between appointment of trustees and purchasing also indicates the possibility of collusion between agents and those appointed as trustees.

One reasonably well-documented case shows the relative ease with which frauds could occur over the appointment of trustees and the sale of minor interests through them. This case involved a minor named Tira Koroheke, who was listed as owner number 142 in Waimarino in the Court ownership lists, where he was described as a boy, aged 10 years.<sup>1100</sup> On 21 April 1886, a trustee named Hohepa Taurerewa was appointed to him on the recommendation of Butler. This recommendation also described him as a boy, aged 10 years.<sup>1101</sup> Some months later, on 6 August 1886, the Land Court heard an application for the rehearing of the appointment of a trustee to Koroheke, owner no 142.<sup>1102</sup> The witness for this hearing was Heni Rakau and she claimed that she knew Tira Koroheke, whom she claimed was a girl, and her granddaughter. She claimed the girl's father was dead. She also claimed that she knew the trustee Hohepa Taurerewa, who she said lived in the Manganui a te Ao area. She told the Court that she did not think he was related to the child, certainly not a near relative, and he did nothing for the girl's welfare. She claimed that the girl lived with a woman named Hira Hinekura and she asked the Court that this woman be made a trustee for the child. The Court found there were no objectors present and therefore ordered that Hira Hinekura be made trustee for Tira Koroheke (owner 142), a girl aged 10 years. The former recommendation for a trustee was cancelled, effectively removing Hohepa as a trustee.<sup>1103</sup>

It does not seem to have occurred to the Court to ask Butler about the matter, given that he had made the original recommendation for Hohepa. A check of the lists shows that Hohepa

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<sup>1099</sup> MA-MLP 4/3 pp 256, 258, 266, 267, 285, 288, 293, 297, 298, 313, 316, 322; MA-MLP 7/10 p 123 voucher 310, 25 May 1887.

<sup>1100</sup> MLC - Whanganui MB 9 p 297

<sup>1101</sup> MLC - Whanganui MB 10 p 15

<sup>1102</sup> MLC - Whanganui MB 11 p 58

<sup>1103</sup> MLC-Whanganui MB 11 p 58

Taurerewa had been made a trustee for a number of minors. For example, he was also trustee for Te Pohe Kawana (owner 307) and for Te Whaiti Taurerewa (owner 321) both of whom were minors. In these cases, he seems to have refused to sell their interests and they were eventually awarded land in non-seller reserves.<sup>1104</sup> Given this attitude, even if Stevens was not actually aware of the fraud, he may have been encouraged to support the case without careful inquiry, as it would have suited him to have a non-selling trustee replaced by one who was willing to sell immediately. Butler's records show that the interests of Tira Koroheke were purchased from the new trustee, Hira Hinekura, on the same day the Court appointed her, 6 August 1886, for the payment of the standard £35. A seller award of 25 acres was provided for Koroheke in reserve E.<sup>1105</sup> The new trustee apparently sold immediately to John Stevens.

In 1898, the Chief Judge of the Native Land Court was petitioned about the case, alleging that Tiro Koroheke's name in the ownership list had been fraudulently altered to enable other people to sell his shares. A Land Court hearing found the name was indeed changed in error and as the result of fraudulent evidence. It was found that the fraudulent trustee had immediately sold to Stevens, although officials chose to believe that Stevens was deceived by those conducting the fraud. In the course of the inquiry into this matter, Sheridan, as previously noted, claimed that Wiremu Kiriwehi who had acted as witness for Butler and Stevens in approving many trustees they recommended, might not be a reliable witness although 'he was paid for assisting in the purchase'.<sup>1106</sup>

When offered compensation, the real Tiro Koroheke indicated that he preferred land instead of monetary compensation for the lost shares and asked for the land to be granted adjoining the land his father was farming. The correspondence over this revealed that Butler had generally treated minors with parents who were owners as having lesser interests in the block and as having nominal interests for partition.<sup>1107</sup> This was presumably why Butler only felt obliged to provide 25 acres for Koroheke in the seller reserve, although it is not clear Maori understood this would be done when they included children on lists or agreed to sell their interests as trustees. It may help explain, however, why Butler may have encouraged having such large numbers of minors on lists. Once again, although treating owners as equal when it suited, Butler also took full advantage of treating some shares as unequal when this assisted

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<sup>1104</sup> MA-MLP 7/6 ANZ

<sup>1105</sup> MA-MLP 7/6 owner 142 ANZ

<sup>1106</sup> Lewis note 22 March 1898 NLP 98/663 MA1, 1924/202 v2 ANZ

<sup>1107</sup> Sheridan note 7 October 1898 NLP 98/663 MA1, 1924/202 v2 ANZ

the purchase. Unfortunately, it is not clear which owner in Waimarino 3 was Koroheke's father, or whether he was the Hohepa who was the original trustee.

Officials recommended that 175 acres of Crown land adjacent to Waimarino no 4 should be granted to Koroheke in compensation for his lost interests, in addition to his 25 acres seller reserve in the tribal reserve.<sup>1108</sup> It is not clear how this amount was decided. However, the recommendation was approved by the Native Minister on 21 December 1898.<sup>1109</sup> A further letter from Tiro Koroheke noted that he wanted the 175 acres adjacent to his father's farm in Waimarino reserve 3, not reserve 4 as had been recommended.<sup>1110</sup> There is no further file record on whether this grant was ever implemented.

John Stevens does appear to have been directly involved in another case where trustees for minors were altered by the Court, facilitating a rapid purchase of interests. In this case, on 25 October 1886, a woman named Maari Matuahu asked the Court to allow her to succeed to the interests of her deceased brother, Henare Matuahu (owner 76). She explained that another surviving adult brother, Te Wharerangi Matuahu, was also an owner but she wished to succeed alone. Instead, the Court made both her and her brother, Te Wharerangi, successors to Henare.<sup>1111</sup> On the next day, 26 October, Te Maari applied to be appointed trustee to her brother Te Wharerangi, who she claimed was deaf and dumb and a minor. She explained that he was absent at present, but she would look after his interest.<sup>1112</sup> John Stevens, who described himself as a Licensed Interpreter, then gave evidence that he knew Te Wharerangi who was aged about 17 years and was deaf and dumb. He explained his father, Matuahu had been appointed trustee for him but said he was now in indifferent health and not fit to be re-appointed a trustee in this case. He told the Court he knew the whole family and he did not think that Te Wharerangi's interest would suffer in any way if the trusteeship were left in the hands of Te Maari. The Court then made an order appointing Te Maari a trustee for Te Wharerangi.<sup>1113</sup> Butler's records show that the next day, 27 October, Maari Matuahu was paid two sums of £27 10 shillings for her interests as successor and now trustee as well for her

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<sup>1108</sup> Sheridan note 21 December 1898 NLP 98/663 MA1, 1924/202 v2 ANZ

<sup>1109</sup> File note 21 December 1898, NLP 98/663 MA1, 1924/202 v2 ANZ

<sup>1110</sup> NLP 99/212 MA1, 1924/202 v2 ANZ

<sup>1111</sup> MLC-Whanganui MB 12 p 105

<sup>1112</sup> MLC-Whanganui MB 12 p 111

<sup>1113</sup> MLC-Whanganui MB 12 p 112.

brother.<sup>1114</sup> Presumably, it was Stevens who purchased the interests. Whether or not Te Maari passed some of the payment on to her brother is not known.

It appears that Butler was also keen on using similar tactics to those used with minors to gain powers of attorney for some Waimarino owners, so others could sell shares on their behalf. On 19 May 1886, he wrote to Lewis claiming he had received a number of letters from owners in Waimarino authorising payment of their shares to others. He asked that, if this was legally acceptable, the Land Purchase Office might print 200 copies of blank power of attorney forms so that he and Stevens could carry out the wishes of those owners. He asked for such a document to be printed in Maori and English so that it did not need to be witnessed by Justice of the Peace and interpreter. He also advised that such powers of attorney should only be executed between Maori and Maori, apparently assuming this might help convince officials to agree. If this could be done, Butler believed it would ‘facilitate’ the purchase of a good deal as some of the owners were a long way off. For example, one was believed to live at Hokianga and another between Gisborne and Opotiki and he was confident both would appoint an attorney.<sup>1115</sup> Lewis annotated the file with a note to Sheridan dated 21 May 86. He did not think this was desirable, and anyway as Butler had already gone upriver he thought the proposal might just be filed.<sup>1116</sup> Butler tried again in a later telegram to Lewis of June 1886. However, this was also apparently ignored, as senior officials felt it was too risky.<sup>1117</sup> Possibly it was believed there might be many more complaints when adults were involved. This does, however, indicate the land purchase tactic of identifying ‘easy’ purchases such as children and absentee owners who lived outside the block and therefore were most likely to agree to selling their interests in it.

Another tactic Butler was able to pursue, this time apparently without requiring Court approval, was to identify and delete duplicate owner names from the ownership list. It is not surprising, given that original lists were prepared and submitted by hapu groups that there were duplicate names. It is also not unusual that duplicates should be removed. However, the haste with which the title case was conducted when such a large block was involved involving so many different communities may well have exacerbated this problem and it is not clear that chiefs had sufficient time to overcome it. The result was of significant advantage to Butler,

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<sup>1114</sup> MA-MLP 7/6 owner 76 ANZ

<sup>1115</sup> NLP 86/176, MA1, 1924/202 v1, letter 19 May 1886, ANZ

<sup>1116</sup> File annotation 21 May 1886, NLP 86/176, MA1, 1924/202 v1 ANZ

<sup>1117</sup> NLP 86/180, MA1, 1924/202 v1 telegram Butler to Lewis 16 June 1886, ANZ

because the more duplicates he found, the fewer owners he had to purchase from. Eventually Butler was to claim that there were a total of 85 duplicate names in the ownership lists, reducing the effective ownership list from over 1000 to 921 names.<sup>1118</sup> However, even though there was a considerable advantage to him with this, there seems to have been insufficient time to ensure that duplicates were correctly identified and removed before the list was approved by the Court or that Butler's later claims of duplication were correct.

The tactics Butler was employing in his early purchases may not have been immediately apparent to many owners, although they did soon become the focus of many complaints as will be explained. In the meantime, however, most early complaints appear to have come from those who still did not believe the Waimarino block could or should incorporate the northern lands that penetrated into the Rohe Potae boundary. It would have been apparent at this time that a 'proper' survey was being undertaken and possibly they wanted to ensure that it 'corrected' any misconceptions about the northern boundaries and whether they could really penetrate into the 'protected' external Rohe Potae boundary.

## **7.8 Complaints about the northern boundary of Waimarino**

On 16 April 1886, even before Butler made his large Easter purchase, the chief Ngatai te Mamaku and others of Taumarunui wrote to Ballance seeking a reserve for the Ngati Haua people, that included some lands coming within the northern boundary of Waimarino. They described the boundaries of their proposed 'reserve' as beginning at Paparoa then running east following the line of the Aotea block including Kuirau, Matahopo, Kapuarangi, Pukehou, Te Makahiwi, Te Iringa-o-te-whiu, Te Murumuru a hikairo, Maramara, Hurutahi and Te Hunua. The boundary then turned in the direction of Whakarua, Hautawa, Te Puke, Pakikuiti, Irinanui, and Waetea. It then followed the Waetea River on to Wainui then to the Whanganui River and followed it before turning west from the Whanganui towards the west to Whakaruatiti, Whakaruamako, Powuiru, Whakarewa, Mangarautawhiri, Matahane, Tututotara, Taumarunui, Te Miro, Paehoa, Iowhenua, Makokomiko, Hikumutu, Omaka, Te Maire, Matawhero, Mareikura, Arimatia, Hauatara, Whenuatere, and ending at Paparoa again. They asked that this land be reserved permanently for them and their children.<sup>1119</sup>

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<sup>1118</sup> MLC-Whanganui MB 13 p 122

<sup>1119</sup> Letter and translation, 16 April 1886, Ngatai te Mamaku and others to Native Minister, MA1, 1924/202 v 1, ANZ

Besides Ngatai, the signatures to this letter were those of Taitua, Te Pikikotuku, Tuao, Tanoa, Tuhaia, Wiremu te Marumaute, Kahu Karewao, Hinetai and Hakiha Tawhiao. Hakiha Tawhiao, who apparently wrote the letter, stated that it was supported at the same time by all the great tribes. Possibly this was intended to be a reference to the proposed reserve being accepted by the Rohe Potae alliance. It seems that the reserve described contained the northern part of the Waimarino lands from the northwest corner of the Kirikau block across to Te Puke and northwards, enclosed by the Warea and Whanganui rivers. This was the heart of the Tuhua lands that extended south of the Whanganui River. It also included lands west of and north of Waimarino, including Taumarunui. This indicates that the reserve required was not out of the Waimarino block itself but was an effort to identify those lands they did not want included within the Waimarino block or under Native Land Court investigation.

Many of the signatures to the letter, such as Te Pikikotuku, Tuao and Tuhaia were recognised owners in Waimarino, although others, such as Ngatai himself, were not. Some of the owner chiefs were also shortly to receive payments from Butler, recorded as being for their interests in Waimarino, and some, such as Pikikotuku and Kahu Karewao, also signed the purchase deed. It is not clear what their understandings were when they did this. Possibly they believed that Waimarino was separate to the Tuhua lands they were seeking to reserve. They might have believed that they could agree to cooperate with the government over what they regarded as Waimarino 'proper', while keeping the northern lands outside this. It does seem that there was considerable confusion over whether lands within the protected external Rohe Potae boundary could be included in Waimarino, not surprisingly since they thought the Government had agreed to the boundary. Their use of the term 'reserve' for land they wanted excluded also indicates that those owners within Waimarino who agreed to cooperate with the government understood their substantial reserves would remain outside the actual purchase. However, this was not the case giving the Government a considerable advantage when it came to making the promised reserves as will be explained.

Ngatai te Mamaku, it will be remembered, was regarded as an influential upper Whanganui/Tuhua chief, even if he had not been recognised as an owner in Waimarino. He had apparently represented some upper Whanganui people in the alliance negotiations over the Rohe Potae. More recently he had been one of the influential chiefs the government had identified and sought to persuade to cooperate with its policies in the March hui at Aramoho. He had attended that hui and had also held at least one private meeting with Ballance at that

time.<sup>1120</sup> It is possible this letter was an attempt to clarify government policies with regard to the boundaries of Waimarino and with regard to promises over what upper Whanganui land might be reserved from dealings. There is no record on file of any reply to this letter.

As concerns about Butler's purchasing tactics in Waimarino spread, this concern solidified into more outright opposition to northern lands being included in Waimarino and to cooperation with the Government. The chief Ngatai te Mamaku wrote to the Government again on 8 May 1886, concerned about what appeared to be happening with Waimarino and again seeking to have the northern lands excluded. In translation, he asked the government to let Waimarino 'be where it is' and not extend on to the lands of his ancestors. In addition, he now wanted to manage his part 'alone' as he did not approve of Butler carrying out the 'secret acquirement of the lands included in the Aotea block'. He wanted Butler's 'negotiations' to end at a line from Papanui to Waimarino, and leave the people to conduct matters themselves within the Aotea boundary. He noted that the Aotea block itself would soon be adjudicated on and the House for that was being built at Haerehuka, Waiapu. He informed Ballance that Butler and his friends Te Rangimatau and Paika were 'acting very badly' and it was well known that these types of proceedings would cause trouble.<sup>1121</sup> Ngatai's reference to the adjudication of the Aotea block may also be a reference to an expected Native committee investigation of the protected Rohe Potae area as an alternative to the Land Court. Again, there was apparently no official reply to this letter. Even though he was acknowledged to be an influential leader, Ngatai was not a recognised owner in Waimarino and although he may not have realised it, Butler did not have to address his concerns.

Another letter of the same date expressed much the same concerns. Also dated 8 May 1886, it was officially described as being from Tuhaia and 8 others. In fact, there were seven other signatures on the bottom of the letter and the interpreter failed to turn the letter over and notice another 32 signatures on the back, as can be seen in the original letter also on file.<sup>1122</sup> This letter, also written from Taumarunui, in translation asked the government for much the same, including letting the Waimarino block 'be where it is' and not penetrate into the boundaries of the Aotea block, which was to be adjudicated on at the House being built for the occasion at Haerehuka. This letter also complained of Butler's activities in advancing money on land and warned it would produce 'evil consequences' including 'trouble both to

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<sup>1120</sup> *Wanganui Herald* 22 March 1886 p 2

<sup>1121</sup> Letter (translation) Ngatai te Mamaku to Ballance 8 May 1886, MA1, 1924/202 v 1, ANZ

<sup>1122</sup> NLP 86/152, 8 May 1886 from Tuhaia and 39 others, MA1, 1924/202 v 1 ANZ

the owners and the land'. The writers asked the government not to listen to one person but to 'the whole people'. The letter also claimed the signatures to it were affixed in the presence of the people. The signatures were the following: Tuhaia, Tangi, Tanoa, Teawitu, Temarae, Hikaia, Wakapaki, Teorou, Tiraha, Tehika, Matena, Konge, Ngaru, Tukutuhi, Tuao, Tarawete, Terake, Teratutome, Temarmaute, Paraone, Hinaki, Rangitauira, Tekopere, Waiora, Tepiki, Tima, Para, Tonga, Uruhora, Hamapiri, Terangi, Manahi, Temeha, Teamuroa, Taumata, Tehore, Tekitana, Teroaka, Waro, and Matene. Some of these, such as Tuao (owner 754) and Tanoa Te Uhi (owner 752) and Tuhaia (owner 938) were owners in Waimarino. Others are likely to have been owners, such as Tangi Manurau (owner 753), Konge Ngatai (owner 773) Takana Rangitauira (owner 896) and Matene Kahukora (906). However, others were not apparently recognised owners in Waimarino. The people signing both these letters appear to have been connected. Presumably they all also connected to Ngati Haua. Some names such as Tanoa, Tuao, Tuhaia and Tamarumaute appeared in both letters and seemed to share similar concerns. These included separating the northern lands from Waimarino and concerns about the activities of Butler, which they warned would cause 'evil consequences'. There is also no indication of an official reply to this letter.

On 31 May 1886, another letter was sent to Ballance, this time from Tokaanu near Taupo. In translation, the writers asked to be informed what part of their lands Butler was making advance payments on. If he was buying in Waimarino they did not think his purchase would have 'mana' as they did not want to sell it. However, they now wanted the land subdivided and asked the government to authorise a surveyor to do this. They wanted Mr Clayton to survey their piece of land and asked for their application to be acted on as soon as possible. They signed this application with 13 names and claimed it represented the whole of the tribe. The names signed were Nini te Hanairo, Matuahu te Wharerangi, Tongo Tamaiwhana, Te Waaka Tamaira, Tukaiora Te Pikikotuku, Topa Te Kakahi, Te Pane Kina, Te Warihi, Te Keepa, Hoko Mariu, Te Tahana Pape, Pateriki te Ane and Taringa Te Wharenuī.<sup>1123</sup>

Once again, the letter shows some uncertainty as to what was included in Waimarino. They may have been referring to the Waimarino plains or Waimarino 'proper' where there were significant Ngati Tuwharetoa connections when they objected to Butler's purchasing. The writers also expressed a collective wish to keep their lands and have subdivisions made so they could be certain that their land was clearly known and they could manage it themselves.

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<sup>1123</sup> letter 31 May 1886, Nini te Hanairo and others to Native Minister, NLP 86/223, MA1, 1924/2-2 v1 ANZ

This letter does not seem to have been considered by officials until July 1886. At that time, Lewis appears to have questioned whether the signatures were genuine, as they all appeared to be in the same writing.<sup>1124</sup> Rather than contacting the supposed writers, he referred the letter to Butler for comment. Butler replied to Lewis on 8 July 1886, that only one of the signatures was an owner in Waimarino and he did not believe the document was genuine. He claimed that Tukaiora te Pikikotuku was with him as he wrote and he denied signing it and did not agree with it. He also claimed that Te Hanairo and Matuahu had agreed to sell and had been advanced payments. This was sent to Ballance for his information, and he noted it seen on 10 July 1886.

Butler's own records show that Nini Te Hanairo (owner 124) was paid an advance of £20 on 5 April 1886.<sup>1125</sup> This was before Butler had even received official instructions to begin purchasing in Waimarino and before the purchase deed had been drawn up. The records also show that a final payment of £100 was made to Te Hanairo on 1 September 1886, but this was after Butler was commenting on this letter. It is by no means clear that Te Hanairo understood he was being paid for Waimarino interests on 5 April. The payment at this time may well have been regarded as meeting expenses and acknowledging his influence in negotiations with Butler. It is perfectly possible that after initially agreeing to cooperate, Te Hanairo may also have developed concerns about the methods Butler was using. It is not clear how Butler persuaded Te Hanairo to accept the September payment. He may have been persuaded to change his mind about selling, but it is also possible that he understood the final September payment simply represented full payment for earlier assistance. It is also possible that he was still under the impression that the Waimarino proper lands were not included within the Waimarino block, or if so the reserves promised would exclude their lands from the sale. Regardless, it is not clear that the 'advance payment' made in April was evidence of his willing agreement to sell whatever interests he held within the official Waimarino block boundary.

Tukaiora Te Pikikotuku (owner no 38) also had recognised interests in Waimarino. Whether or not he later changed his mind and willingly agreed to sell, at the time of this letter there is no record he had not sold his interests in Waimarino. Butler's records show he was not paid until 19 July 1886, and the payment was £70 for his interests, significantly more than many

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<sup>1124</sup> Lewis file note, 1 July 1886, NLP 86/223 MA 1, 1924/202 v 1 ANZ

<sup>1125</sup> MA-MLP 7/6 ANZ

other owners.<sup>1126</sup> Matuahū Te Wharerangi may have been the same as Matuahū Wairehu (owner 103). If so, he was also paid £20 by Butler on 5 April 1886, again before purchasing officially began or the deed was drawn up. Butler himself later reported that Matuahū and his family had really only agreed to sell in September 1886, after he had promised substantial additional reserves to two associated chiefs.<sup>1127</sup> Butler's records show a later payment to him made on 9 September 1886, but again this was well after the date of the letter and Butler's comments on it.

Butler's claims about these owners appear to be misleading at the time. Apart from this, Butler's own records indicate that his claim that only one of the letter writers was an owner was incorrect. It is difficult to be sure of other names, as spellings differ and different names appear to have been used at different times. However, it seems that at least one of the other signatures, Pateriki Te Ani, may have been the same Pateriki Te Ane (owner 180) in the block.<sup>1128</sup> He was not recorded as selling his interests until 9 September 1886, again well after this letter and Butler's comments on it.

This letter also does not appear to have received the official attention the writers may have expected, given Ballance's earlier assurances of consultation and good faith. It is possible that the letter may have taken some time to reach the Government, but even when officials did consider it, in early July, they appeared more concerned with whether it was genuine and whether the writers were recognised owners, rather than with the issues raised. Then it was simply referred on to the very person the writers were concerned about. The request for a partition was also ignored by officials, as were all such applications for partition at this time. The government presumably, gave higher priority to facilitating the purchase.

It seems that Butler may have been less than careful in considering the letter and deciding it did not really represent owners. However, this was possibly only to be expected when Butler was also under pressure to purchase the block. However, the implications were now clear for those who had not been legally recognised as owners in the block. Even if they clearly lived in the area and believed they had significant interests and responsibilities there, unless their names actually appeared on the lists, they would not be legally recognised and their concerns

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<sup>1126</sup> MA-MLP 7/6 owner no 38 ANZ

<sup>1127</sup> Butler report, 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

<sup>1128</sup> MA-MLP 7/6 ANZ

could be disregarded. Even those who were owners could not expect serious government consideration of their concerns, if these conflicted with purchasing.

It seems that once some chiefs began to realise what Butler was really doing with regard to purchasing they became even more determined to have their lands excluded from the block handed over for cooperation with the government. Those who had supported cooperation also appear to have been reconsidering in some cases. However, as far as Butler and Ballance were concerned, second thoughts were too late. Once they had made payments and gained signatures, they no longer had to be concerned about the views of the chiefs involved. They also did not have to have much regard for the views of leaders who had not been recognised as owners in Waimarino, as long as they did not actively threaten the purchase itself.

### **7.9 Early complaints about purchase tactics**

Within a few weeks of the Easter purchasing, a number of leaders of the area were also beginning to express concern, and seek clarification about the tactics Butler seemed to be using. For example, on 30 April 1886, a letter was written to the government by Waata Hipango asking what was happening with the Waimarino purchase. This included how much money the government was advancing on Waimarino. Another letter or part of the letter of the same date from Hipango noted that he had been instructed by owners of Waimarino to write and ask how much money the government had advanced on the block and who had received the money. They also wanted to know what amount of money had been spent on the trig survey of Waimarino and what Maori would be expected to pay for the survey, especially now as the government was already purchasing in the land. They asked whether the government intended to pay for the second survey (presumably the ‘proper’ survey) when it was already buying on the first (sketch) survey. The letter also asked whether the sum of £50,000 was the full amount for purchasing the whole block and if it was, then why was £15,000 also being set aside and who was to receive it.<sup>1129</sup>

This letter appeared to reveal a number of important concerns. In contrast with the open discussions Ballance had appeared to be promising, it seems that owners were very confused and concerned about what government policies in the block were and how the purchasing was actually being carried out. The concerns about the survey raised important points. It was not clear how the initial sketch surveys were being paid for and whether these might be charged

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<sup>1129</sup> NLP 86/180, MA1, 1924/202 v1, ANZ

against the land. They had been largely compiled, as already noted, from earlier railway and trig surveys and the external boundary survey the alliance had agreed to pay for. However, survey costs and what would be charged were always a concern for owners. Since purchasing had already begun before the 'proper' survey was completed, it was also not clear how this later survey would be charged. It was also not clear how any anomalies found between the sketch plan, on which purchasing was based, and the final survey on which any awards might be made, would be addressed. For example, it was not clear who might gain or miss out if the 'proper' survey found there was less or more land than was now assumed. None of these matters appear to have been openly discussed with owners. They simply had to rely on whatever Butler assured them in private.

The letter also raised concerns about the purchase price for the block. It seems that there were worries that Butler was making advances and paying for 'services' to certain selected chiefs much as had happened under the old 1870s system of purchasing causing so much disquiet and which Ballance claimed had been now rejected by the government. Instead of open and public discussions about the proposed purchase with everyone being aware of the proposals and their implications and being able to form free and informed consent on this, concern was growing in the district about secretive and manipulative payments to some, to the disadvantage of others. Whanganui leaders seemed aware of the £50,000 purchase price to be paid to owners. However, they were also rightly suspicious of the additional fund Butler seemed free to dispense as he liked, causing considerable disruption, dissension and conflict among communities to the advantage of purchasing. Given that it was known he was paying relatively low prices for some shares (a standard £35) there must have been considerable concern as well if the actual purchase price was £50,000, meaning some owners were being paid considerably less than others. This process seemed designed to cause exactly the kind of internal conflict and tensions Ballance had claimed not to condone. The letter does not raise the issue of minors, indicating that the tactics being used by Butler and Stevens regarding minors were still not fully appreciated in the district at this time.

A feature of this letter was that the owners appeared to have asked a member of a prominent Whanganui Maori family, known to have been supportive of the government, to make their request. The letter also seems to have been sent through the government-recognised Whanganui Native committee. It appears to have arrived at the government in a number of pieces, and part of it appears to have been franked by P Kuramate. Ironically, in spite of Ballance's claims to have increased the status of committees, officials receiving the

postmarked letter seemed entirely puzzled by it. They seemed unaware that Kuramate was the chairman of the Whanganui Native committee and as such he had been given postal franking rights as acknowledgement of his status. The letter may have been a committee attempt to consult with the government, but it does not seem to have been recognised as such and officials seemed unsure about how to deal with it. Part of it seems to have been annotated by Sheridan of the Land Purchase Office on 5 May, wondering if Hipango was in fact an owner in the block and therefore presumably had the right to be asking such questions.<sup>1130</sup> T W Lewis appears to have also annotated the letter, noting that only part had been received and it seemed to have been franked by P Kuramate. He asked Butler if he knew the writer, and suggested if so, he might be able to supply the information requested if the writer was entitled to receive it.<sup>1131</sup> On 12 May, Butler replied that he knew the writer Waata Wiremu Hipango and he would be glad to give him any information in his possession regarding Waimarino.<sup>1132</sup>

These official comments reveal another important feature of the Waimarino purchase. Butler was not only responsible for land purchasing. The Government also appeared willing to give him responsibility to deal with Maori as government representative over their concerns with Waimarino and land management generally. Just as with Booth in the 1870s, Whanganui Maori quickly found therefore, that their complaints about Butler were largely circular, being referred directly back to Butler for ‘explanation’. This was true, even when they sought independent advice about government policies or the purchase of the block. Even though Butler was now clearly no longer in a neutral role, the Government also remained content to rely on Butler’s view of the local people and their activities and opinions, and on his portrayal of his own activities.

This reliance on a government representative, who was also responsible for land purchasing, to present and explain government policy to Maori and to interpret Maori actions and opinions to government, was very close to the kind of system that had operated in the 1870s, under James Booth. Even then this system had seemed ripe for manipulation by agents and Maori appeared alienated from feeling their concerns were being independently and seriously considered. This may well have contributed to what the *Herald* had later admitted were dealings that would not stand the ‘light of day if fully exposed’.<sup>1133</sup> Now, in the interests of

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<sup>1130</sup> Sheridan annotation 5 May 1886, NLP 86/180 MA1, 1924/202 v 1, ANZ

<sup>1131</sup> T W Lewis annotation 3 May 1886, NLP 86/180 MA1, 1924/202 v1, ANZ

<sup>1132</sup> Butler note 12 May 1886 NLP 86/180, MA1, 1924/202 v1 ANZ

<sup>1133</sup> *Wanganui Herald*, 25 March 1886 editorial p 2

purchasing, the Ballance Government seemed ready to tolerate a similar situation under Butler.

### **7.10 Early petitions about the Waimarino purchase**

When the many early complaints to the Government were routinely sent on to Butler, a number of groups appeared to decide trying to appeal direct to the Government by another means. A number of formal petitions protesting the Waimarino purchasing were also sent to Parliament as early purchasing tactics in Waimarino became apparent. The first of these was apparently presented to the House of Representatives on 18 May 1886.<sup>1134</sup> This petition from Himu Materoa and 69 others, was officially described as asking for an inquiry into the ‘mode of the purchase’ of the Waimarino block. It was referred to the Native Affairs committee, which reported on 21 July 1886.

Unfortunately, the original papers and evidence of the 1886 Native Affairs committee on petitions has not survived. When the petition was received, Butler was asked to explain some of the accusations. He replied to Lewis by telegram of 20 May 1886, that he believed the petition had been prepared on the advice of a man named Cooke. His reply also gave an indication of what the petition complained of. He told Lewis that it was impossible that any of those signing the deed could have thought that the amount they got was not the final payment. He claimed that the conditions had been clearly explained to them before they signed and they all understood their payments were final.<sup>1135</sup>

Two more petitions also complaining about the ‘manner of purchase of the Waimarino block’ were presented to the House of Representatives just a week later, on 25 May 1886. These were both officially described as from Tapa Parota te Aurere and others, the first from Tapa Parota te Aurere and 196 others and the other from Tapa Parota te Aurere and 183 others.<sup>1136</sup> The three petitions with their ‘numerous’ signatures were referred to the Native Affairs Committee of Parliament and reported on together on 21 July 1886. The printed report for all three petitions summarised them as coming from owners, all tenants in common, in Waimarino. They complained that the government agent purchasing the block was paying or

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<sup>1134</sup> *Journal of the House of Representatives*, 1886, p xvi, petition 1886/17

<sup>1135</sup> telegram 20 May 1886, NLP 86/176, MA1, 1924/202 v1, ANZ

<sup>1136</sup> *Journal of the House of Representatives*, 1886, p xviii petitions 1886/50 (1); 1886/51 (2)

had agreed to pay, some owners large sums of money to their prejudice, when all had equal claims. They asked for an inquiry into why the government was doing this.<sup>1137</sup>

The committee found that the Waimarino block contained about 490,000 acres and Maori from thirty different hapu had interests in it. The government had made a general arrangement to purchase the land and it was not considered necessary to put the owners 'to the expense' of dividing it (in spite of the many requests for partitions the owners had made). After cutting out 35,000 acres for 'special grants' and arranging for 50,000 acres for reserves, the balance available for the Crown to purchase was about 405,000 acres. It was arranged that 'the minimum to be given to each grantee would be £35' but it was recognised that some owners 'from chieftainship or other reasons' would have to be paid more than this. The purchasing officer had instructions that the price 'including every charge' should not exceed £50,000, the grantees numbering a little over one thousand. In accordance with instructions, the purchasing officer gave no less than £35, but in other cases £40, £50 and sometimes more. Some of the petitioners acknowledged they had received the larger sums and all declared they did not oppose the sale. The report claimed that the purchasing agent had clearly explained to each seller, when they signed the deed that the money covered all demands and about 600 owners had parted with their interests. The committee did not believe that any injustice had been perpetrated and made no recommendation.<sup>1138</sup>

Although the report appeared to offer little to the petitioners, it did confirm some government policies concerning the Waimarino purchase. It confirmed, for instance, that Butler had indeed set the standard price per interest at £35 and intended to raise it only if he felt obliged to. This meant the weaker owners in Waimarino (such as most minors and many ordinary owners with no particular authority) could expect no more than £35 for all their interests. This worked out at 1/9 per acre, well short of the 3/6 per acre the purchase was estimated to cost the government and that Butler had reported as 'cheap'. It was also well short of the 4 shillings per acre that Ballance had earlier claimed could be expected for even isolated, inaccessible, interior lands; let alone lands that were expected to benefit significantly from being in the railway area. The Government might promote the view that individuals were free to reject the price offered if they did not like it, but this was misleading. As the Government well knew, many less influential owners were placed in a position where effectively they had

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<sup>1137</sup> *AJHR* 1886 I-2 p 28

<sup>1138</sup> *AJHR* 1886 I-2 p 28 report 21 July 1886 on petitions nos 50, 51 and 17.

little choice but to accept what was offered. Some were minors who had no say. Others were influenced by their chiefs whom Butler had managed to persuade, well knowing the kind of pressure this would create, in spite of the government claim to protect individual rights. The Land Court had also created a new individual form of right with the ownership lists that now placed great pressure on individuals that Butler could take advantage of. Butler's own records show that at least 417 of the final around 821 owners who sold in Waimarino received no more than £35 or the equivalent of 1/9 per acre for their interests.<sup>1139</sup> This treatment of these owners appears to be in stark contrast to Ballance's earlier promises to protect the weaker owners in land blocks.

The report also claimed that a 'general arrangement' had been made to purchase the land and it had not been considered necessary 'to put the owners to the expense of dividing it'.<sup>1140</sup> This 'general arrangement', however, had not included the Maori owners as participants, unless signing the purchase deed itself was evidence of an 'arrangement'. The government had made its own arrangements to purchase the whole block and had drawn up a purchase deed to that effect, which owners were then pursued and 'persuaded' to sign, in spite of their concerns about losing too much land. As already noted, the owners had repeatedly asked for the land to be subdivided so they could gain an idea of what was being sold or kept and to enable them to manage their land. They had made formal applications to the Court for this and seemed willing to pay the costs if that was what was required. However, it was the government who had refused to allow the applications to go ahead, by ignoring them and refusing to gazette them, so the Court could not, or would not, hear them. This was not because the government wished to 'spare' the owners expense. Instead, it seems to have been because it was more convenient to government policies of rapid and extensive purchasing not to have the delays and complications (and added awareness on the part of owners about what land they might actually be selling) that subdivisions might bring.

The Native Affairs committee also claimed that the purchase price to the Government of £50,000 was to include 'every charge' connected with the purchase. It claimed that the minimum was to be £35 per owner, but some owners for 'chieftainship or other reasons' would have to be paid more than this. This was incorrect. Butler had approval to pay owners up to £50,000 for their shares, but he also had an additional amount of £10,000 to pay extra

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<sup>1139</sup> MA-MLP 7/6 ANZ

<sup>1140</sup> *AJHR* 1886 I -2 p 28 report 21 July 1886 on petitions nos 50, 51 and 17

for chiefs and other expenses. This did not have to come out of the £50,000 at all and if he had divided this up fairly he may have caused much less tension. There was no written approval for Butler's decision to lower his standard price to £35, although this may have been agreed verbally with Ballance and not recorded. The effect however, was that in doing so, Butler had a much larger amount he could use to 'encourage' purchases with some owners at the expense of others. It is hardly surprising this caused resentment. The report omitted to note that it was the ordinary half of owners who it seemed were being required to carry the loss of these extra payments through a lower standard price. Without this they may well have expected a price closer to the £50 per interest the £50,000 maximum allowed.

The report also noted that the extra payments might be £40, £50 or 'sometimes more' implying that anything over £50 was relatively rare. When the committee reported in late July, not all of the larger amounts had been paid and it is not clear how up to date the payments records provided to it may have been. Nevertheless, the records do show a trend by then towards a significant number of combined payments of over £50 to some owners. By the end of the purchase, Butler's records show (even when some large payments are excluded, such as when Butler had to pay extra for the same interests in cases of impersonation) that around 79 owners in the block received more than £50 in total for their interests. In some cases this was substantially more, and in one case appears to have been £170 for one owner's interest.<sup>1141</sup>

Although 'chieftainship' was mentioned as one reason for the disparity in payments, it was acknowledged there were 'other reasons' as well. If publicly discussed, the acknowledgement of customary leadership in paying higher prices might have been accepted, although there might have been debate about which leaders were recognised as such. However, it seems to have been left entirely up to Butler to decide who should be paid extra and why, without any general consultation with owners. This was the kind of 'interference' interior leaders had complained of and that Ballance had appeared to have rejected. It also seems it was the 'other reasons' for higher payments that were causing most concern and causing owners to question the fairness of the disparity in the size of payments between some owners and others.

Unfortunately, the papers for the 1886 committee hearings do not appear to have survived, so it is not possible to discover who signed the petition, or appeared as witnesses, and what

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<sup>1141</sup> MA-MLP 7/6, including Tohiora Pirato owner 125.

evidence was provided to the committee to base its report on. It is highly likely that Ballance, as a member of the committee, was involved in its findings on the petitions, although he was also closely involved with the purchases, as has been shown. It is also likely that government officials such as TW Lewis may have reported or given evidence, although they too were closely involved with the purchase. It is not known what witnesses were heard on behalf of the petitioners, or from Waimarino owners generally, or what other evidence the committee may have considered. One small clue can be found in Butler's expenses claims, where on 23 July 1886, just after the committee reported, he paid Tutaua Tanira for his expenses in attending the Native Affairs committee for the Waimarino petition and charged this to the Waimarino purchase account.<sup>1142</sup> Tutaua Tanira (owner 535) is recorded as being paid a total of £48, in two sums, the first paid on 12 April 1886 and the last on 22 April 1886. It is not clear whether Tutaua was also a petitioner, as the committee appeared to assume. However, as Butler paid his expenses for being a witness before the committee, it seems likely that his evidence would have been supportive of Butler, rather than the petitioners.

The report may not have appeared to provide much satisfaction to the petitioners. However, the very existence of the petitions and the necessity to inquire into them, no matter how superficially, did cause further evidence to come to light in official records about the purchase tactics Butler was using. Presumably as a result of the complaints in the petition, Lewis wrote to Butler on 24 June 1886, instructing him to state the conditions under which payees signed deed for payments on account (advances). Butler was also required to record the balance due and when it would be payable, when he agreed to make advance payments. It seems that some petitioners had also been critical of the system of advancing payments to certain owners on the promise that further payments would follow. This method had been widely used in the 1870s and had provoked considerable criticism, especially when confusion arose over whether some payments were full and final, or simply an advance on what was to be paid later. Lewis also reminded Butler to ensure procedures for signatures were correctly followed, noting that the signatures on voucher 660 were incomplete and voucher 628 was not certified.<sup>1143</sup> Poor record keeping and careless procedures, especially when purchases were conducted in haste and secrecy had also been a much-criticised feature of earlier purchases.

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<sup>1142</sup> MA-MLP 7/10, p 59 voucher 1072, ANZ

<sup>1143</sup> Lewis to Butler 24 June 1886, NLP 86/235, MA1 1924/202 v1 ANZ

In reply to concerns about the system of advance payments, Butler wrote to Lewis on 26 June 1886, claiming that Tamakana Waimarino and Winiata Kakahi were the only owners who had received payment on account ‘when signing the Waimarino deed’. He explained they were both large owners and he had agreed to pay them £100 each, when all their people had signed. He reported that Winiata’s people had signed and he had received the full amount. Tamakana Waimarino would receive the balance due to him of £40 when the rest of his family sold their interests to the Crown but Butler was unable to say when this might be. He explained that their hapu was strongly opposed to selling and it would be difficult to obtain their interests.<sup>1144</sup>

Winiata Te Kakahi (owner 271) is shown in Butler’s records as receiving two payments for Waimarino interests. The first £50 was paid on 28 May 1886 and the second payment of £50 was made on 17 June 1886.<sup>1145</sup> Together these came to £100 and seemed to follow Butler’s outline for an advance and a further payment once others had signed, even though in Butler’s records both payments were recorded as being for Winiata’s interests in Waimarino. There is no official indication in the records that part of the payment was for ensuring the rest of his people sold their interests. Similarly, Tamakana Waimarino (owner 296) is shown as receiving two payments for his interests. The first was made on 12 June 1886, and was a payment of £60. The balance that Butler seemed to be referring to of £40 was not paid until 13 April 1887.<sup>1146</sup> This was presumably when Butler was finally satisfied that sufficient of the hapu had sold. Again the records do not indicate that part of the payment was not for Tamakana’s interests as appeared, but for ensuring that others sold. Nor is there any formal record of these arrangements in the land purchase file.

These payments appear to indicate that the ‘other reasons’ the committee report mentioned were in fact closely related to assisting Butler make his purchase, regardless of the status of the individuals involved. Tamakana and Winiata were both community leaders and may well have believed their payments recognised their authority. However, it seems that on his part, Butler was not making payments to simply recognise status, but he regarded payments as being conditional on assistance in securing more signatures. The implication was that if those being paid such amounts did not cooperate as he wished, then the final payment would be withheld, regardless of their status. To Butler it may have been a simple business transaction.

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<sup>1144</sup> File note 26 June 1886, NLP 86/235 MA1, 1924/202 v1 ANZ

<sup>1145</sup> MA-MLP 7/6

<sup>1146</sup> MA-MLP 7/6

At the time, the chiefs may also have been convinced that cooperation with the government was their best way forward. However, such advances may also have placed them in a very difficult position. Butler paid them an advance and promised more based on their apparent authority and status. However, to prove their status and their ability to exert authority, they were obliged to persuade their people to cooperate over the purchase. When payments were so closely linked to assistance with purchasing, rather than being independent recognition of status, it does not seem so surprising that there serious concerns were being raised.

It seems that in replying to Lewis, Butler was also less than straightforward about the system of advance payments he was using and the extent of it. It is possible that Tamakana and Winiata may have been the only owners who were paid advances when they actually signed the deed. As noted previously, it is not possible to be absolutely sure when owners really signed the deed as the recorded dates seem to indicate when payments were made. These were often the same date but not always. What does seem clear is that these two were not the only owners paid advances by Butler for Waimarino. As noted previously, Butler's own records show that a number of influential chiefs were paid advance amounts and then a later amount for the Waimarino purchase, and these payments were recorded as extinguishing their interests in the block. These included: Hori Tamaiwhana (owner 57) who received payments on 5 and 22 April 1886; Matuahu Wairehu (owner 103) payments on 5 April and 9 September 1886; Te Rangihuatau (owner 104) payments on 8 and 24 April 1886; Nini Te Hanairo (owner 124) payments on 5 April and 1 September 1886; Tohiora Pirato (owner 125) payments on 5 and 22 April 1886; Te Kaioroto Hamuera payments on 30 April and 14 May 1886, Tutaua Tanira (owner 635) payments on 12 and 22 April 1886; and Topia Turoa payments on 14 and 20 April 1886.<sup>1147</sup> A number of these chiefs could not have received advances when actually signing the deed, as the deed had not been drawn up when the first advances were paid. Nevertheless, the initial payments were still recorded as being for their interests in the block.

The issue of payments of advances, and what payments were really for, continued throughout the purchase of the Waimarino block. For example, on 31 July 1886, Wiari Turoa wrote to the Native Minister noting that he had received £100 from Butler, but wanted £1000 and that Topia Turoa should also be paid £1000. He also told Ballance that he did not agree with the 50,000 acre reserve. He wanted the £1000 because 'it was I who agreed to sell the

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<sup>1147</sup> MA-MLP 7/6

Waimarino’.<sup>1148</sup> Butler noted on file that he had received £100 as payment in full when he signed the deed and nothing else was due to him.<sup>1149</sup> Lewis also noted the file that Ballance had seen Wiari Turoa over this recently at Whanganui, and there was no need for a written reply.<sup>1150</sup>

There is no record of what Ballance told Wiari Turoa, or how they may have settled the issue, but it seems clear that there was still confusion over what payments were being made and whether they represented instalments or the final amount. The correspondence does indicate that Wiari and Topia Turoa believed their cooperation was critical to Butler in his activities over Waimarino. However, in noting disputes over payment and even over the amount of land to be reserves, it seems that while they agreed to cooperate, they expected continuing consultation and dialogue and did not see the matter as finally settled. This may have been because they understood the deed provision for the government and chiefs to consult over the reserves as a chance to continue negotiations over what would be reserved.

A few years later in 1888, the Member of Parliament, Mr Taipua, speaking on the Native Land Bill, complained about the actions of the previous Native Minister, Ballance, with regard to his treatment of Maori and their concerns, particularly the lack of adequate legislative provision for protecting Maori interests. As part of this, he claimed to have been present at Wanganui when the Waimarino block was purchased and he claimed to have seen trustees for minors squandering the money they had obtained for their own use. He also complained about the Native Land Court and asked for Native Committees to be given powers to investigate Maori land.<sup>1151</sup>

### **7.11 ‘Special arrangements’ over the purchase of the Waimarino block**

As a result of the petitions, Lewis also instructed Butler to ensure that copies of any special arrangements entered into with any chiefs or other owners over the purchase were forwarded at once for the official record. He explained that this was not just for Butler’s future protection but also for the full information of the Native Affairs committee dealing with question of the Waimarino purchase before it (as a result of the petitions).<sup>1152</sup> Butler replied that he had not

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<sup>1148</sup> letter to Native Minister 31 July 1886, p 101 of file MA1, 1924/202 v1 ANZ

<sup>1149</sup> file note 22 september 1886, re letter of 31 July 1886, p 101 of MA1, 1924/202 v1 ANZ

<sup>1150</sup> Lewis file note 9 October 1886 NLP 86/315 MA1, 1924/202 v1 ANZ

<sup>1151</sup> *NZPD* 1888, vol 61 pp 689-690

<sup>1152</sup> Lewis to Butler, 24 June 1886, NLP 86/235 MA1, 1924/202 v1 ANZ

formally made any special arrangements with any chiefs although ‘certain proposals were made to Topia Turoa and Te Rangihuatau in connection with the purchase of Waimarino’.<sup>1153</sup> However, he claimed that unless they ‘signify their acceptance of them and render the services required the proposals will be withdrawn’.<sup>1154</sup> This suggests that indeed there had been discussions of an additional payment to Topia Turoa, as had been claimed later. Butler was now claiming, however, that he did not have to honour the arrangement because he did not believe it had been properly carried out. The issue did not go away. Much later, after Butler and Topia had clashed over continuing purchasing and Topia had failed to thwart the Crown case at the partition hearing, Topia Turoa appears to have sought the full payment he thought he was due for his critical early cooperation over purchasing in the block. In April 1899, he asked the land purchase office for the £1000 he had been promised for helping Butler and Stevens in upper Whanganui over the Waimarino purchase, which he claimed had been promised once all the signatures were collected.<sup>1155</sup> In reply, Butler did not deny the existence of the agreement, but claimed that Topia Turoa had failed to carry out his part. Butler claimed he had opposed and thwarted the land purchase office at every step and therefore was not entitled to a penny. He offered to report at length if required.<sup>1156</sup>

At the time, while claiming the agreement with Topia was no more than a proposal, Butler also assured Lewis that if any definite arrangement was agreed, it would be forwarded at once for the record.<sup>1157</sup> Butler apparently viewed his arrangements as simple agreements for services that had to be carried out as he wished or payment would be forfeit. This was considerably different from the joint partnership and cooperation arrangements that Ballance appeared to have been promising and that the chiefs may have believed they were entering into. The later requests for payment, and even Butler’s reply, indicate that the chiefs did believe they had an arrangement. However, having cooperated with Butler as asked, they later withdrew further support because they believed Butler was not following the promised arrangement of open and public decision making and cooperation the Government appeared to have promised. As will be described, later correspondence from a variety of owners indicates continuing disappointment that in spite of Ballance’s assurances of Butler and Topia working together, Butler seemed to be acting largely on his own in Waimarino. As indicated,

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<sup>1153</sup> Butler to Lewis 26 June 1886, NLP 86/235, MA1, 1924/202 v1 ANZ

<sup>1154</sup> Butler to Lewis 26 June 1886, NLP 86/235, MA1, 1924/202 v1 ANZ

<sup>1155</sup> Letter 20 April 1899, NLP 99/105 MA1, 1924/202 v2 ANZ

<sup>1156</sup> Butler, file note 14 June 1899, NLP 99/105, MA1, 1924/202 v2 ANZ

<sup>1157</sup> Butler to Lewis 26 June 1886, NLP 86/235, MA1, 1924/202 v1 ANZ

the support of Topia and Wiari Turoa had been critical to Butler in beginning the purchase. Butler still required Topia's assistance with some purchasing, but in his official correspondence he clearly regarded Topia as no more than an assistant to be paid only if he did exactly what Butler asked of him. As this attitude became increasingly clear, the relationship between Butler and Topia appears to have become increasingly bitter, until eventually as will be seen, Butler complained that Topia was the chief 'conspirator' against the Crown case in the partition hearing of early 1887. Butler had the great advantage, however, of having conducted a large part of the purchase while Topia was either cooperative or just beginning to feel disillusioned, and in the end this was what really mattered.

It seems that Butler was also less than accurate in reporting that the only matter close to a formal arrangement he had made over Waimarino was a still as yet unconfirmed proposal with Topia Turoa and Te Rangihuatau and that he would send copies of any arrangements he made in future for the official record. He may have evaded this by considering that other arrangements were less than 'formal' and therefore did not need to be reported. However, it does seem that he had certainly made arrangements with certain owners and that he would continue to do so. In some cases these were even written and witnessed, although they would only come to light when owners knew to keep them and were able to produce them later. There is no record in the official files of Butler forwarding copies himself. It seems highly likely that given those that survived there would also have been others. A majority of these may well also have been made verbally and therefore would not be provable later, although Butler would have known that for many Maori at the time, a verbal, face to face agreement would have been considered solemn and binding, especially with someone with as much apparent official standing as Butler.

For example, in 1899, as a result of the final surveying of the promised Waimarino purchase reserves, three of the original owners in Waimarino wrote to the Government with a copy of a written agreement Butler had made with them on 28 April 1886.<sup>1158</sup> This was dated before Butler's denials, just described, in June 1886. The April agreement was in the form of a letter from Butler to three owners, Ngapaki Pukahika, Potatau te Kauhi and Ani Mohoao. It was to the effect that if they supported Butler in his work of purchasing Waimarino then, after all the signatures to the deed of sale were completed, Butler would give them £100 to be divided by themselves amongst themselves. He also agreed to put their names into all the purchase

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<sup>1158</sup> NLP 99/229 translation of agreement of 28 April 1886, MA1, 1924/202 v 2 ANZ

reserves, supposing they had claims or rights to such reserves. The owners claimed they had kept the original of the written agreement and asked for government assistance with the promise over the reserves now that the Waimarino block had been cut up.<sup>1159</sup>

The three were all original owners in Waimarino. They were Ani Mohoao (owner 55) Potatau te Kauhi (owner 195) and Ngapaki Pukehika (owner 324). They were all recorded as selling their interests in Waimarino and were paid £40 each for them on 28 April 86.<sup>1160</sup> This was the same date as the written agreement. It seems highly likely that the offer of the additional £100 would have helped secure the purchase of their interests. The written agreement gave no indication of what exactly was expected from the three owners in order to receive their promised payment other than ‘supporting’ Butler’s work. The terms were very vague and gave Butler plenty of opportunity to claim the terms had not been fulfilled. He was also not required to make the promised additional payment until all signatures were gained, regardless of whether the three had any influence on whether all signatures were obtained. The promise to insert their names in all the reserves was also significantly qualified by the requirement that they had to have rights in such reserves. The agreement was silent on who was to decide but presumably it was entirely over to Butler. This promise may also have been redundant as if they had such widespread rights then presumably they would be included in the reserves anyway. The agreement appeared to have many flaws that enabled Butler to evade what seemed to be his part of the deal. It is perhaps not surprising that Butler did not submit a copy for the official record.

When Butler responded to the production of the agreement in January 1900, he did not deny the existence of the agreement. Instead, he claimed that the persons the arrangement was made with had given him ‘no help whatsoever’ in the Waimarino purchase and they were told that as they had not carried out their part, they were not entitled to the agreed sum.<sup>1161</sup> Presumably Butler would have only made the original agreement if he felt the owners could assist him in some way. However, the agreement is not clear about what kind of ‘support’ was expected. The terms of the agreement were so vague that it was easy for Butler to evade making promised payments on the claim that the ‘support’ promised had not met his requirements. With such vague agreements it would always be a case of his word against the owners and this placed him in a position of considerable advantage.

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<sup>1159</sup> NLP 99/229 translation of agreement of 28 April 1886, MA1, 1924/202 v 2 ANZ

<sup>1160</sup> MA-MLP 7/6 ANZ

<sup>1161</sup> Butler file note 24 January 1900 NLP 99/229 MA1, 1924/202 v2 ANZ

This raises the issue of whether Butler deliberately engaged in such agreements knowing it was most unlikely he would ever have to honour them. In this case, the agreement also only came to light many years after the agreement was made. This raises further issues of the government failing to ensure that Butler did not engage in such agreements and failing to censure him when it was discovered that he had made agreements in spite of his assurances to the contrary. In this case, it seems that Butler's reply was simply passed on to the owners and the official records show that an allowance of 50 acres was made for each of them in one reserve only, that being reserve A.<sup>1162</sup>

It seems that Butler also continued to make arrangements with certain individuals in order to achieve sales in Waimarino, even after Lewis's warnings of June 1886. Contrary to his promises of that time, Butler also generally failed to forward copies of these for the official records, especially at the time they were made. These arrangements tended to only come to light when owners sought to have them honoured after the purchase was completed. They appear to confirm that promises concerning reserves as well as payments for active assistance with purchasing were important features of these arrangements. They include two written arrangements, each made on 8 September 1886. One of these promised the owners involved that they could select 50 acres each, anywhere in the purchase area if they agreed to sell their interests.<sup>1163</sup> The other, of the same date, promised grants of 500 acres each to two other owners, for their 'continuous assistance' with the purchase, additional to the land that would be granted to them from the 50,000 acre reserve, as sellers in the block.<sup>1164</sup> This one was eventually reported by Butler, but only in July 1887, well after it had been made.<sup>1165</sup>

These arrangements will be considered in more detail in a later chapter in the context of the promises and assurances Butler may have been making to owners over reserves in order to 'induce' them to sell their interests and the expectations Butler created as a result. At present, it is enough to note that Butler does seem to have indulged in making arrangements with individuals throughout the Waimarino purchase. Most of these were likely to have been verbal but at times Butler went as far as agreeing to written arrangements to ensure sales, and some of these later came to light. They tend to confirm the criticisms of leaders even at this early period that Butler was indulging in 'secret' deals with certain owners, that gave them

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<sup>1162</sup> MA-MLP 7/6 ANZ

<sup>1163</sup> NLP 89/105 and attachments, MA1, 1924/202 v1 ANZ

<sup>1164</sup> NLP 90/117 and attachments MA1, 1924/202 v1 ANZ

<sup>1165</sup> Butler report, 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

payment advantages over other owners with apparently otherwise equal interests in the block. As leaders had feared, this tended to encourage internal disputes and tensions and undermined efforts to exert effective chiefly and collective authority in the interests of all owners. This system was very reminiscent of what had happened and had been roundly criticised in the 1870s system of purchasing. It was also in stark contrast to the new system that Ballance had appeared to promise and promote and that many owners appear to have believed at first was to happen with Waimarino. This had appeared to promise that Maori communities and their leaders would be able to cooperate with the commissioner and the government over more rational, open and fair management of their lands.

### **7.12 The first upriver purchasing trip May-June 1886**

In the meantime, by early May 1886, just as early criticisms over the Waimarino purchase were beginning to become evident, Butler and Stevens appear to have decided to move on to what was likely to be the more difficult purchasing among interior communities. They had completed the large Easter purchase at Wanganui township, and the process of appointing trustees and purchasing minor interests was well underway. They also appear to have gained the cooperation, initially at least, of some influential chiefs such as Topia Turoa. They were still acting under urgency and the next step seemed to be to take purchasing to the interior. They began this by travelling up the Whanganui River, whose upper reaches bordered the Waimarino block to the north and west above the junction with the Manganui o te Ao River, and purchasing from owners who lived among river communities. Following this, they attempted to continue purchasing among interior communities by travelling overland to the east of the district, through the Murimotu and up through the Taupo area to Otorohanga where many upper Whanganui and Tuhua people were obliged to attend Land Court sittings at Taupo and Otorohanga. They remained aware that Land Court sittings at Wanganui were still a major gathering place of owners, however, and for some of these trips made sure that other officials at Wanganui kept up the purchasing work for Waimarino.

On 10 May 1886, Butler telegraphed Lewis that he intended to start upriver in a few days and that in doing so he hoped to get about 400 signatures. He estimated that he would need about £20,000 for this part of the Waimarino purchase. Of this, he wanted to take £5000 in notes, as he explained that Maori of the upper river would accept cash more readily than cheques. He asked this cash to be forwarded on to him if Lewis approved. The remaining £15,000 could be sent in sums of £5000 every three days, so the whole sum could stand to his credit. He noted

that he would like to take a much larger sum in cash as he was certain that would facilitate the purchase but he was worried about the responsibility. He emphasised that there should be no delays in remitting the required amounts to his credit, as dishonoured cheques tended to have a bad effect. T W Lewis suggested to the Native Minister the next day, 11 May 1886, that as Butler and Stevens were travelling together they could take the money in an iron box and a reliable constable could go with them. This was approved by Ballance. Lewis also instructed the land purchase accountant, Sheridan, to ensure that Butler was kept in funds.<sup>1166</sup> Clearly, Ballance was still closely involved with developments with the Waimarino purchase.

The proposed upriver trip also appears to have relied on the cooperation of at least some influential chiefs. In early May, it seems as though there was still some goodwill from the Waimarino leadership towards the new government policies and the idea of Butler as a responsible government commissioner who could work jointly with chiefs over the management of Waimarino lands. However, the chiefs made a clear distinction between ‘commissioner’ Butler and John Stevens who was regarded as tainted by his previous 1870s land purchase activities in the Whanganui district. Sheridan appears to have been the witness with Butler for much of the Easter purchase while Stevens still had a relatively low profile. However, when it became clear that Stevens would accompany Butler on his upriver trip, a number of chiefs from those communities immediately complained.

On 6 May 1886, a number of these chiefs wrote to Ballance, Stout and Lewis, to express their concerns to all of them about Stevens. In translation, the letter referred to Mr John Stevens, ‘who is accompanying Mr Butler to Tuhua’ and informed the government that their ‘positive’ word was that they knew Stevens as ‘an offspring of satan’. They claimed ‘he does not act straightforwardly, but is the cause of trouble to the people’. They believed his object in engaging in business with them was to forward his own interests and there were other tribes who had also been in difficulties through him. They only wanted Butler to go with them to Tuhua ‘because he has been appointed the permanent Commissioner for this district; and Waimarino has been handed over to be dealt with according to the law, and all connected with it’. They asked Ballance to tell Stevens to stay where he was and not accompany Butler as

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<sup>1166</sup> NLP 86/223, telegram 10 May 1886, Butler to Lewis and annotations of 11 May 1886, MA1, 1924/202 v1 ANZ

they did not approve of him. The letter was signed by Hoani Paiaka te Pikikotuku, Ngatai te Mamaku and ‘all the tribe’, ‘te iwi katoa’.<sup>1167</sup>

The chiefs could hardly have been more clear about what they wanted. They were willing to trust the government and bring the block under ‘the law, and all connected with it’ presumably based on government assurances such as at Aramoho, and on the basis that the government would assist them in to manage their lands. They regarded Butler as part of this promised new system as ‘commissioner’ for the district. What they did not want was a repeat of the old system of 1870s land purchasing and everything connected with it, as John Stevens clearly represented. That would undermine their expectations, cause ‘trouble’ and was clearly not what they were agreeing to cooperate with.

The letter caused concern in the land purchase office, not because of the objections of the chiefs as such, but because such objections might undermine purchasing in Waimarino. T W Lewis sent a memo to Ballance noting that ‘a land purchase operation like the course of true love never runs smooth and the Waimarino block is no exception to the general rule’.<sup>1168</sup> He explained that Butler had anticipated receiving considerable assistance from Stevens because he was supposed to have the confidence of the upriver Maori. However, this letter indicated the contrary. Lewis recommended to Ballance that the letter should be forwarded to Butler ‘at once’ who could explain ‘on your behalf’ to those objecting that he is the government officer responsible for the negotiations, but Mr Stevens had to go with him to witness signatures as a Justice of the Peace. Butler could decide when he read the letter whether he should take Stevens and if other arrangements might need to be made. This was annotated with Ballance’s signature presumably indicating his agreement<sup>1169</sup> Butler later informed Lewis that no importance need be given to the letter. He claimed that Mr Stevens had given ‘most valuable assistance’ and Paiaka had withdrawn his objections.<sup>1170</sup>

What in fact Paiaka appeared to have agreed to, was that Jack Stevens could accompany Butler if he followed Butler’s instructions, that is if he was closely under Butler’s control. Paiaka wrote to Ballance to this effect on 10 May 1886. He wrote that he would always support Butler in his capacity as government assessor. He also asked Ballance to allow Ngatai

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<sup>1167</sup> NLP 86/144 with 86/158, MA1, 1924/202 v1, letter (translation) 6 May 1886 from Hoani Paiaka Te Pikikotuku and Ngatai te Mamaku to Government, ANZ

<sup>1168</sup> Memo Lewis to Native Minister 8 May 1886, NLP 86/144, MA1, 1924/202 v1 ANZ

<sup>1169</sup> Memo Lewis to Native Minister 8 May 1886, NLP 86/144, MA1, 1924/202 v1 ANZ

<sup>1170</sup> Butler to Lewis 12 May 1886 NLP 86/144, MA1, 1924/202 v 1 ANZ

and himself to think the matter over and leave it entirely to Butler to make arrangements for both Butler and Stevens. He did not want this to be interpreted as ill-feeling but as an instruction for the future. He assured the government that everything was progressing satisfactorily and the law was unbroken ‘which law is my refuge, and constant friend’.<sup>1171</sup> It seems from this that Paiaka saw Butler as ‘controlling’ Stevens, presumably to ensure that he did fall into old ways. Paiaka also seems to have seen himself as involved in something more than simply helping with a sale of land. He had committed himself to working within ‘the law’ and as a government assessor in assisting Butler as a government representative. He clearly trusted Butler, and reluctantly accepted Stevens with qualifications and only if he was under Butler’s control. This was not quite the same as Butler’s claim that Paiaka had withdrawn his objections. The opinions of Ngatai at this time are not known.

This correspondence seems to indicate that government officials were willing to mislead the chiefs in the interests of the purchase. They were well aware that Stevens had been chosen because he was more than just a witness. He was in fact selected because he was familiar with the upper river people and with land purchasing. Presumably his significant commission was also based on the understanding that he had contacts and knowledge of the interior people and could assist Butler with his previous land purchase experience. However, officials seemed willing to encourage Butler to portray him as no more than a required attesting witness.

The upriver trip to the interior appears to have taken place from about 19 May to 13 June 1886, based on information from Butler’s expense records.<sup>1172</sup> The purchase deed indicates that most of the deed signatures of this time were witnessed by Stevens and Butler.<sup>1173</sup> Around this time, Butler also appears to have chartered the Wanganui River Steam Navigation Company ship the *Tuhua* for 4 ½ days at £10 per day to collect signatures along the river. The conditions of the charter apparently allowed the ship to carry cargo at the same time, as long as it did not interfere with Butler’s arrangements but no other passengers, other than those accompanying Butler, were allowed. This arrangement was referred to by the managing director of the company in a telegram to Lewis of 31 May 1886.<sup>1174</sup> Butler paid this charter fee of £45 on 19 July 1886.<sup>1175</sup> At the same time he also paid the company for

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<sup>1171</sup> Letter Hoani Paiaka Te Pikikotuku to Ballance, 10 May 1886, NLP 86/144 MA1, 1924/202 v1 ANZ

<sup>1172</sup> MA-MLP 7/10 p 47 vouchers 685, 691; p 49 vouchers 748-751; p 59 voucher 1073, ANZ

<sup>1173</sup> ABWN 8102 w5279 b 105 deed 659 pp 7-8 ANZ

<sup>1174</sup> NLP 86/223, MA1, 1924/202 v1, telegram 31 May 1886 A D Willis to Lewis, ANZ

<sup>1175</sup> MA-MLP 7/10 p 59 voucher 1074, ANZ

meals for the Maori accompanying him on the steamer.<sup>1176</sup> This indicates he was continuing to make payments to chiefs for a variety of reasons other than just for payment for their interests in the block. His expenses from this time also show canoe hire, presumably for those parts of the upper river the steamer could not reach.

On 14 June 1886, Butler telegraphed Lewis that he had returned from the river trip late the previous evening. He had managed to obtain 90 signatures and had paid an average of £40 per share, 'including all expenses'. Presumably this means that he was taking into account such expenses as the hire of transport and payments for meals. This was considerably less signatures than the 400 he had originally estimated, but he claimed that the number of owners on the river had been over-estimated. Butler also reported that he had met opposition at Manganui a te Ao, Utapu and Taumarunui, where the people were followers of the new Pautini hau religion and objected to selling or leasing land. However, he was confident he had secured the cooperation of some leading chiefs who would gradually overcome their objections. He reported he had only obtained the interests of 40 to 50 owners at those places. Nevertheless, Butler now estimated that with the extent of the interests he had acquired, 'more than half the block has now been secured'.<sup>1177</sup>

Butler's relative lack of success seems to have been confirmed by the chief Paiaka te Pikikotuku, who appears to have prepared a draft petition to two Maori members of parliament, Mr Wi Pere and Mr Puke, a few weeks after this. This does not appear to have progressed as far as an officially presented petition to parliament. However, a draft apparently was acquired by officials and filed. The draft, dated 27 June 1886, notified the two Maori members of a decision of the people at Manganui a te Ao, Taumarunui and Tuhua. It explained that Butler had returned unsuccessful from Tuhua and the people did not accept the sums of money brought by him for their shares in Waimarino. Paiaka believed the attempted purchase was 'a gross treatment' by the government and the commissioner of both the Maori race and the land. He claimed that it was his and Topia's opinion that the administration of this government 'might yet become straight' and the people might see justice and 'Pai (peace, prosperity goodwill)' spread over the land. In the meantime, they asked for Butler and his proceedings to be removed from Whanganui because their applications for subdivision had not been heard and no effect was given to the certificate, leaving Waimarino and Tuhua

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<sup>1176</sup> MA-MLP 7/10 p 59 voucher 1075 paid 19 July 1886. ANZ

<sup>1177</sup> telegram Butler to Lewis 14 June 1886, NLP 86/223, MA1, 1924/202 v1 ANZ

unsettled. The petition noted that the government had forwarded £50,000 to Butler to advance to the people. In some cases he had advanced £35 and in other cases, £40, £50, £30 and £100, although £5 was no longer being offered. The people were now beginning to waver and resist because it was ‘wrong to obtain Waimarino in this manner’.

Paiaka claimed that he and Topia had told Butler that the whole of the money should be given to the people so that, whether the distribution was right or wrong, it was done by the people themselves because ‘God only gave the land to support once’. However, Butler had not agreed and had distributed the money according to instructions from the Government. Paiaka now warned the Government that the money advanced on Waimarino and Tuhua would only have to be written off, because he and Topia were the real owners of the land through which the railway had to pass and they did not want the government to have the land. That would be wrong and Paiaka asked that the ‘poison be kept aside and let it not be on the tip of the Commissioner’s tongue’. Paiaka told the Maori members that he would be strong and ‘throw back’ Mr Butler’s money to the lands that were signed and given over to Mr McLean and not Waimarino and Tuhua. Paiaka said that after the next hearing of Waimarino, he would place the money received by his people on Kawautahi outside of Aotearoa.<sup>1178</sup>

The reference to Aotearoa is interesting and needs more research. Earlier, Paiaka had referred to the Maori members Puke and Wi Pere chosen by the people of ‘Aotearoa’. It seems that the reference to ‘Aotearoa’ may have been meant to refer to what had become accepted as the equivalent and equal Maori name for the North Island, Aotearoa. Although it may not have been a traditional name for the North Island, historians have noted that by the 1880s, many Maori and the Kingitanga in particular, had adopted it as a name for the Maori side of the North Island. The Kingitanga also favoured the name Aotearoa for the area of the North Island they saw as still under Maori control and with Maori customary authority. The interior Rohe Potae was alternatively known as the Aotea, or sometimes ‘Aotearoa’ block, believed at this time to be held under equivalent and equal Maori authority to that of the Crown. Michael King has also noted that Tawhiao similarly called his Kingitanga bank, Te Peeke o Aotearoa.<sup>1179</sup> It seems from this petition, that Paiaka and perhaps also Topia, still believed that the upper Whanganui and Tuhua parts of Waimarino still belonged in the Rohe Potae and should remain outside the Waimarino block.

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<sup>1178</sup> draft petition 27 June 1886, p 62 MA1. 1924/202 v1 ANZ

<sup>1179</sup> King, *The Penguin History of New Zealand*, 2003, p 41

Shortly afterwards, on 29 June 1886, Paiaka te Pikikotuku wrote to Stout, referring to his recent visit to Taumarunui and asking him to straighten the crooked colony and let the rail come quickly. Paiaka noted that only one more sitting of the Land Court was required and then Waimarino would be thoroughly subdivided. He asked for his property ‘the ora’ of the Maori people. Lewis simply noted on this to Ballance, that he knew the character of Paiaka and recommended that Butler be asked for his comments. Butler in turn explained that Paiaka wished to encourage repudiation in connection with the Waimarino purchase. Ballance noted seeing this on 7 July 1886.<sup>1180</sup> This appears to have been another indication of chiefly disillusionment with the purchase. However, there was no official recognition of this, or the claims that the northern part of Waimarino should remain in the Aotea Rohe Potae.

It seems that by this time, and possibly after Butler’s tactics became apparent when he visited, there was growing disenchantment among the interior leadership with even Butler. However, there was still some goodwill towards government policies generally as they had been explained by Ballance, and a hope that the Government could still yet make things ‘straight’. Butler himself, by noting there were less owners upriver than estimated, seemed to be acknowledging that many of those actually living on or near the block, who might be supposed to have interests were not recognised as owners and opposed any sale. Both Paiaka and Butler’s reports also appear to confirm that those actually living on the block, especially upriver in what was still regarded as the Tuhua area, were most resistant to purchasing. Many of them were also supporters of Te Kere and his Pautini hau movement. As part of this, they rejected not just the Land Court, but any involvement with leases, sales or mortgages. Presumably, as they did not recognise the Court, some at least, would have been included as owners by others.

Butler’s report indicates two main ways he had of overcoming this. The first was to identify and persuade certain leaders and then expect them to persuade their communities. The other was that, although he was obliged to collect as many owner signatures as he could, Butler could still decide that some owners had interests that were much more extensive than others. There was apparently no legal basis for this in Waimarino, as the Land Court had not made any determination as to relative interests in the block and in spite of their efforts owners were unable to have the Court make subdivisions. However, recognising that some chiefs and families might have relatively larger interests than others did not contradict custom, although

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<sup>1180</sup> Letter 29 June 1886, and annotations, NLP 86/235, MA1, 1924/202 v1 ANZ

the extent of these might be a matter for debate. Butler was in a position however, where he could use the general acceptance of differing relative interests to make his own assumptions, to further his objectives with the purchase, with very little accountability. As far as possible, he could attempt to ensure that those who were most reluctant to sell generally had less extensive interests than others. Once again, Butler seemed to be using a mix of the modern application of individual rights to transfer interests regardless of community views alongside the selective use of customary beliefs to facilitate his purchasing.

### **7.13 Purchasing at Land Court hearings, Wanganui**

Having returned back to Wanganui town in mid-June 1886, with relatively few upriver interests, Butler appears to have turned his attention to planning his next trip to the interior, this time overland through the Murimotu and Taupo districts, making use of Land Court sittings to pursue gatherings of owners. In the meantime, while he was planning this trip, Butler took the opportunity to continue picking up interests from owners obliged to attend the Whanganui Land Court. He reported that he had picked up another 50 Waimarino interests at Wanganui in the period 14-19 June 1886. He claimed that this made a total of 520 Waimarino interests purchased by this time, including dependants.<sup>1181</sup> This was more than half the owners already, just over a month since official purchasing in Waimarino had begun.

Butler's reports reveal how useful continued Land Court sittings were for purchase officers, just as they had been in the 1870s. The usefulness of the Whanganui Court for appointing trustees for minors has already been noted. There were other pressures arising from the Court process, that appear to have been useful for those seeking signatures in return for payments. Most simply, as Butler and others often noted, the Court requirements for Maori to attend cases to protect their interests meant that they were gathering places for owners who might otherwise be scattered at their usual living places, or at seasonal work or attending various hui. The still often itinerant lifestyles of many Maori at this time made it very difficult to track owners down and even know who they were. They could also just leave to go elsewhere if they wanted to avoid pressure from land purchase agents. They did not have this same option of leaving when they had to attend Court and they were also required to accurately identify themselves for the Court, making the work of agents much easier. This of course pointed to one of the important features of land purchase work, in which Butler was acting no differently

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<sup>1181</sup> Butler urgent telegram to Lewis 19 June 1886, NLP 86/223, MA1, 1924/202 v1 ANZ

from earlier agents. In these purchases it was not so much a matter of owners wishing to sell seeking out agents, but agents actively seeking out and ‘inducing’ owners to sell, even when they were clearly reluctant.

What Butler and other agents generally failed to mention officially was that Land Court sittings also created many other pressures that assisted purchasing. They were generally held in towns such as Wanganui and Taupo away from the usual homes of most owners. This caused considerable financial pressures for food, lodgings and for receiving and giving hospitality. The drunkenness associated with Land Court sittings has already been noted and had been a major reason why Wahanui and others sought licensing controls. Police Court cases reported in newspapers of the time, indicate that debts incurred from liquor, board, food and other supplies continued to be a fruitful source of civil claims. For example, during 1886, the *Wanganui Herald* Court reports reveal numerous cases where Maori, some of them owners in Waimarino, received court judgements against them for a variety of debts.<sup>1182</sup> This was additional to the often heavy fees and costs of engaging in the Land Court process itself. The gatherings of large numbers of people might also involve obligations in providing and accepting hospitality. Owners required to attend Court over a variety of cases might be forced into the position of selling some interests to keep themselves out of prison or to simply protect other interests in other blocks considered more valuable.

As well as financial pressures, attending the Land Court at Wanganui appears to have offered considerable scope for confusion and misunderstandings. This was the time often–inexperienced owners found themselves having to deal with a variety of unfamiliar legal processes. These might include the appointment of trustees, the receipt of rents and the purchase of interests as well as applications for various procedures such as partitions of land, all of which involved signatures and often over a number of blocks where they might hold interests. For example, owners with rents due also had to attend the Land Court office and deal with the same Court officials such as clerks and registrars who also were commonly used as attesting witnesses in purchases. In February 1886, for instance, while he was engaged in purchasing blocks in Whanganui district, Butler was also responsible for distributing rents in

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<sup>1182</sup> For example, *Wanganui Herald*, 6 April 1886, p2 cases Hogg v Hoani Paiaka where £9 and costs of 5s awarded against defendant; Hewson v Porokura Patapu £4.15.0 awarded or in default 5 days in prison.

the Murimotu block.<sup>1183</sup> Many of the witnesses attesting owner signatures for the Waimarino purchase were also officials of the Land Court and Resident Magistrates Court.<sup>1184</sup>

Some of the more influential chiefs were also receiving payments for a variety of reasons including in acknowledgement of their position and for their assistance such as giving evidence at a variety of Court hearings. Some owners found to have interests in a variety of blocks might also find themselves receiving payments for any of these. The kind of confusion surrounding the Native Land Court process, especially for inexperienced leaders, can be seen, for example, in the minutes of the Waimarino hearing where a chief (Tohiora Hirata) asked for some lists to be returned as he believed some of those named actually had claims in another block.<sup>1185</sup> It also seems that Butler was purchasing in other blocks as well as Waimarino, at this time, which may well have added to the confusion of owners.<sup>1186</sup>

In addition, the Land Court sittings were places where owners who wanted to sell their interests for a variety of reasons were most easily found. Some of these owners may have been attempting tactical sales, seeking to sell interests they had been awarded in blocks where they no longer lived or had strong ties, in order to acquire cash to invest in and protect blocks where they did live. Some owners may already have been in debt and needed cash. Others appear to have been willing to take cash without really understanding the implications, especially when their interests could not be linked to any particular piece of land. They may also have believed important places were protected by the additional promises of secure separate purchase reserves even when they sold. Some noted others taking cash and did not want to miss out. Whatever the reasons, the Land Court hearings at Wanganui and in the interior continued to be an important source of purchasing for Waimarino.

While Butler planned another trip to the upper Whanganui and interior districts, he wanted to ensure that purchasing at Wanganui did not suffer. He made arrangements to ensure others could take his place at Wanganui to continue his method of ‘inducing’ Waimarino sales there. In August 1886, Butler explained to Lewis that he and Stevens intended travelling inland to visit the Waikato and Taupo districts to get Waimarino signatures but they needed someone else to remain in Wanganui ‘who would be able to continue the arrangements I have hitherto

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<sup>1183</sup> MA-MLP 4/3 p 233, ANZ

<sup>1184</sup> ABWN 8102 w 5279 b 105 deed 659, for example witnesses 4 May 86 Thomas Lawlor Clerk of Court and Woon clerk of court eg owner nos 326, 917 395, ANZ

<sup>1185</sup> MLC-Whanganui MB 9 p 280

<sup>1186</sup> For example, memo 12 May 1886 noting Butler purchasing in Waimarino Kaimanuka and Maungakaretu blocks MA-MLP 4/3 p 244, ANZ

adopted to induce them to sell'. Otherwise he noted, the purchase would be delayed. The only suitable person he could suggest was Mair.<sup>1187</sup> This was presumably the same Mair who had been a land purchase agent in the Whanganui district in the 1870s, as previously described. This letter also confirms the urgency the purchase was still being conducted under.

A day later, on 7 August 1886, Butler telegraphed Lewis that he had obtained a further 40 signatures to the Waimarino deed in the last 10 days. The total signatures were now 654, leaving 360 still to obtain. He believed that 50 to 100 Waimarino owners were likely to attend the Otorohanga Court and it was 'absolutely necessary' to make an effort to get them without delay or they would disperse causing greater trouble and expense. At the same time he emphasised that the 'most important owners' were at Wanganui with about 20 having just arrived in town. He believed it was possible to obtain a few of their interests at a time, but if any anxiety was shown they would decline to sell or only at an 'exorbitant' rate. Butler wanted someone to continue at Wanganui with Stevens and then he could travel, or alternatively, Mr Grace or Mr Wilkinson should go with Stevens on the trip. Butler also asked for a copy of the committee report.<sup>1188</sup> This appears to confirm the approach of targeting selected owners often individually, rather than risk 'exorbitant' prices should owners be able to gather together to discuss selling. Presumably Butler also intended to use the favourable Native Committee report of 21 July, to help reject overcome concerns such as the petitioners had made.

Lewis replied to Butler that it was thought very important that he should go on the trip but he was having great difficulty finding officers who would continue his purchase work at Wanganui. He suggested Butler try to make some confidential arrangement with Mr Woon, the sheriff at Wanganui. He was authorised to offer him a bonus of £50-£100 for the work.<sup>1189</sup> This was apparently Garland Woon, a relative of the now retired resident Magistrate Richard Woon. Garland Woon would also later become the registrar of the Land Court at Wanganui. Butler reported a day later that he had made the necessary arrangement with Woon. However, Woon required Justice Department permission to enable him to visit various places in the neighbourhood to obtain signatures when the Court was not sitting. Woon also required a separate deed and an imprest account to make payments. Lewis immediately requested Ballance's assistance with this, noting that Butler and Stevens would travel to Waikato and

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<sup>1187</sup> Letter 6 August 1886, NLP 86/304, MA1, 1924/202 v1 ANZ

<sup>1188</sup> telegram 7 August 1886, NLP 86/315, MA1, 1924/202 v1 ANZ

<sup>1189</sup> telegram Lewis to Butler 9 August 1886, NLP 86/315, MA1, 1924/202 v 1 ANZ

Taupo while Woon, the clerk to the Court would act as a land purchase officer in their absence. This would need the approval of the Minister of Justice while the land purchase office would pay him a bonus for his services. He was also assured that the work would not interfere with Woon's Court duties. This matter was acted on very quickly. On the same day the arrangement was approved by Ballance and the Justice Minister.

Immediately following this, the Under Secretary of Justice informed the Resident Magistrate Wanganui of the arrangement, and Lewis instructed Sheridan of the land purchase office that he should give any instructions required to prevent any complications in securing the services of Woon. Butler was notified the arrangement with Woon had been approved on the same day, 10 August 1886.<sup>1190</sup> At this time, Woon was also authorised to countersign pension cheques in the absence of Butler.<sup>1191</sup> This indicates that Butler had other official duties in Wanganui besides his land purchase activities, raising the issue of whether this may have caused confusion or given the land purchase officer undue influence among owners. Presumably it was felt necessary to provide Woon with similar responsibilities. A further telegram from Butler of the next day, 11 August 1886, referred to rents going slowly and the possibility of Woon getting rid of some at a meeting to be held at Marton. This indicates that Butler may also have retained responsibilities for paying rentals in some blocks. Butler also suggested that Sheridan might travel up to Wanganui to assist Woon in his absence.<sup>1192</sup>

It also seems that the second copy of the purchase deed, as it now exists with signatures dating from August 1886, was drawn up so that Woon could continue collecting signatures at Wanganui while Butler and Stevens were travelling inland.<sup>1193</sup> Woon appears to have continued purchasing through August and into late September 1886.<sup>1194</sup> He also seems to have been paid his promised £50 bonus for this assistance on 15 December 1886.<sup>1195</sup>

#### **7.14 Further purchasing trips in the interior, August-September 1886**

Butler's overland trip to the interior appears to have including travelling through the Murimotu, Waimarino, Taupo and Te Awamutu districts in search of owners he could induce to sell their interests in Waimarino, again making use of Land Court hearings at many of these

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<sup>1190</sup> correspondence 10 August 1886, NLP 86/315, MA1, 1924/202 v1 ANZ

<sup>1191</sup> MA series 26/13 p 38 NO 86/2445 ANZ

<sup>1192</sup> Telegram 11 August 1886, NLP 86/315 MA1, 1924/202 v1 ANZ

<sup>1193</sup> ABWN 8102 w5279 b 105 deed 659 second copy, ANZ

<sup>1194</sup> MA-MLP 7/10 p 65 vouchers 1275-1277 and pp 66-68 ANZ

<sup>1195</sup> MA-MLP 7/10 p 97 voucher 2322 ANZ

places. Again, Butler was careful to identify and select influential chiefs whom he hoped might persuade their communities to follow them into cooperating over the deed, making his purchasing a good deal easier. Butler telegraphed Lewis on 15 June 1886, reporting that he knew of a considerable number of owners at Taupo, but he still did not think there were as many as (land purchase officer) Grace was estimating and most of those had minor interests. Instead, Butler thought it was more important to first obtain Peehi Te Katana's signature, as Peehi had a large interest in a portion of the block it was most desirable for the government to obtain. Butler acknowledged that Peehi was strongly opposed to selling and reported that he wanted to take Topia to assist in persuading him. Butler also informed Lewis that he intended to visit Te Awamutu while the Land Court was sitting there, although his exact travel might be altered by circumstance. Interestingly, Butler also expressed the hope that 'consideration of the petition will be deferred as long as possible so as not to interfere with work'.<sup>1196</sup> This was, apparently, a reference to the petitions of May 1886, already described, that would not be reported on until July. The implication seems to be that if Peehi and others were to find out about the accusations being made, then they would be much less likely to agree to Butler's inducements.

A few days later Butler telegraphed Lewis again about his proposed interior trip with much the same details. However, this time he noted that another reasons for going to Te Awamutu when the Land Court was sitting, was because he expected the Taumarunui people to attend and they had interests in the Waimarino where there was very valuable totara forest. Butler also admitted at this time that there was not much use for him to go and see Peehi without Topia. However, by now it seems that he was becoming doubtful that he could persuade Topia to go with him and use his influence with Peehi as required.<sup>1197</sup> This seems to be another indication that Topia was becoming disillusioned with Butler's activities. Butler also reported that he was still acquiring interests rapidly but had just lost the opportunity to gain four interests because they were minors and he hoped 'something will be done speedily' about this.<sup>1198</sup> Presumably the process of having trustees appointed was still not considered convenient enough. Butler's telegrams may indicate another reason for the continued urgency of the purchase process. Butler seems to have been attempting to stay just ahead of increasing disillusionment with his tactics. He was profiting from Ballance's assurances and promises of

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<sup>1196</sup> telegram Butler to Lewis 15 June 1886, NLP 86/223, MA1, 1924/202 v1 ANZ

<sup>1197</sup> urgent telegram Butler to Lewis 19 June 1886, NLP 86/223, MA1, 1924/202 v1 ANZ

<sup>1198</sup> urgent telegram Butler to Lewis 19 June 1886, NLP 86/223, MA1, 1924/202 v1 ANZ

a new system in persuading leaders to cooperate with him over the purchase. As long as was careful, it did not matter so much that these leaders became disenchanted shortly afterwards. As long as he had their signatures before this happened and those of as many of their communities as possible, their later criticisms could be disregarded and the purchase could still go on. The major difficulty was in losing chiefly support while it could still be useful, as appeared to be happening with Topia Turoa.

Butler also appears to have been reporting his progress directly to Ballance at this time. For example, he informed Ballance direct of his progress and interior travel plans by telegram of 21 June 1886.<sup>1199</sup> It was unusual and not generally acceptable for a government officer to contact a Minister directly like this. However, Butler and Ballance were already well known to each other and the direct reporting may have been a reflection of their earlier close official relationship as Minister and private secretary. This direct reporting also indicates that Ballance remained closely interested in the progress of the purchase and was kept well informed about it.

This correspondence is also the first recorded acknowledgement in the purchase process that the Government was identifying and seeking certain valuable parts of the block for itself, including areas with resources such as totara forest. There is no indication that the Government felt obliged to discuss these areas and resources with Maori so their acquisition or development could be planned and agreed and so that Maori could benefit from the profits to be made. Possibly Butler may have intended some acknowledgement of the value of these resources in his payments to chiefs with mana over these areas but there is no official indication of this and whether it was linked to the actual estimated value of such resources. The 'valuable totara forest' may also have been another reason why officials had insisted on extending the Waimarino boundaries into the Tuhua area. As Butler had acknowledged, it was the Taumarunui or Tuhua people who had large interests in the forest and this forest was believed to be very valuable. As will be described, the surveyor Rochfort would later report that the timber of this totara forest alone, would more than likely 'repay the total cost of the purchase [of the Waimarino block] from the Natives'.<sup>1200</sup> It seems that Butler had considerable difficulty in purchasing from many of the leaders in this area. As will be

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<sup>1199</sup> telegram Butler to Ballance, 21 June 86 NLP 86/223, MA1, 1924/202 v1 ANZ

<sup>1200</sup> Rochfort letter to Lewis 28 February 1887 NLP 87/89. MA1, 1924/202 v1 ANZ

described, he did not manage to purchase from some, such as Tuhāia, until January 1887, while others, such as Tuao, refused to sell at all.

The lack of subdivisions at this time would also have hampered Maori in being aware of exactly what land areas and associated resources were involved in the purchase. It was very easy for Butler to be vague about both what he was buying and what would be included in the purchase reserves. Some of the less obvious implications of this only became evident much later. For example, 1924 documents attached to the original purchase file inquire about Oruarangi Island, located in the Whakapapa River in the northern part of the Waimarino block. Officials of the time noted the imposition of riparian rights concerning any such case. The location of the Crown purchase or Maori retention of adjoining land would therefore have been critical to legally recognised ownership of the island. However, as officials admitted, the ownership of the island had not even been a matter of discussion during the purchase, let alone Maori agreement to its possible loss.<sup>1201</sup>

While Woon was continuing work in Wanganui, Butler and Stevens appear to have made their inland trip from around 13 August to 18 September 1886, as indicated in the expense claims for the trip. These included buggy hire, and other expenses for Butler and the Maori accompanying him, along with a Mr Thompson, who was apparently a court clerk from Taupo who acted as a witness for some purchases.<sup>1202</sup>

### **7.15 The application for a Court award to the Crown for Waimarino**

Although Butler was still purchasing in Waimarino as rapidly as possible during this time, it seems that by mid-August he felt confident enough to advise the Minister to go ahead and make a formal application for a partition of the Crown interests in Waimarino based on claimed purchasing. The Native Minister, Ballance, made this formal application dated 17 August 1886, under the Native Land Act Amendment Act 1877. It was made to the Chief Judge of the Native Land Court and requested that the interest claimed by the Crown in the Waimarino block would be defined at the next sitting of the Native Land Court, Wanganui.<sup>1203</sup>

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<sup>1201</sup> NLP 1924/202, MA1, 1924/202 v1 ANZ

<sup>1202</sup> MA-MLP 7/10 p 69 vouchers 1413-1416 August-September 1886, ANZ

<sup>1203</sup> MA-Wang WH 388 A vol 1 ANZ

This application was made well before Butler had acquired all the signatures he needed to gain the large part of the block he wanted to claim. However, Butler seemed confident the signatures he had obtained already represented significant interests, or that he could anyway obtain the rest by the time of the next sitting. The early submission of the application also indicates urgency by Butler and the government. Possibly, as well as ensuring the purchase went ahead before too much opposition was aroused, officials were also concerned that an application was made and most of the purchase appeared complete before new legislation was passed that might require new conditions for any new or barely started purchases. For example, the promised Native Land Administration Act 1886, which was expected to implement Ballance's promised new system of dealing with Maori land, was being passed at this time. The Bill had been read for a third time in the House of Representatives in early July 1886 and been sent to the Legislative Council in early August.<sup>1204</sup> In the event although as an Act it was dated 9 August 1886, it was not made operational until 1 January 1887.<sup>1205</sup> Another pressure may have been the imminent passage of the North Island Main Trunk Railway Loan Application Act 1886, which was dated 17 August 1886, the same day as the Native Minister's application for partition of the Crown interests in Waimarino. As noted previously, this provided further for the application of loan moneys for the central route of the North Island Main Trunk railway and for dealing with reserves made from land acquired for it.

#### **7.16 'Mopping-up' the Waimarino purchase, September 1886 - March 1887**

From the time of the formal government application for partition in mid-August 1886, government officials appear to have treated the 'completion' of purchasing in Waimarino as a race to gain as many more signatures as possible to confirm as large a Crown interest as possible, before the partition sitting began. As with the earlier stage of purchasing, it is not an easy matter to work out the tactics agents were using to achieve this from their official reports. It also seems that, as before, many discussions concerning tactics were discussed at meetings between officials that were not officially recorded. For example, on 10 September, after the application was made, Butler telegraphed Lewis reporting he had obtained 60 more signatures. He asked whether they could meet together along the coast as he felt they needed to talk.<sup>1206</sup> Lewis suggested that they meet with Ballance in Auckland. He also asked where

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<sup>1204</sup> *Journal of House of Representatives*, 1886, p XL

<sup>1205</sup> Native Land Administration Act 1886, section 1

<sup>1206</sup> Telegram Butler to Lewis, 10 September 1886, NLP 86/315, MA1, 1924/202 v1 ANZ

most remaining interests in Waimarino were now likely to be located.<sup>1207</sup> Butler believed that remaining owners were scattered at inland settlements such as Rotoaira, Taupo and Ohakune. Others were more widespread, including Parihaka, Mokau, Waikato, Whakatane, Opotiki and other places. The current bad weather was also making it very difficult to get to owners.<sup>1208</sup>

What followed was the pursuit of these interests by a number of officials throughout the central and lower North Island. Land purchase officials from neighbouring districts were also brought into help, where it seemed owners might be located in their districts. For example, Thomas McDonnell appears to have helped for a period from 13 to 16 October, 1886.<sup>1209</sup> W H Grace of Taupo also helped from his area, as did George Wilkinson in the King Country.<sup>1210</sup> Other officials, such as resident magistrate RS Bush also appear to have assisted in purchasing signatures.<sup>1211</sup> As time began to run out, T W Lewis also became involved in purchasing interests personally, in January and February 1887.<sup>1212</sup>

This extension in the range of officials assisting with purchasing in Waimarino seems to be why additional copies of the deed were made so that purchasing in Waimarino could go ahead in a number of different areas at the same time. While Stevens and Butler appear to have continued with the original and largest copy of the deed, and the next copy had been made for Woon at Wanganui, the third copy dating from around October 1886 appears to have concentrated on owners at Taupo and been largely overseen by W H Grace. The final copy appears to have concentrated largely at Otorohanga under Wilkinson and was the smallest with just five signatures.<sup>1213</sup>

Along with this extended involvement of officials, the copies of the deed show that there was also an increased variety in the witnesses attesting the purchase signatures. These included numerous Court officials, such as Jackson of the Whanganui Land Court and Baker, Ward and ES Thompson of the Resident Magistrate's Courts at Wanganui and Taupo. A number of witnesses were also simply described as 'settlers' such as George Blake and John Burns. Some of the more notable witnesses included James Carroll and E W Puckey.<sup>1214</sup> E W Puckey

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<sup>1207</sup> NLP 86/315, MA1, 1924/202 v1 p 92 ANZ

<sup>1208</sup> Butler to Lewis NLP 86/315, MA1, 1924/202 v1 pp 93-94 ANZ

<sup>1209</sup> MA-MLP 7/10 p 76 voucher 1368, ANZ

<sup>1210</sup> MA-MLP 7/10 p 84 vouchers 1899-1902 ; p 84 voucher 1914, ANZ

<sup>1211</sup> MA-MLP 7/10 p 97, voucher 2323, ANZ

<sup>1212</sup> MA-MLP 7/10 p 90 vouchers 2103-4, p 99 vouchers 2387-2396 January-February 1887, ANZ

<sup>1213</sup> ABWN 8102 w5279 b 105, deed 659 ANZ

<sup>1214</sup> ABWN 8102 w 5279 b 105 witness signatures to deed 659, ANZ

was presumably the same person as the Land Court judge who had heard the original Waimarino title investigation case and was soon to also hear the Crown partition case for Waimarino. Puckey's involvement reflects the apparently very close involvement of the Land Court and land purchasing process at this time. This had continued to cause Maori serious concern and had been one of the reasons they had consistently preferred their own committees over the Court. Puckey's actions at this time may not have been illegal, but his presence as a judge investigating both the title case and later Crown partition case for Waimarino, while acting as a purchase witness for the block in between, does raise issues of whether such actions tended to lower the confidence of Maori in the integrity of such government processes.

During this period, Butler and Stevens appear to have travelled quite widely pursuing individual Waimarino owners. Butler's expense records, for example, indicate that he claimed travel expenses for travelling through the district in the period 20 September to 30 October 1886.<sup>1215</sup> He also claimed travel expenses for chasing after absentee interests in Hawkes Bay in mid-December 1886.<sup>1216</sup> Butler also seems to have hired a canoe from 1 to 18 January 1887, to travel upriver again for purchasing.<sup>1217</sup>

The records also indicate that Butler paid a number of Maori for various services connected with purchasing in the Waimarino during this period. These included Te Heuheu Tukino, whom Butler recorded as paying £100 on 18 September 1886, for assistance in acquiring Waimarino.<sup>1218</sup> He was not an owner, although as noted in the previous chapter, he had made one of the applications for a rehearing for Waimarino. The records do not specify what this assistance entailed. Butler also paid Te Rangihuatau £100 for services in assisting with the purchase of Waimarino from 20 April to 31 October 1886.<sup>1219</sup> This payment was made in late 1886, well after the payments of a combined £63 10 shillings for Te Rangihuatau's interests made in April 1886. It was, therefore, presumably additional to that. Butler and Lewis also recorded in their expenses, paying Te Keepa Tahukumutia and Tatarina sums of £5 each for assistance with the purchase.<sup>1220</sup> It is not recorded what type of assistance this involved but it may have been the source of concern noted in the letter from Paiaka noted earlier, that

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<sup>1215</sup> MA-MLP 7/10 p 87 voucher 2007 ANZ

<sup>1216</sup> MA-MLP 7/10 p 97 vouchers 2319-2320, ANZ

<sup>1217</sup> MA-MLP 7/10 p 97 voucher 2318 ANZ

<sup>1218</sup> MA-MLP 7/10 p 73, voucher 1541 ANZ

<sup>1219</sup> MA-MLP 7/10 p 87 voucher 2005 ANZ

<sup>1220</sup> For example, MA-MLP 7/10 p 87 voucher 2006 Butler to Keepa Tahukumutia for £5 and p 90 voucher 2103 Lewis to Tatarina £5, ANZ

amounts of £5 had been paid for some interests. Other Maori may not have realised the payments they received were recorded as a direct charge to the Waimarino account when they were paid for services such as canoe hire, acting as messengers for delivering correspondence or for delivering *Kahiti* notices to settlements.

In many cases, although the kind of assistance was not always specified, the various separate payments to some individuals when combined were quite significant. For example, Wineti Paranihi received £10 from Lewis for services regarding signatures for the Waimarino purchase on 5 February 1887. Five days later Lewis paid him another £40 for his assistance with the Waimarino purchase including his travel expenses.<sup>1221</sup> Hamuera te Kaioroto was paid £7 1s 9d for travelling to Parihaka in connection with the purchase from 4 to 13 December 1886, and another £12 for visiting various settlements and distributing the *Kahiti* from 1 to 24 January 1887.<sup>1222</sup> These sums were paid well after the records showing payments for his interests in April and May 1886, so presumably were additional to these.<sup>1223</sup> T W Lewis also paid Hama Tapukawiti £20 for services in connection with signatures of Parihaka owners on 25 January 1887.<sup>1224</sup> Wiremu K Te Matotoru was also paid £20 for services regarding the purchase on 18 March 1887.<sup>1225</sup> Te Keepa Tahukumutia was paid another £15 for assistance with the purchase on 12 March 1887.<sup>1226</sup> Many of these payments for ‘assistance’ with the purchase were also significant when compared with the standard £35 for owner interests. For example, Te Keepa Tahukumutia was recorded as being paid the standard £35 for his interests in May 1886.<sup>1227</sup> However, he received another £20 for his ‘assistance’ with the purchase.

Butler’s records indicate that by this period as signatures were more difficult to collect and finishing was becoming more urgent, he was also often willing to pay more for the interests of remaining individuals than the standard £35 per share, sometimes up to £100 per owner.<sup>1228</sup> It is not always clear how Butler made up these larger payments. In some cases it seems they were for interests, while other payments for assistance were additional. However, this was not always the case. As noted earlier, the payments for two owners, Winiata Te Kakahi (owner

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<sup>1221</sup> MA-MLP 7/10 p99 vouchers 2391, 2393 ANZ

<sup>1222</sup> MA-MLP 7/10 p 97 vouchers 2339, 2340 ANZ

<sup>1223</sup> MA-MLP 7/6 owner 553 ANZ

<sup>1224</sup> MA-MLP 7/10 p 99 voucher 2390 ANZ

<sup>1225</sup> MA-MLP 7/10 p 110, voucher 2751 ANZ

<sup>1226</sup> MA-MLP 7/10 p 108 voucher 2706 ANZ

<sup>1227</sup> MA-MLP 7/6 owner 417 ANZ

<sup>1228</sup> MA-MLP 7/6 ANZ

271) and Tamakana Waimarino (owner 296) although recorded as being for their interests in the Waimarino block, actually appear to have been partly made up of sums for their assistance in persuading other members of their communities to sign.

Purchasing in Waimarino continued right up until and even while the hearing for the Crown partition was being heard from 31 March to 5 April 1887. For example, Butler's records show that Mata Ihaka (owner 616) was paid £100 for her interests on 4 April 1887.<sup>1229</sup> The Waimarino purchase deed itself is dated 5 April 1887, the date the partition hearing finished. As will be seen in the next chapter, Butler claimed at the partition hearing that excluding duplicates, there had been some 921 owners found for the Waimarino block and of these 821 had sold, leaving just 100 non-sellers. The final purchase price entered into the Waimarino deed was just £35,000 for the interests of the 821 owners who had sold. Based on the 1887 Court award of 417,500 acres to the Crown for the purchase, this worked out at an average sale price of 1 shilling 8d per acre. This was well below, the estimated 3/6 per acre cost to the Crown, which had been regarded as 'cheap' and the estimated price of 2/6 per acre originally proposed for the owners. It was also well below the 3-4 shillings per acre that Ballance had estimated even isolated and inaccessible land in the interior was worth.

The Government acknowledged the importance of the Waimarino purchase and Butler's role in achieving it with urgency and well within budget. On 1 July 1887, the Native Minister authorised an extra payment of £150 to Butler in 'special recognition' of his services in purchasing the Waimarino block.<sup>1230</sup> Following on from his work in Waimarino, Butler continued to undertake land purchasing duties in a number of other land blocks, including Taumatamahoe and Lake Wairarapa.<sup>1231</sup> In 1893, he would be appointed a Land Court judge.<sup>1232</sup> This meant that in later inquiries into Waimarino, he was often explaining his actions in Waimarino to officials from his position as a judge. John Stevens was eventually paid £3285.2.6 commission for his assistance in purchasing the Waimarino block.<sup>1233</sup>

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<sup>1229</sup> MA-MLP 7/6 owner no 616 ANZ

<sup>1230</sup> MA-MLP 3/5 p 667, letter Lewis to Butler, 1 July 1887, NO 87/1858, ANZ

<sup>1231</sup> MA-MLP 4/3 pp 403-4, Instruction to Butler from Native Minister to assist with acquisition of Wairarapa Lake, 17 May 1888, ANZ

<sup>1232</sup> *New Zealand Gazette*, 15 June 1893, p 893

<sup>1233</sup> correspondence April-May 1887, MA-MLP 3/5 pp 617-623

## 7.17 Continuing complaints about the Waimarino purchase

The later period of purchasing in the interior, and ‘mopping up’ brought renewed protests from Maori of the district. Even though the Native Affairs committee had failed to uphold protests about Butler’s tactics when he first began purchasing, similar protests continued about purchase tactics and about whether the block boundaries were correct. Increasingly, a number of upper Whanganui communities also sought to stay outside the purchasing and cooperation with government officials, preferring to live ‘quietly’ according to their own customs and authority.

Shortly after the Native Affairs committee reported in July 1886, on the earlier petitions for Waimarino, officials were beginning to receive numerous other complaints about purchasing tactics in Waimarino. Complaints about disparities in payments and treatment of owners continued, while complaints also began to extend into other areas, including concerns about ‘personation’ of owners, wrongful payments to non-owners and the failure of agents to carefully identify the right owners and follow proper procedures. These kinds of complaints also seemed to increase as the ‘mopping up’ of the purchase involved more officials and as Butler and Stevens, in their haste, relied on others to bring to them, or identify, the rightful owners.

In some cases, complaints about impersonation revealed that the ownership lists themselves were not considered entirely reliable and in fact, Butler eventually crossed off many names in the lists, claiming they were duplicates.<sup>1234</sup> The reliability of the lists was further questioned in July 1886, when the issue was raised whether one of the owners named on the list was, in fact, the person paid the money. Butler noted that he was not certain whether either the name on the list, or the person claiming, actually represented the true owner. However, he had agreed to share the money between them and he claimed the matter did not need to go further.<sup>1235</sup>

In December 1886, an owner Rangitūaina complained that payment for his interests had been made to someone else.<sup>1236</sup> He also informed officials that he knew of three cases at least where people had falsely misrepresented themselves as names on the list and taken money.<sup>1237</sup>

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<sup>1234</sup> MA-MLP 7/6 ANZ

<sup>1235</sup> NLP 86/290 letter 20 July 1887 MA1, 1924/202 v1 ANZ

<sup>1236</sup> NLP 87/16 MA1, 1924/202 v1 ANZ

<sup>1237</sup> NLP 87/17 MA1, 1924/202 v1 ANZ

These complaints were referred to Butler who expressed surprise because he claimed he had been told by reputable chiefs that the people he dealt with were the real owners. He suggested that the people who claimed to be personated should attend the next Court where their details could be taken and arrangements made with any who had genuinely missed out.<sup>1238</sup> Although there are is no further official correspondence concerning this claim on file, Rangiutaina, (owner 162) is shown as being paid £60 compensation on 1 March 1887, while the original impersonator was paid £35 for shares on 1 November 1886.<sup>1239</sup> Presumably, Rangiutaina followed Butler's suggestion and was found to have a genuine case. A similar claim of personation was made by Te Waaka Tamaira in December 1886, who claimed the wrong person had been paid and asked for the law to inquire into it. This was also referred to Butler who denied it.<sup>1240</sup>

Claimants therefore had to have considerable evidence before their complaints would be considered and many, such as the claim of Te Rangi Kaiamokura, were dismissed for lack of evidence.<sup>1241</sup> However, although they insisted they generally did find the correct owners, officials did later admit that it had been very difficult in Waimarino to be sure that the wrong people were not paid. For example, when L M Grace forwarded a letter claiming that Hupene Taranaki had been impersonated in the Waimarino sale, Lewis noted that, in many cases, Butler had no reason to doubt he was paying the right people. However, many of the owners in Waimarino went by different names, or changed their names, and there were several people in the list with the same name. Lewis noted that it was 'not easy in a block like the Waimarino' with 1000 owners 'to avoid paying the wrong persons'. Lewis recommended that Hupene be informed that the government had been advised that the right person was paid, but promised that further 'careful inquiry' would be made.<sup>1242</sup>

Officials would rely heavily on the claim that there were bound to be some mistakes in Waimarino, when it had over 1000 owners, in response to complaints of impersonation or fraud concerning payments. Butler would eventually reduce the actual number of owners to around 921, as will be seen in the next chapter concerning the Crown award, although officials tended to focus on the earlier, larger list numbers when excusing errors. This acknowledgement of difficulties with Waimarino raises the issue of why the Government

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<sup>1238</sup> Butler to Lewis, 20 January 1887 NLP 87/18 MA1, 1924/202 v1 ANZ

<sup>1239</sup> MA-MLP 7/6 owner no 162 ANZ

<sup>1240</sup> NLP 87/45, MA1, 1924/202 v1 ANZ

<sup>1241</sup> NLP 87/349 MA1, 1924/202 v1 ANZ

<sup>1242</sup> File note 12 December 1888, NLP 88/290, MA1, 1924/202 v1 ANZ

insisted on going ahead with such a large block in the upper Whanganui, when it was clear that identifying the right owners would be difficult, especially under the government-imposed urgency for purchasing. It seems the advantages for the Government in having such a large block in a strategic area and purchasing with haste were considered worth the risk that some owners might miss out through fraud or error.

Even given the reluctance of officials, there were some particularly persistent cases where owners were fortunate to have compelling evidence and this eventually forced the Government to concede some personation cases in Waimarino and pay rightful owners for their shares. For example, with regard to further letters concerning Hupene, the Native Minister explained that the signature purporting to be that of Hupene was witnessed by Mr John Stevens who was not at present in the colony. He was expected to return shortly and further inquiries would be made then and if any mistake was found it would be rectified.<sup>1243</sup> Eventually, although it is not clear why from the record, officials became convinced that Hupene had not in fact been a party to the Waimarino purchase deed. Sheridan recommended that £70 be paid to him as a ‘final settlement’ of all his claims and disputes. This was eventually approved by Mitchelson on 2 June 1890.<sup>1244</sup> Butler’s records show that Hupene (owner 161) was supposedly originally paid in September 1886, at the time when Butler and Stevens were attempting to ‘mop up’ the Waimarino purchase and scouring the district for as many interests as they could. The payment of £70 to the rightful owner was shown as being paid on 11 June 1890.<sup>1245</sup>

It also seems that Butler and Stevens did pay some Maori to bring Waimarino owners to them or identify owners, so purchases could go ahead. For example in 1889, the chief Paiaka Te Paponga, complained that one of the owners in his list, ‘interested in the portions of Tuhua included in Waimarino’ named Tawake Toheriri had been impersonated by a Tawake of Ngati Maniapoto, brought to Butler by a man named Wiremu Kauika. He claimed this had deprived Tawake Toheriri of £60. Te Paponga regretted that Butler had been so careless and asked the government to pay his son-in-law £150, leaving it with ‘the law to see into the action of Wiremu Kauika and his fellow accomplice’. Te Paponga himself claimed he had assisted with other purchases and he had supported the break up of the ‘whole of Aotea’.<sup>1246</sup> Officials noted

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<sup>1243</sup> Draft letter, Native Minister Mitchelson, NLP 89/29 MA1, 1924/202 v1 ANZ

<sup>1244</sup> Sheridan file note, 22 May 1890, NLP 90/160 MA1, 1924/202 v1 ANZ

<sup>1245</sup> MA-MLP 7/6 owner 161 ANZ

<sup>1246</sup> Letter 30 May 1889, MA1, 1924/202 v1 p 371, ANZ

that Tawake Toheriri (owner 764) had in fact been paid £55 not £60 and they seem to have taken no further action over this.<sup>1247</sup> This claim is one of a number of allegations that some Maori were paid to bring owners to Butler and Stevens for signatures to be obtained and payments made.

Butler and Stevens also relied in some cases on some people claiming others were people who were named owners in Waimarino. W H Grace took up the case of another owner, Te Rewha Taraiti, who claimed she had been personated by a woman named Raana with the help of a person named Keepa. Keepa had apparently testified to Butler and Stevens that Raana was telling the truth when she claimed to be Te Rewha. As a result, they had paid her the money.<sup>1248</sup> Grace told officials that from inquiries he had made he was ‘satisfied’ that Raana had indeed signed Te Rewha’s name to the purchase deed and that Keepa Puataata had assisted in the fraud. The original signature had been taken at Whanganui or nearby, but at the time Te Rewha had never been away from Tokaanu. W H Grace noted he had written to officials about the case when he first found out about it and he had reported two similar cases as well.<sup>1249</sup> This again indicates the difficulties faced by purchase officers when trying to obtain signatures over a large area and in some haste. Not surprisingly, those interested in making purchases such as Butler and Stevens, were likely to believe claims that supported purchasing, making it more likely that real owners who might be reluctant to sell, were subject to fraud.

In June 1890, Sheridan reported that he believed this case, concerning Te Rewha Taraiti, was the last of the personation cases for Waimarino, and ‘in a purchase from so many owners (1014) the number of personations have not been excessive’. The amount paid originally in this case had been £42, and he recommended this might afterwards be recovered from Keepa Puatata who assisted in the fraud.<sup>1250</sup> T W Lewis recommended to the Native Minister that Te Rewha be informed that ‘under the circumstances’ the Government was prepared to pay the same amount of £42 as was paid to the person who impersonated her. This was approved by Mitchelson.<sup>1251</sup> This case seems to refer to Terewha Taraiti (owner 176). Butler’s records show that original payment for the share was made on 4 November 1886 and the subsequent

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<sup>1247</sup> Annotation on letter 30 May 1889, p 371 MA1, 1924/202 v1, and MA-MLP 7/6 owner no 764 ANZ

<sup>1248</sup> Letter of Te Rewha Taraiti 17 May 1890, NLP 90/176 MA1, 1924/202 v1 ANZ

<sup>1249</sup> Letter 24 May 1890 W H Grace to TW Lewis NLP 90/176 MA1, 1924/202 v1 ANZ

<sup>1250</sup> Sheridan file note 5 June 1890 NLP 90/176 MA1, 1924/202 v1 ANZ

<sup>1251</sup> File notes T W Lewis 5 June 1890, and Mitchelson 5 June 1890, NLP 90/176 MA1, 1924/202 v1 ANZ

payment to the real owner was made on 21 June 1890.<sup>1252</sup> Once again officials were content to accept a few losses to the Government as a result of impersonation, in the interests of completing the large purchase. They do not appear to have considered the implications of such ‘inevitable’ mistakes for the integrity of the whole purchase process.

Butler’s records show a number of other cases where officials appear to have become convinced personation had occurred and additional payments to the real owners were made. These included; Wiripene Atiria, (owner 177) £40 originally paid for share on 29 July 1886 and another payment of £60 made on 1 April 1887; Heremia Akapita (owner 183 - minor) £50 originally paid to trustee on 17 November 1886, and further payment of £50 on 2 January 1887; Morehu Waitapu (owner 278) original payment on 8 May 1886 and another payment of £60 on 7 April 1887; and Ngakura Rangikawhiria (owner 723) original payment of £45 on 22 September 1886 and another payment of £35 on 21 October 1886.<sup>1253</sup> Interestingly, most of these impersonation cases where compensation was made appear to have occurred when purchase agents were scouring the district trying to ‘mop up’ the purchase as rapidly as possible, in the period from mid August 1886. This seems to indicate that officials accepted this ‘mopping up’ period was more likely to have involved some errors.

### **7.18 Continuing special arrangements**

Complaints also continued about special arrangements being made with certain individuals that disadvantaged other owners and the disparities in what were paid to owners. Certain arrangements made by Butler in the early period of purchasing have already been noted along with his promise to ensure that, in future, any he made would be included in the official record. It seems that Butler did continue to make these kinds of arrangements, even to the point of making them in writing, especially in the period after mid-August 1886, when there was a great deal of pressure to gather as many interests as possible before the Crown application was heard. However, it seems that in spite of his promise, Butler generally failed to submit copies of these arrangements for the official record. Copies of these written arrangements generally only came to light when the parties they were made with produced them and sought to have them honoured. A number of these arrangements have already been briefly referred to. However, it seems worth describing them in more detail here, as they also

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<sup>1252</sup> MA-MLP 7/6 owner 176. ANZ

<sup>1253</sup> MA-MLP 7/6 ANZ

seem valuable in reflecting the kind of verbal assurances Butler may have been making in explaining the terms of the purchase and what it would mean for those who sold.

One of these written arrangements was made by Butler, and dated 8 September 1886. It was witnessed by John Stevens and J E Grace, Native Interpreter and settler, Taupo.<sup>1254</sup> It was produced for government attention by J E Grace in 1887, on behalf of a number of the owners it was made with, now his clients, after the Waimarino purchase was completed, and when the government was in the process of finally deciding and surveying purchase reserves. They were seeking fulfilment of its terms concerning the reserves.<sup>1255</sup>

This written agreement was made between Butler and six owners; Te Marotoa Parekarangi (owner 170), Karore Menehira (owner 171), Te Arahou Parekarangi (owner 172), Te Iwiheke Parekarangi (owner 173), Rangipora Parekarangi (owner 174), and Te Rangimonehunehu (owner 662). In effect, Butler promised that in consideration of them selling their interests in Waimarino, he would grant back to them or their successors fifty acres each of land, out of the portion of the block purchased by the Government; ‘that is’ that the reserves agreed would be part of, and come out of, the 50,000 acres named in the purchase deed. Butler further agreed in the document that the government would ‘survey off and grant’ to the named persons the promised reserves in two sections of 200 acres and 100 acres each. The 200 acre block would be granted to Te Marotoa Parekarangi, Karore Menehira, Tarahou Parekarangi and Te Iwiheke Parekarangi, and the hundred acre block to Rangipoia Parekarangi and Te Rangimonehunehu. The six named persons were also to have the right of selecting the promised reserves out of the part of the block purchased by the government, and have the location of the reserves or blocks ‘in any particular spot they may desire’ up to the area of the said 50,000 acres. The selection of the above named reserves, ‘if the Government shall think fit’ was to be made after all other Native reserves were made and selected. The agreement noted that, as one of the named owners Karore Menehira had already died, his share was to be vested in Mawake Taupo Te Kerehi, his successor and nephew, and the only grandchild of Te Marotoa Parekarangi, provided that it was proved to the satisfaction of the government that the deceased Karore Menehira was the son of Te Marotoa Parekarangi.<sup>1256</sup>

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<sup>1254</sup> Copy of written agreement 8 September 1886, pp 294-295, MA1, 1924/202 v1 ANZ

<sup>1255</sup> Letter from JE Grace to Native Minister 30 June 1887, p 296, MA1, 1924/202 v1 ANZ

<sup>1256</sup> Copy of written agreement 8 September 1886, pp 294-295, MA1, 1924/202 v1 ANZ

Butler's records show that five of the named owners all sold their interests on 9 September 1886, the same day the written agreement was made. The exception was the deceased Karore Menehira, whose interests were recorded as already sold by his trustee Merania Pikiunuunu on 15 June 1886, for the standard £35.<sup>1257</sup> The interests of the other five were sold for considerably more, ranging from £47 to £65 per person.<sup>1258</sup> Presumably, Butler felt obliged to pay these extra amounts and provide the written agreement in order to achieve the sale.

This written agreement was interesting in that it seemed to reveal the kind of promises Butler may well have been making over purchase reserves when he 'induced' owners to agree to the sale of their interests in Waimarino. By promising the owners 50 acres each, the agreement appeared to confirm the average 50 acres to be granted to those owners who sold their interests in the block. It also appeared to confirm that those 50 acres blocks would be surveyed and granted by the government. In other words, the owners would receive 50 acre blocks with secure title, already surveyed off and ready to use, without the necessity for further Land Court action or the expenses involved. This, if widely understood this way, would have been a major incentive to sell, as non-sellers were still left with all the difficulties and expense of having partitions made through the Court and surveyed off before they could use their lands.

The written agreement also appeared to assure the owners that the promised seller reserves (that is reserves in the promised 50,000 acre aggregate the government had promised to set aside for sellers) could still largely be selected in locations the owners chose themselves. This may well have reflected similar verbal assurances Butler was also making to other sellers when explaining the terms of the purchase deed. The only slight difference appears to have been that the purchase deed appeared to provide for consultation with chiefs of each hapu, while in this case individuals appear to have preferred to deal with Butler themselves. This deviation from the deed may well have been a reason why the owners wanted a separate written agreement.

Butler himself certainly appears to have believed that the written agreement was little different from the Waimarino purchase deed as he was interpreting it. When asked to comment on the written agreement once it was produced, Butler replied that the 'five' owners named in the agreement were all members of the Ngati Kahukurapango hapu and their names

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<sup>1257</sup> MA-MLP 7/6 ANZ

<sup>1258</sup> MA-MLP 7/6 ANZ

appeared in the list of owners for purchase reserve E, set apart for that hapu. (In fact, of course the agreement named six owners although one had already died). He had provided the 'maximum area of fifty acres' each for four of them and twenty five acres for Karore Menehira 'who is a minor'. Butler went on to say that he had 'forgotten' the existence of the agreement, or he would have included it in his report.<sup>1259</sup>

It seems that Butler saw no real conflict between what he had promised in the written agreement and what he was generally providing, although this was a very narrow interpretation of the agreement. The written agreement appeared to anticipate owners receiving their purchase reserves as separate blocks, surveyed and granted by the government. In this case, this meant two blocks being surveyed off and granted by the government of 200 and 100 acres each. However, Butler appears to have felt that his insertion of the names of the owners in the general reserve E for Ngati Kahukurapango was sufficient to meet the agreement. However, this was clearly not the case. The agreement owners listed in reserve E may have had interests equivalent to 50 acres, but in the general reserve these remained undefined. They still had to go through the difficulties and expense of having these interests located on the ground within the reserve. They also had to pay their share of the costs of surveys required to separate out their blocks. This was significantly less than the apparent promise that the government would provide individual blocks of land, already surveyed off and with secure title.

In addition, even though the agreement appeared to promise 50 acres 'each' to the named owners, Butler had, as he acknowledged, taken it upon himself to reduce one of the shares of an owner in the agreement to the equivalent of 25 acres. He claimed this was because this owner, Karore Menehira, was a minor and indeed this kind of unilateral reduction of reserve shares for 'lesser' interests seems to have been a policy Butler applied over the whole of the Waimarino seller reserves. In this case, while Butler may have purchased Karore's interest as a minor, by the time the agreement was made Karore had already died and Butler had agreed that his rightful successor could have his share. If Butler was assuming that the successor share was worth no more than that of a minor because Karore had been a minor, this was not made clear in the agreement. On the contrary, the words 50 acres 'each' gave the impression that each owner was entitled to 50 acres. Further, the two agreed blocks of 100 and 200 acres were equivalent to 50 acres per owner for the six owners. Otherwise one of the two blocks

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<sup>1259</sup> Butler letter to Lewis 30 July 1887 NLP 87/236 pp 298-300, MA1, 1924/202 v1 ANZ

would have been reduced by 25 acres. It seems that Butler was being less than straightforward with this.

Butler went on to claim that following the exact promises of the written agreement would be so ‘obviously’ disadvantageous to the persons it was made for, they were better allowing their reserves to remain where he had made them. He noted that J E Grace had insisted on the written agreement for his clients, before the owners sold their interests to the Crown. He also claimed that Grace had been clearly told and understood that if the government had made the promised reserves, the costs of the survey would be charged to the reserves.<sup>1260</sup> This seems to have been where they were likely to have been ‘disadvantaged’ according to Butler. They would have had to pay the costs of surveying the agreed reserves. However, it is not clear that Butler could simply unilaterally change the terms of the agreement by claiming such disadvantage. In addition, he failed to note that the owners would still have to pay Court and surveys costs to have their particular interests defined from the general reserve E. It is interesting to note that it was Grace who had insisted on the written agreement. Presumably otherwise Butler would have made similar verbal promises to these owners as he was making generally.

Butler also claimed that Grace had ‘thoroughly understood’ that the costs of any separate reserves such as those promised would be a charge on the promised reserves. However, he made no claim that he had explained this to the owners or that they had thoroughly understood it. Nor had he included it in the written agreement, although he apparently had felt the need to explain it carefully, to Grace at least, verbally. On the contrary, the words in the written agreement that, ‘the Government of New Zealand shall survey off and grant to the above named ... land in two sections of two hundred and one hundred acres’ seem to indicate strongly that these blocks would be made and granted at government cost.

Butler advised that if the owners really preferred to select their own reserves and survey them out of the balance of the 50,000 acre reserve, in terms of the agreement, and after all other owners were ‘satisfied’, then it would be necessary to fix the location of the remaining 16,000 odd acres that it had not been considered ‘necessary’ to provide, owing to a number of owners not having sold their interests. He thought this could be done without difficulty and with ‘due

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<sup>1260</sup>Butler letter to Lewis 30 July 1887 NLP 87/236 pp 298-300, MA1, 1924/202 v1 ANZ

consideration for the interests of the Crown', which would not be at any loss by allowing the exchange.<sup>1261</sup>

The written agreement had stated that the reserves to the owners would be a portion of, and come out of the 50,000 acres set aside in the purchase deed for sellers. On the face of it, this did no more than confirm the blocks promised in the agreement were the type of purchase reserve the deed provided for. At the equivalent of 50 acres this should have been easily achievable as the 50,000 acres was based on an average 50 acres per seller. However, Butler now seemed to be claiming that the freedom for owners to select their blocks was limited to wherever it was decided the 50,000 acres would be located in the block and only after 'all other owners are satisfied'.

Again, the written agreement seemed to conflict with this interpretation. The agreement wording was actually that the named owners would have 'the right of picking or selecting' (their blocks) 'out of the portion or portions bought by the Government of New Zealand of the Waimarino block'. Otherwise, the location of these was to be 'in any particular spot they may desire'. The portion bought by the government was the whole of what became Waimarino no 1, not just the area where the government might decide the 50,000 acres were located. The agreement had also somewhat confusingly stated that the reserves would be selected 'if the Government shall think fit' after all other Native reserves shall have been made and selected. This simply seemed to mean the owners could not choose land already set aside and agreed for other owners. It still did not limit them to the location of the 50,000 acre reserve and nor was the promise of land to them dependent on every other owner being satisfied with theirs first.

Butler also explained that the Ngatikahukurapango reserve had been located in that part of the block in which its owners were interested. He claimed that this was 'not compulsory' by the terms of the purchase deed, but it was a 'concession' on the part of the Crown to the sellers. As Maori customary title had been extinguished over the whole (purchased) block, Butler did not think any owners who might 'disapprove' of the reserves set apart for them could 'in strict accordance with the terms of the deed' now fairly demand to have their reserves located in any part of the block they might want. Butler also claimed that there was nothing in the agreement that would 'justify' those it was made with making such a demand. Butler

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<sup>1261</sup> Butler letter to Lewis 30 July 1887 NLP 87/236 pp 298-300, MA1, 1924/202 v1 ANZ

therefore recommended that the area required to complete the 50,000 acres of the deed should be laid off on a plan at a point adjoining the reserves on the Whanganui River in the southwest of the block. Mr Grace should then be informed that his clients might ‘select and survey’ their reserves at their own cost ‘anywhere within that area’.<sup>1262</sup>

Butler’s interpretation in this instance seemed to be in conflict with the written agreement and even the purchase deed. Although Butler claimed the location of the reserve was no more than a ‘concession’, it has already been noted that the written agreement appeared to promise the owners they could select reserves where they chose. The purchase deed also provided that the Crown would make ‘good and effectual grants’ to sellers of parcels of land ‘in such localities, and to such of the said vendors as may be agreed upon by her said Majesty and a representative chief of each hapu’.<sup>1263</sup> This deed, as has been noted, was drawn up in the context of Ballance’s promises to respect customary chiefly authority and to consult with owners over managing land. There appeared to be a clear implication that there would be consultation over reserves. However, Butler, presumably with the knowledge and consent of Ballance and senior government officials, had reduced this expectation of consultation to the ‘strict’ terms of the deed. As he noted, the deed had technically extinguished customary title over the whole purchased area and therefore the sellers had no ‘rights’ to say where or how much land they might be allocated as purchase reserves. For Waimarino people, the promise to consult had turned out to mean they actually had to rely on ‘concessions’ the government might decide to make.

While government officials appear to have had no problems with Butler’s approach and interpretations generally, in this case they seem to have doubted whether he could so comprehensively reinterpret the terms of the written agreement that had now come to light. Sheridan noted in the margin of the report in 1887, that Butler had now agreed to give Korere Menehira 50 acres and the lists had to be amended accordingly.<sup>1264</sup> Another marginal note of 1887, warned that there was actually no balance left from the 50,000 acres, as it had been reduced proportionately for the interests of minors. Nevertheless, they were also not happy with Grace. A note by Sheridan on the back of Butler’s report, contained a proposed draft

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<sup>1262</sup> Butler letter to Lewis 30 July 1887 NLP 87/236 pp 298-300, MA1, 1924/202 v1 ANZ

<sup>1263</sup> ABWN 8102 w5279 b 105 deed 659 ANZ

<sup>1264</sup> Sheridan note 6 September 1887, in margin of Butler report 30 July 1887, NLP 87/236, p 300 MA1, 1924/202 v1 ANZ

reply, with Sheridan also noting that ‘Mr Grace is attempting to exact too much appears to me to have over reached himself’.<sup>1265</sup>

The draft letter was approved by Native Minister Mitchelson and signed by Lewis. On behalf of the Native Minister, Lewis noted the agreement with ‘five’ owners. He informed Grace that the proportion of the 50,000 acres within the government purchase proposed to be set aside had all been absorbed by alterations already made and there was no land left for his clients to select. However, their names were included for 50 acres each in the Ngati Kahukurapango reserve and the Native Land Court could at any time be moved to decide the right of succession to the interest of Karore Menehira in the reserve. He also noted the names of the five owners in the margin. For some reason, they now omitted the sixth owner, Rangipoia Parekarangi.<sup>1266</sup>

Grace replied on 30 November 1887, informing Lewis that his clients declined to accept his proposal or his interpretation of the agreement. They wished it noted that they would not have signed the purchase deed if Butler had not agreed to make the written agreement and that agreement clearly implied that they were to select the two reserves of 100 and 200 acres anywhere out of the block purchased by the Crown.<sup>1267</sup> A file note by Lewis of 2 March 1888, now informed the Native Minister that it appeared Butler had ‘exceeded his authority in making the agreement’. However, it would now have to be carried out ‘according to its meaning if no more satisfactory arrangement can be agreed to’.<sup>1268</sup> The Native Minister (Mitchelson) instructed that a reply be sent stating that Butler had exceeded his authority by making the arrangement, but as he had, the government would not repudiate the agreement. However, the government ‘cannot allow’ the owners to make their own choice of such reserves and therefore must insist on having a say in the allotment of such reserves.<sup>1269</sup>

It seems there were only parts of the agreement the Government would not ‘repudiate’. J E Grace wrote back on 19 April 1888, saying he had advised his clients of the latest proposals and of the discussion between himself and Lewis in Auckland. His clients asked for a copy of tracing of the whole block showing all the parts set apart for Maori and the parts retained by

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<sup>1265</sup> Sheridan note 7 October 1887, NLP 87/236 annotations on Butler’s report pp 298-300 MA1, 1924/202 v1 ANZ

<sup>1266</sup> draft letter Lewis to Grace recorded as outwards letter no 617/5 of 14 October 1887, MA1, 1924/202 v 1 ANZ

<sup>1267</sup> Letter J E Grace to TW Lewis 30 November 1887, NLP 87/370, p 318 MA1, 1924/202 v1 ANZ

<sup>1268</sup> File note T W Lewis 2 March 1888 NLP 87/370 MA, 1924/202 v1 ANZ

<sup>1269</sup> File note 2 March 1888, NLP 87/370 MA1, 1924/202 v1 ANZ

the government. They would mark off the places where they wanted their reserves and return the tracing.<sup>1270</sup> In response Lewis advised the Native Minister that he thought it best that he (Lewis) should deal with the matter himself, personally, when he next visited Taupo. He advised that the surveys for the reserves for sellers and subdivisions for non-sellers should be put in hand as soon as possible, otherwise complications were 'sure to arise'.<sup>1271</sup> However, the Native Minister instructed that the matter should stand over and the papers were filed for the present.<sup>1272</sup>

These particular owners, even when they had taken the precaution of seeking written confirmation of Butler's assurances and having a lawyer to pursue their interests, were still without their promised blocks two years after they had first brought the matter to official attention. The Government had reluctantly agreed that it might need to be carried out according to its 'meaning' although only if some other more 'satisfactory' arrangement (to the Government) could not be reached. Even then it was to be limited to what the Government would 'allow'. There is no indication in later reserve records that these owners ever received the separate reserves in locations they chose as promised in the agreement, although their allocations in reserve E do seem to have remained, amended to 50 acres each.

Butler appears to have made another written agreement with two other owners on the same day, 8 September 1886. This written agreement signed by Butler and witnessed by L M Grace this time, promised that 'in consequence of the continuous assistance' rendered by Taiamai te Huri and Hokopakake in furthering the purchase of the Waimarino block, Butler undertook to ask the government to give 'that is to grant' to each of the two five hundred acres of land, 'such land to be situated so as to adjoin the land to be granted to them within the 50,000 acre reserve'.<sup>1273</sup> Unlike the previous agreement, which appeared to mostly confirm general understandings regarding the seller reserves, this agreement clearly anticipated substantial additional reserves over and above the owners might expect to receive as sellers. Again, the requirement that these adjoin their ordinary seller grants implied a general understanding that these grants would be separate and readily locatable blocks of land, not just undefined interests in a larger reserve.

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<sup>1270</sup> Letter JE Grace to Lewis 19 April 1888, p 366, MA1, 1924/202 v1 ANZ

<sup>1271</sup> File note T W Lewis 13 May 1889 NLP 89/105, MA1, 1924/202 v1 ANZ

<sup>1272</sup> File notes, 22 and 23 May 1889 NLP 89/105, MA1, 1924/202 v1 ANZ

<sup>1273</sup> copy of written agreement 8 September 1886, NLP 90/117 MA1, 1924/202 v1 ANZ

Taiamai Te Huri (owner 32) had his interests recorded as being sold on the same day, 8 September 1886 for £50. He was also allocated 50 acres in reserve E.<sup>1274</sup> Hoko Pakake (owner 53) also sold his interests on the same day, 8 September 1886, for £100. He was also allocated 50 acres in reserve E.<sup>1275</sup> Butler acknowledged having made this arrangement in his general report on his proposals for settling seller reserves of 8 July 1887, even though he had not forwarded a copy of this agreement at the time it was made.<sup>1276</sup> In his report, he noted that it had been necessary to make a special agreement with two influential Taupo owners, Taiamai Te Huri and Hokopakake, ‘who prevented Matuahu and his family from selling’. Recognising the importance of acquiring their interests, ‘which are admittedly the largest in the block’ Butler reported that he had spent a week or more negotiating for them without success and was ultimately compelled ‘most reluctantly’ to promise the two a special reserve of 500 acres each adjoining their tribal reserve E. The result of this was that 60 or 70 signatures were obtained in twenty four hours, including all Matuahu’s people. Butler regretted he had to treat these two ‘exceptionally’ but was convinced that the interests involved could not have been acquired in any other way. He claimed that Mr Stevens, who was also present, would bear this out. Butler suggested, however, that to prevent ‘jealousy and ill feeling on the part of other owners’ the two be asked to accept a sum of money in lieu of land.<sup>1277</sup>

It is not clear why promising special reserves to two chiefs would cause 60 or 70 other owners to agree to sell their interests. Presumably, Butler was relying on these two chiefs to somehow then persuade their communities to cooperate. It is not clear what they expected from this, including whether they expected to share in the additional land. However, it does show how Butler was able to manipulate the often-confused distinction in the purchase between owners as legal individuals and as customary representatives of larger communities. This report also confirms that far from buying from willing sellers, Butler was aggressively seeking to ‘induce’ otherwise reluctant owners to take part in the purchase. Although Butler’s records show that he had already paid Matuahu an ‘advance’ of £20 on 5 April 1886, for his interests, it seems clear from this, that this chief did not recognise the early ‘advance’ as a purchase. Butler now seemed to be acknowledging that the sale really only took place when he paid Matuahu £90 for his interests on 9 September 1886.<sup>1278</sup>

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<sup>1274</sup> MA-MLP 7/6 owner no 32 ANZ

<sup>1275</sup> MA-MLP 7/6 owner no 53 ANZ

<sup>1276</sup> Butler report 8 July 1887, NLP 87/234 MA1, 1924/202 v1 ANZ

<sup>1277</sup> Butler report, 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

<sup>1278</sup> MA-MLP 7/6 owner 103 ANZ

Additionally, Butler seems to again have already decided in his own mind how extensive the particular interests of various owners might be, even though he treated everyone as equal while calculating the purchase price. In this case, he seemed confident that Matuahu and his family were the largest owners in the block. It is true that Matuahu was a very influential chief in the area. However, there had been no legal Court determination to support Butler in the assumptions he was making and in fact the government had refused owner efforts to partition the block which may have further indicated various interests. Butler was well aware that his agreement for extra land might cause dissension in the district and that was why he suggested immediate purchasing of the special reserves. However, while the chiefs might be pressured into this they would also obtain the payments. The other 60 to 70 owners who had been persuaded to enter the purchase on the strength of the agreement would be excluded from this and their expectations ignored.

Lewis replied to Butler that the Native Minister approved his suggestion and asked him to communicate with Te Huri and Hokopakake about accepting a monetary payment in lieu of the extra reserve of 500 acres each promised to them.<sup>1279</sup> Hoko Pakake apparently contacted Lewis on 28 December 1888, seeking fulfilment of the promise, but received no reply. However, it seems that he was in contact with Butler. It appears to have taken some time but by early 1890, he seems to have agreed to sell his special reserve for 10 shillings per acre.<sup>1280</sup> In response, Sheridan recommended offering 7/6 per acre to relinquish all rights under the agreement, while still retaining the grant in the tribal reserve. Lewis, however, recommended to the Native Minister that 'this promise should be satisfied by the payment of as little money as possible'. He believed that 7/6 per acre seemed 'altogether too high a price to offer'. He recommended that between 2/6 and 5 shillings per acre should be enough and that Butler had better take an early opportunity to close the matter. This was approved by Native Minister Mitchelson.<sup>1281</sup> This acknowledgement so soon after the purchase that land in the block might be worth 2/6 to 5 shillings an acre also indicates how cheaply most of the land was purchased for the government.

The matter seems to have rested there for some time, and in the meantime Te Huri and Hokopakake petitioned Parliament to have the grants of land amounting to 500 acres each in

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<sup>1279</sup> Lewis to Butler 1887, MA-MLP 3/5 p 685 ANZ

<sup>1280</sup> Memo from Minister of Lands and Mines to Minister for Maori Affairs, 26 April 1890, NLP 90/117, MA1, 1924/202 v1 ANZ

<sup>1281</sup> File note T W Lewis 24 May 1890, and approval by Mitchelson 24 May 1890, NLP 90/117 MA1, 1924/202 v 1 ANZ

the Waimarino block awarded to them as stipulated. The Select Committee reported on this on 7 August 1894, noting that as the Government was complying with the request of the petitioners, it had no recommendation to make.<sup>1282</sup> It seems at this stage they still wanted the land as agreed. However, Butler was apparently authorised to offer 5 shillings per acre, or £125 for each of the 500 acre special reserves, while the owners would retain their grants in Reserve E. A later file note of 1894, written by Sheridan indicates that Butler then actually offered the two owners £100 for each of the special reserves, reducing the amount authorised because he believed he could save money. No reply was apparently received in response to this and the Minister instructed that the original £125 each was to be offered again. This finally seems to have worked and a receipt for payment of £125 to Hoko Pakake dated 21 August 1894 and approved by R J Seddon is on file.<sup>1283</sup> All through this, there is no record of the view or expectations of the owners over the promise and whether they were ever allowed to believe they had any chance of obtaining the land instead of the money offered. The treatment of the owners over the honouring of this written promise, even if the promise had been made ‘reluctantly’ appears to raise issues of good faith and fair dealing with those owners named and those others who signed the purchase deed in good faith as a result of the promise.

There were a number of other later inquiries and complaints that appear to indicate that a number of owners might have understood they had arrangements or agreements with Butler other than what the deed actually said. For example, in August-September 1886, the Government received two letters from Tohiora Pirato, a Waimarino owner who appears to have received one of the largest payments for his interests from Butler. This had included an advance of £20 paid on 5 April 1886, and a further £150 paid on 22 April 1886, as part of the Easter 1886 purchase.<sup>1284</sup> As well as payments for interests, Butler also appears to have paid Pirato additional sums for ‘assisting’ in the purchase. For example, on 1 May 1886, he noted payment of £1 to Tohiora Pirato for ‘services re purchase of Waimarino’.<sup>1285</sup> The nature of these services were not specified.

Tohiora Pirato asked the Government about the agreed reserve of 5000 acres in Waimarino with a station and township on it. Sheridan noted on the file that 50,000 acres had been set

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<sup>1282</sup> *AJHR* 1894 I-3 p 3 petition 143

<sup>1283</sup> File note by Sheridan 21 August 1894, NLP 90/117, MA1, 1924/202 v1 ANZ

<sup>1284</sup> MA-MLP 7/6 owner 125; MA-MLP 7/10 p 31 voucher 159 ANZ

<sup>1285</sup> MA-MLP 7/10 p 35 voucher 297 ANZ

aside for the 1000 owners in Waimarino or about 50 acres each. These had been reserved but not yet allocated. He noted the stipulation in the deed regarding the purchase reserves and advised that he did not know where the 5000 acres the writer wanted were to come from.<sup>1286</sup> Lewis, as usual, requested Butler to sort the matter out, instructing him to verbally explain the matter and inform Mr Pirato that he was doing so in reply to the letter.<sup>1287</sup> Once again, it was Butler, who had induced chiefs such as Pirato to sign in the first place, who was given responsibility for explaining the matter in more detail. Butler noted the file that he had explained the matter to Pirato ‘in a manner that can leave no doubt in his mind’.<sup>1288</sup> It did not matter that Butler was now having to be more blunt about what was really provided in the purchase deed, as he already had Pirato’s signature.

The Government received another letter of October 1887, from Piripi Tuhaia of Taumarunui and Tuhua, asking for his money and pension as promised.<sup>1289</sup> The file notes on this indicate that the matter of the Waimarino purchase was still being discussed at various meetings with Maori, which were often not recorded. The file note indicates that Lewis and Butler were present at a meeting in Taumarunui on 16 January 1887, where the sale was discussed. They apparently relied on memory to note that they could remember agreeing to £150 not £1000 and they refused a pension. No evidence has been found of this meeting. It was recommended to the Native Minister that Tuhaia be told he had misunderstood arrangements as no pension had been agreed to. This was approved in December 1887.<sup>1290</sup>

A later letter from Postmaster Bell claimed that he had been at the meeting and had heard Lewis promise a pension but not of any amount. Lewis absolutely denied this. He claimed that he had been very careful to ensure that all the owners he dealt with clearly understood that what was paid to them was full and final settlement apart from the reserves provided for in the deed. He also claimed that he made no promise other than the consideration paid.<sup>1291</sup> While this may have been true of Lewis, it was clearly not the case with Butler, and owners are likely to have been aware of this. This also indicates the difficulties created when government officials attended meetings to allay Maori concerns, knowing their statements would be taken solemnly by Maori, but failing to properly record the meeting as part of the

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<sup>1286</sup> File note 14 September 1886, NLP 86/360 MA1, 1924/202 v1 ANZ

<sup>1287</sup> Lewis file note 16 October 1886, NLP 86/360, MA1, 1924/202 v1 ANZ

<sup>1288</sup> Butler file note NLP 86/360, MA1, 1924/202 v1 ANZ

<sup>1289</sup> Letter 29 October 1887, NLP 87/341 MA1, 1924/202 v1 ANZ

<sup>1290</sup> File notes NLP 87/341, MA1, 1924/202 v1 ANZ

<sup>1291</sup> Letter from Bell and Lewis file note 27 June 1888, NLP 88/146, MA1, 1924/202 v1 ANZ

official record. It is not entirely surprising that some owners may have believed that pensions were part of the deal for cooperation over Waimarino. As noted previously, the government had a long history of paying or withdrawing pensions from influential chiefs based on cooperation. For example the official salaries registers show that Waimarino chiefs Topia Turoa and Rangihuetu (Rangihuatau?) were paid pensions in the 1886/87 year.<sup>1292</sup>

### **7.19 Continuing concerns over ‘advance’ payments and payments for ‘services’**

Along with concerns over arrangements Butler was making, complaints also continued over the disparities in payments being offered for interests and confusion over payments for interests and for ‘other services’ in assisting the purchase. Although Butler often acknowledged he was paying more to those he regarded as the most influential chiefs, this was not simply just a recognition of customary authority, as they may have believed but was closely linked to recognising those chiefs who might assist in achieving the purchase. If chiefs had (or believed they had) customary authority but were of little importance to the purchase they were not so readily recognised as those whose cooperation was considered to be more critical.

For example, in June 1886, the Government received some very disgruntled letters from Aropeta Haereta Te Rangi of Wellington who complained that Butler had only offered him £35 for his interests in Waimarino. He wrote that he had visited Ballance because he was unhappy that no survey had been made of Waimarino for each individual’s share. He claimed that if this had been done he would have been determined to have a large share. He complained that Butler’s purchasing compared badly with McLeans’s, when he claimed, chiefs were commonly paid £500 to £1000 each.<sup>1293</sup> Official notes indicate that Butler later offered him £50. Officials also noted that Haeretaterangi had received over £1000 on the Mangakaretu block before it passed the Court and had then ‘neglected’ to prove his claim. Lewis advised the Native Minister that he could not be taken at his own valuation. He was formerly thought to have influence but this was no longer the case and Lewis was confident that Butler had properly valued his interests when he offered him £50. Lewis claimed that Butler had also told Lewis verbally that Haeretaterangi should not have been included in the Waimarino owners at all.<sup>1294</sup>

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<sup>1292</sup> MA series 26/13 p 38 ANZ

<sup>1293</sup> letter Haeretaterangi to Native Minister (translation) 9 June 1886 NLP 86/215 MA1, 1924/202 v1 ANZ

<sup>1294</sup> letter and annotations 1 July 1886, 21 June 1886 NLP 86/235 MA1, 1924/202 v1 ANZ

Haeretaterangi further complained at the way Butler seemed to be paying some groups of owners more than others. He noted that while Butler was offering owners 1/9 per acre, the newspapers were saying that the Government was offering 4/6 per acre. The owners were annoyed and they wanted the relative shares determined before purchases were made.<sup>1295</sup> However, as already indicated, the Government appears to have rejected all attempts by owners to have their relative shares determined and located on the ground by an independent authority. Haeretaterangi also brought up the issue of supposed cooperation and consultation with the chiefs. He noted that Topia had wanted the purchase money to be issued to the chiefs of each hapu for them to distribute. However, Butler had refused to agree to this.

The Government received a number of complaints just as the Crown application for partition was being heard and agents were trying hard to gain as many more interests as they could in the short time available. One of these was received from the chief Ngatai te Mamaku, who had long been concerned about purchase activities in Waimarino. He informed the Native Minister that he had received a telegram informing him of a gratuity of £50 and Butler had told him it was for Waimarino. He asked the meaning of this as it had caused ‘much trouble’, presumably among his people. Sheridan advised the Minister that it was simply a gratuity for food for the Waimarino owners sent by a European ‘friend’ and would not be charged against Waimarino.<sup>1296</sup> Nevertheless, a few days later, Butler recorded a payment of £50 to Ngatai te Mamaku for his expenses attending Court regarding the Waimarino purchase, which was charged to the Waimarino account.<sup>1297</sup> It is not clear if Te Mamaku was aware that this payment was charged to Waimarino, although it seems clear by them that there was a great deal of disquiet about such payments, especially when so many owners had received nothing but the standard payment.

Butler’s accounts records show that he did continue charging a great variety of services to the Waimarino account, presumably out of the £10,000 set aside for the payment of services and special interests of chiefs. It has already been noted that Butler charged such expenses as his tent, and removal costs and office cleaning to the Waimarino account, as well the costs of travel for himself and those who assisted him in chasing up purchases. His records show that he continued making the same kind of charges through the later part of the purchase. These included, canoe and buggy hire, food, firewood and other supplies, assistance for services,

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<sup>1295</sup> letter (translation) 9 June 1886 NLP 86/215, MA1, 1924/202 v1, ANZ

<sup>1296</sup> Letter and file note, 18 March 1887, NLP 87/100, MA1, 1924/202 v1 ANZ

<sup>1297</sup> MA-MLP 7/10 p 110 voucher 2752 ANZ

payment for oars and rowlocks for a canoe required by land purchase officers, fees for interpreters, and periodic cleaning of the Wanganui office.<sup>1298</sup> The introduction of such large amounts of money into an economically marginal district, with up to £50,000 for owner interests and another £10,000 for services and other expenses, and with Butler having a great deal of freedom over how it would be paid out, was bound to cause tension and internal conflicts in the district. This was precisely the kind of destructive impact that Ballance had been so critical of before the purchase began.

## **7.20 Non-sellers in Waimarino**

The continued use of Butler's tactics and the system of scouring for interests that took place from August 1886, also provoked continuing criticism from the leadership of the district. For example, the chief Peehi Turoa wrote to Ballance, on behalf of his people, in a letter from his village, Ngatokorua, dated 9 December 1886. [The translation mistakenly has the date as 9 December 1887]. In translation, Peehi Turoa complained of the persons drawing money which was said to be for Waimarino. He rejected that and said it might be for their land, but it was not for 'my Waimarino' and he did not approve of it. He told the Government that his way was to remain quiet 'for God does not create land for me twice'.<sup>1299</sup> A file note from Butler of 16 February 1887, recommended that Peehi should be advised that owners selling their interests in Waimarino would not affect his, and he should be informed of the 'liberal terms of the purchase' more especially the 50,000 acre reserve 'which will become of far greater value to the owners, when the surrounding country is occupied by Europeans than the whole block is now'. Butler also noted that Peehi should be advised to attend the Court partition sitting, whether he intended selling or not or 'his interests might suffer in his absence'.<sup>1300</sup> Sheridan noted on the same day that the Native Minister intended to see the writer on the subject.<sup>1301</sup> There is no more file correspondence on this. In fact, non-sellers could not just assume that if they did not sell, their interests would be safe. While all owners had interests in the block they had interests in all the resources it contained often scattered throughout many parts of the block. As seller awards were made and areas of land and associated resources partitioned off, these areas were also lost to the non-sellers. As Butler

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<sup>1298</sup> MA-MLP 7/10 pp 71-136 ANZ

<sup>1299</sup> Letter from Peehi Turoa and tribe (written by hand of Hohepa) from Ngatokorua 9 December 1887, NLP 87/38, MA1, 1924/202 v1 ANZ

<sup>1300</sup> Butler file note 16 February 1887, NLP 87/38 MA1, 1924/202 v1 p 134, ANZ

<sup>1301</sup> Sheridan file note, 16 February 1887, NLP 87/38 MA1, 1924/202 v1 ANZ

had indicated, they would still also be obliged to fight for their interests when the Court claimed its award in land. This would become very clear when the partition hearing for Waimarino eventually took place. For example, Peehi Turoa was presumably referring to Waimarino ‘proper’ and the Waimarino plains area when he referred to ‘my’ Waimarino. His people would eventually retain just a small reserve of under 4000 acres in that area (Waimarino 4). In the meantime, as Butler and Stevens continued picking up every interest they could, and by early 1887, preparations were being made for the Land Court determination of the Crown partition application in Waimarino.

## **7.21 Conclusion**

Like the title investigation, the Waimarino purchase was conducted within a remarkably short time, given the amount of land involved and the clear wish of Whanganui Maori communities to make careful decisions about their land. Although he had already begun making payments he would record as part of the purchase before then, Butler received official approval to begin the Waimarino purchase on 10 April 1868. Following this, a significant number of influential signatures were obtained for the deed just a few days later in Easter 1886. By August 1886, within six months, the Government felt sufficiently confident to make an application for a Crown award in Waimarino for the interests purchased. This was followed by a ‘mopping up’ period from late August until early 1887, when a hearing for the Crown award was notified. It took less than a year for the Crown to claim it had purchased most of the large Waimarino block.

The Waimarino purchase began in the context of a number of government assurances to the Whanganui people. These assurances were made about the proposed system of land management due to be implemented under expected legislation, but they were presented in such a way that leaders were likely to have believed that the Government was already committed to them. In the meantime, the Government appears to have used the interim period before the promised legislation was passed to try and force through a rapid purchase of the whole Waimarino block using tactics the Government claimed to have rejected. This included the use of 1870s style purchase tactics and the failure to engage in the system of partnership, open public information, and fair dealing the Government claimed it now supported.

Even before gaining official approval for the purchase, Butler had identified and persuaded certain selected chiefs to cooperate with him over Waimarino. It is not clear how chiefs understood these discussions at the time, but it seems there was at least some willingness to

cooperate over a venture that would allow some settlement in the district. Butler received official approval for his Waimarino purchase proposal on 10 April 1886, very shortly after the title case finished and around the same time Ballance made a very strong appeal to Whanganui chiefs to trust in government policies. This left owners very little time to discuss their future management of Waimarino, or to take advantage of legal protections for rehearings, correction of ownership errors, or to obtain partitions that would enable interests to be defined on the ground and allow more effective decision making.

Butler's purchase proposal appeared to make some concessions to Whanganui concerns. It provided for a system of reserves that appeared to take account of community wishes to retain selected areas of land in the block and to allow other areas to be used for settlement. However, regardless of how communities may have perceived this, Butler's proposals indicate that the Government was knowingly authorising a system of reserves based on calculations that raised issues of the adequacy of the proposed reserves for economic purposes. Butler's calculations of 50 acres per owner stand in contrast to the Government information that most farms in the district would need to average around 1000 acres to be viable. This was without any necessary losses for infrastructure, such as roading. The proposal also made no reference as to whether any consideration had been given to the wishes of communities to retain important settlements, cultivations, and waahi tapu, while still having sufficient land for their economic survival and how these wishes might be provided for in the 50 acre average.

The proposal also raised issues of whether the price set for interests was adequate. The proposal recognised that additional expenses for the purchase were likely to be considerable – around £13,000 pounds, excluding previous written off advances. This raises the issue of the likely impact of such a large fund for paying various expenses and 'services' on the relatively cash poor communities of the district. At the same time, just £50,000 was proposed for the interests in the block, the equivalent of around 2/6 per acre. This was much lower than Ballance had previously estimated (presumably based on land price information he was aware of) even isolated and remote land in the Whanganui district was worth. In contrast, large areas of Waimarino straddled the railway and might be expected to rapidly increase in value because of this. The development of riverboat transport may also have been expected to raise the value of the large areas of land in the block accessible by river. In addition, Butler was also aware of large areas of valuable totara and other forest in the block, as a result of the railway explorations. There is no indication that the value of this timber was taken into

account in the low average price to be paid. This raises issues of how committed the Government really was to ensuring Maori would share fairly in the anticipated benefits of settlement.

The advantage of the lack of partitions of the block can also be seen in the setting of an average price over the whole block. It was much more difficult for owners in more valuable parts of the block to know whether that increased value was being taken into account without having their interests clearly located on the ground. Butler himself even acknowledged that his proposed price was considered 'cheap', and he appeared to be referring in this to the estimated total cost to the Government, not the price to be paid to owners. It was understandable that the Government might want to allow for some of the costs of development in prices it paid for land. However, issues arise of to what extent Waimarino owners were being expected to bear the cost of purchasing their own land and being denied the potential future benefit expected from development in this proposal. This again meant that the quality and location of reserves in Waimarino would be very important if owners were to share in anticipated benefits.

Another feature of Butler's proposal was the assumed urgency of the purchase. For example, the purchase was being instituted very rapidly after the title hearing and Butler seemed to anticipate that it would only take six months to purchase such a large block. This urgency seemed to cut across the clear community desire to be able to make careful considered decisions over land. This raises the issue of Government commitment to assurances over this. It also raises the question of why such urgency was considered necessary. The Government had already protected itself from difficulties private purchasers might cause by creating a monopoly for itself in the railway area, so it hardly needed to purchase rapidly for this reason. Issues arise of whether the urgency was felt necessary to ensure Government rather than Maori benefited from the expected rise in land values from what was then expected to be the imminent construction of the railway. Possibly also urgency was felt necessary so purchasing could be completed before communities fully understood the real implications of what their 'cooperation' involved. In either case, issues arise of government good faith and fair dealing, not to mention deliberate dishonesty over assurances being made.

The Waimarino purchase deed also appeared to reflect community desires to retain certain areas of land, while allowing other areas to be used for settlement, through the system of reserves. Unlike Butler's proposal however, the deed simply provided for reserves of up to 50,000 acres. The deed requirement for consultation between the Government and chiefs of

each hapu for the location of the reserves also appeared to reflect the desire for continuing cooperation and consultation. The deed promise of ‘good and effectual’ grants of the reserves also implied that the reserves would be made in a way that gave communities rapid and secure legal title so that these areas would be clearly identified and protected. Once again, how reserves would be provided and understandings of them would be very critical to the purchase of the block.

The 1886 Easter hui and the early cooperation of influential chiefs such as Topia Turoa appears to have been a very important part of the Waimarino purchase, with a significant amount of signatures gained for the purchase deed. The significance of the meeting was also confirmed by newspaper reports indicating that this meeting had effectively arranged the purchase of the block. The meeting seems to have been another acknowledgement of community desires to be able to discuss matters openly and publicly and make decisions based on this. Unfortunately, no record has been found of what took place at the Easter meeting or how the purchase was presented and explained by Butler. Topia Turoa’s later bitter opposition to Butler indicates that understandings at this meeting may have been significantly different from what actually happened as the purchase was implemented. Certainly after this meeting, Butler and Stevens seemed much more reliant on old style purchase tactics of selecting and pressuring individuals or small groups to sign the deed and also of manipulating the Land Court and legal system to facilitate the purchase.

This manipulation included the significant use of appointments of trustees (confirmed by the Land Court) for minors among owners in Waimarino. These trustees were then used to purchase the interests of often groups of minors. The records indicate that Stevens and Butler were able to have the Court confirm trustees they set up for purchasing with relative ease. The system of objections often proved ineffective as those interested were often not aware of when applications were to be heard and had to know about the application and be present in Court in order to object. In some cases Butler and Stevens appear to have purchased from trustees before they were formally appointed, and in many others purchases were made within such a short time it seems likely purchase arrangements had already been made. The pressure to have trustees appointed rapidly and to appoint those cooperative to selling as trustees in order to pursue a rapid purchase is also likely to have created a situation where protections for minors in the process were significantly undermined or rendered ineffective. The rapidity with which Butler and Stevens began using this process also raises the issue of whether Butler had

advised communities to include large numbers of children in ownership lists from the beginning, knowing the system could later be manipulated to facilitate purchasing.

Another important responsibility Butler was allowed to have was the decision making on duplicates in Waimarino ownership lists. He appears to have been able to identify and remove what he believed were 'duplicate' owners with impunity, even though this clearly facilitated purchasing. The haste with which the purchase was conducted may also have contributed to difficulties in ensuring duplicates were accurately identified.

Butler did not openly record other purchase tactics he was using and many of these have to be identified by close examination of surviving accounts records and by the complaints from communities that very soon began to appear about purchasing in Waimarino. These included the system of picking off individuals who had to attend the Land Court for other reasons and the use of the very large sums of money Butler had available to pump into and manipulate the district economy, including the widespread use of payments for 'services' and for 'assistance' with the block, as well as large disparities in amounts being paid for various owner interests. The official assumption was that owners were 'free' to accept or reject Butler's offers for shares but this was misleading in the context of the time. Owners would have found it very difficult to analyse whether amounts being offered were 'fair' or even in some cases exactly what they were for. In the still traditional culture of the time, many ordinary owners also relied on the advice of their leaders as to what should be accepted. Significant numbers may also have accepted payments in the spirit of cooperation and unity with the Government, trusting government protection for their future requirements. The failure of the Government to work with Native committees over the block or to generally explain the payments in open and public discussions also led to disquiet and internal divisions in the district. This also assisted with purchasing but exacerbated internal conflict and divisions within and between communities, undermining the efforts of Whanganui leadership.

It is also evident that, in an effort to complete the purchase under urgency Butler entered special arrangements with some individuals, including agreements to provide extra land in return for 'cooperation'. In some cases these agreements appeared to highlight what the understandings of communities may have been over the purchase, including that those who sold would all get individual grants of 50 acres. Later complaints also indicate that there were significant errors made in identifying the correct owners in some cases, possibly also due to the haste with which the purchase was conducted. Issues also arise of Butler's use of advance payments and how well these were understood by chiefs and communities involved.

Butler also appears to have relied on substantial confusion over just what the ‘purchase’ involved. It seems that many chiefs and communities may have believed that they were agreeing to sell certain selected areas, while they were withholding from sale other important areas necessary for their continued living on the block, and areas likely to be useful for new economic uses. Butler appeared to be providing for this in setting up a purchase where sellers were actually agreeing to part with all their interests in Waimarino, in return for being granted selected areas of land up to an average of 50 acres. The issue was how well this system actually did meet the understandings and expectations of chiefs. This was further confused by the incomplete and sketchy surveys of the block for discussions on what land might be involved and the refusal to hear partition applications so owners knew where their interests were located.

It also became evident during the purchase that many of the communities of the Tuhua area in the northern part of the block and especially those within the external Rohe Potae boundary did not believe their lands should be included within the Waimarino block or subject to purchasing. Many of the communities of the area consistently pointed out to the Government their belief in this error and their wish to have their district excluded. In spite of Ballance’s claims to commitment to consultation and discussions over issues of concern, these complaints were largely ignored or downplayed. This raises the issue of how far the Government placed anticipated benefits from the railway and from the northern totara forest ahead of the concerns of these communities. It also raises issues of to what extent Butler arranged the title investigation case to ensure these communities had poor representation within legally recognised lists and therefore their lands could be more easily purchased.

In spite of the growing disillusionment of the district leadership, Butler and Stevens had gained enough signatures to have the Native Minister apply for the Crown award of the block by August 1866. This was followed by a frantic ‘mopping up’ period to gain as many extra signatures as possible, paying increasingly larger amounts and engaging in more special arrangements to achieve this. By this time, the Government was also receiving large numbers of complaints about the purchase in a variety of forms including by petition. This raises further issues of how willing the Government was to engage in serious consultation over these concerns and to what extent the insistence on urgency undercut possible protections for communities.

It also became evident that the Government was willing to refer most complaints directly to Butler to deal with, even though he was rapidly becoming the subject of many of them. Butler

was also given every opportunity to explain his actions and present them in the most favourable terms while discrediting the motives of those complaining. This raises further issues of the effectiveness of systems of redress open to communities who were concerned about the purchase. Even petitioning, which may have been assumed to offer a more objective (if expensive) process for those with concerns about the purchase, appears to have been undermined by the reliance on reports from officials heavily involved in the purchase.

Butler appears to have made no provision for the possibility of non-sellers in his proposals and calculations. His focus appears to have been to purchase the whole block and then return some land to the sellers through the system of reserves. Presumably there was an assumption that some non-sellers would be left and their interests could be cut out when an award for the Crown interest was made. However, once again the lack of partitions in the block threatened to cause disadvantage for those who refused to sell. Non-sellers evidently believed that they could refuse to engage with the Land Court process and the purchase and just be left alone on their lands. Ballance may also have confirmed this view in promising that he would not force the Land Court into an area. They may also have felt reassured by Butler that they could simply have their interests cut out from the purchase. However, this raised a feature of the Land Court process that had been so sharply criticised by the alliance leadership. Once the Land Court was 'invited' in by even one individual, it was not possible for non-sellers to simply refuse to engage and assume they could retain the interest they believed they had or even the cultivations and settlements they were clearly using. Butler could also manipulate the next Land Court hearing for the Crown award to ensure the recognition of their interests was as limited as possible. This also raises the issue of protection for non-sellers in the kind of purchases the Government was implementing with Waimarino.

## Chapter 8 The 1887 Crown award hearing for Waimarino

### 8.1 Introduction

Butler and Stevens had been purchasing interests in the Waimarino block from at least April 1886. They were confident that they had bought enough interests to apply for a Crown award by August 1886, but continued to buy up as many interests as they could through the remainder of 1886 and early 1887. At the same, the ‘proper’ survey of the block was completed under considerable pressure. As preparations began for the hearing into the claimed Crown award in Waimarino based on purchased interests, Butler began to prepare a case to convince the Court that the Crown should be awarded the largest part of the block and also those areas within the block that he considered most valuable for Crown purposes. This meant his case would support claims of the sellers, that they had interests in the most valuable parts of the block (and that they had sold them). It also meant that his case would attempt to prove, as far as possible, that the non-sellers in the block had relatively insignificant interests in areas of least value. The Court findings on the Crown and non-seller awards, and the later creation of seller reserves in terms of the purchase deed, would further reveal the implications of the Waimarino purchase for Whanganui Maori.

### 8.2 The ‘proper’ survey for Waimarino

As previously noted, Native Minister Ballance applied for an award of the Crown’s interest in the Waimarino block on 17 August 1886.<sup>1302</sup> This was apparently based on Butler’s advice that by this time he had already purchased the majority of interests in Waimarino. Even so, the Government did not actually notify a Native Land Court sitting to hear the Native Minister’s application until December 1886, some four months later.<sup>1303</sup> This advised that the Native Minister’s Waimarino application would be heard at a Land Court sitting at Wanganui beginning on 24 January 1887. Other Whanganui blocks also notified to be heard on Crown application for subdivision awards at this time, were Waimanuka, Rawhitiroa, Mangakaretu, Opatu, Otaranoho, Okehu and Whataroa.<sup>1304</sup> As previously described, the delay of four months presumably gave Butler the chance to ‘mop up’ as many additional interests in

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<sup>1302</sup> MA-Wang WH 388A v1, Application by Native Minister John Ballance, 17 August 1886 (NLC 86/790), ANZ

<sup>1303</sup> *NZ Gazette*, vol 2, Gazette no 67, 23 December 1886, notice dated 20 December 1886, pp 1693-4

<sup>1304</sup> *NZ Gazette*, vol 2, Gazette no 67, 23 December 1886, notice dated 20 December 1886, pp 1693-4

Waimarino as possible. The Government may also have delayed notice of the hearing until the ‘proper’ survey for Waimarino had been completed and title could then be transferred to the Crown on award. As noted previously, this ‘proper’ survey had been conducted at the same time as the Waimarino purchase, and was also completed about the same time. It is described separately in this section for purposes of clarity.

It has been noted that the long delay in completing the ‘proper’ survey for Waimarino may have significantly disadvantaged Maori communities in making decisions about the block and in understanding clearly what was involved. The delay in the proper survey also appears to have prevented the restriction on alienation protection from coming into effect while the purchase was being undertaken. At the same time it is clear that a proper survey of such a large block as Waimarino was going to be no easy task. The very rough sketch survey ML 772 was apparently considered sufficient for the purposes of title investigation, but a much more adequate survey was required for title purposes, before land title could be considered capable of being transferred.

It has already been noted that Butler reported in his purchase proposal of 10 April 1886, that the Chief Surveyor Marchant was expected any day to begin management of the Waimarino survey.<sup>1305</sup> File correspondence indicates that Marchant appears to have moved from Wellington to Wanganui at around this time. Once again Marchant appears to have sought assistance from the Auckland survey office for the northern part of Waimarino. For example, on 9 April 1886, J Annabell informed the Wellington survey office that Marchant was asking the Auckland office what part of the Waimarino plan it could ‘finish’.<sup>1306</sup>

At the same time, a number of surveyors from the Wellington office were diverted from other duties to complete surveys for the rest of Waimarino and to produce the final ‘proper’ plan. This involved extending their general triangulation work into the block as well as field work on some of the boundaries. The Wellington office survey work involved the brothers, John and Joseph Annabell, in the western and southeastern areas of the Waimarino block. Joseph was to make a sketch survey of the Whanganui River as far as the Retaruke block with general triangulation work extending east into the block.<sup>1307</sup> John Annabell was authorised to survey the south and southeast boundaries.<sup>1308</sup> The surveyors Wilson and Dunnage, who had

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<sup>1305</sup> Butler to Lewis, 10 April 1886, NLP 86/122 attached to 86/144, MA1, 1924/202 v 1, ANZ

<sup>1306</sup> Telegram 9 April 1886, LS-W 1, 2351 ANZ

<sup>1307</sup> Telegram from Marchant to Wellington office 19 April 1886, LS-W 1, 2351, ANZ

<sup>1308</sup> Marchant letter of authority to John Annabell, 20 April 1886, LS-W 1, 2351, ANZ

been working southeast of the block in the Murimotu district, were to move up to complete the eastern Waimarino boundary to Ruapehu. Wilson was also instructed to extend his triangulations into Waimarino and work on the claim boundaries the Court had excluded from the southern part of the block.<sup>1309</sup> James Thorpe was to continue work on the south west boundary of Waimarino and then move on to general triangulation work over the block.<sup>1310</sup> Marchant informed Thorpe that as the Waimarino block had been passed on a sketch plan, it was now necessary to make a 'complete' one. He was instructed to work on the southern boundary from Popotea and was to work in terms of the survey regulations. However, lines did not need to be cut unless absolutely necessary, and insisted on by Maori. The Ngati Pare claim also had to be cut out.<sup>1311</sup>

Correspondence of this time clearly indicates that the Waimarino survey was regarded as a matter of urgency at the highest levels of government and that surveyors were to undertake their work as expeditiously as possible. Marchant had informed Thorpe not to cut lines unless absolutely necessary. Marchant also informed Wilson that the Government wanted the Waimarino block surveyed as quickly as possible 'as they are anxious to complete the purchase of it'. Wilson's move on to survey work for Waimarino was considered a 'most urgent and important duty' and 'the Honourable Mr Ballance expects that the required plans shall be promptly furnished'.<sup>1312</sup> The Auckland survey office was also informed in April 1886, that the [Waimarino] survey 'is considered by the Minister as very important'.<sup>1313</sup> It was also expected at this time that surveys of the other parts of Waimarino would be completed within a few months.<sup>1314</sup>

File correspondence also contains discussion of how best to conduct the proper survey for Waimarino in the most 'expeditious' manner, including whether field work had to be carried out on the ground and to what extent. This included, for example, whether straight line boundaries had to be cut on the ground or marked by fixed points, and whether river boundaries had to be traversed or defined by triangulation or compass work.<sup>1315</sup> Generally, as with instructions to Thorpe, although survey regulations had to taken account of, the quickest

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<sup>1309</sup> Marchant to Wilson, 20 April 1886, LS-W 1, 2351, ANZ

<sup>1310</sup> Telegram from Marchant to Wellington office 19 April 1886, LS-W 1, 2351, ANZ

<sup>1311</sup> Marchant to Thorpe, 20 April 1886, LS-W 1, 2351, ANZ

<sup>1312</sup> Marchant to Wilson, 20 April 1886, LS-W 1, 2351, ANZ

<sup>1313</sup> Telegram 22 April 1886, Surveyor General to Assistant Surveyor General, BAAZ 1108/108c ANZ-Akd

<sup>1314</sup> Telegram 22 April 1886, Surveyor General to Assistant Surveyor General, BAAZ 1108/108c ANZ-Akd

<sup>1315</sup> Correspondence April 1886, LS-W 1, 2351, ANZ

way was generally preferred, even if this meant relatively little field work and physical marking of boundaries.

It was also hoped that in the northern part of Waimarino, Cussen's work for the Auckland survey office would help complete the northeastern boundary and nearby areas.<sup>1316</sup> The Auckland office was informed that the northern boundary of the Waimarino block had recently passed the Court but still had to be defined on the ground so a sketch plan could again be put before the Court. (This presumably referred to the 'proper' survey that was still to be completed). It was also noted that this northern part extended into the Aotea block [Rohe Potae].<sup>1317</sup> The Wellington office suggested that Cussen could provide sufficient detail for the plan while he was carrying out his trig work in the area, if he was assisted by Butler pointing out place names.<sup>1318</sup> However, the Assistant Surveyor General, Auckland, was reluctant to allow Cussen to have anything to do with Native Land Court surveys, in case this provoked Maori opposition to his general triangulation work in the area. The Auckland office was also uncertain about whether Cussen would complete his work in time for Waimarino.<sup>1319</sup>

The Wellington office nevertheless seemed optimistic that Cussen's continuing work would provide additional information for the plan. It was noted that the Aotea boundary ran parallel and might be used in some cases, and much of the area had been fairly well topographically surveyed at least.<sup>1320</sup> Marchant noted, however, that the northern boundary still needed to be defined by trig sketch or traverse and the 'surveyor who does it must work under Butler's directions'.<sup>1321</sup> In the meantime, efforts appear to have been concentrated in the main part of the block where the Wellington office surveyors were working.

As survey work began, Whanganui Maori sought more information on the survey and how it was to be paid for. W Hipango wrote to Merchant on 30 April on behalf of Waimarino owners, asking what the survey costs were expected to be for Waimarino, including the already completed sketch survey and the proper survey now being conducted. This was

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<sup>1316</sup> Telegram from Marchant to Wellington office 19 April 1886, LS-W 1, 2351, ANZ

<sup>1317</sup> Memo Surveyor General Wellington to Assistant Surveyor General Auckland, 4 April 1886, BAAZ 1108/108c ANZ-Akd

<sup>1318</sup> A Barron Wellington Survey Office to Assistant Surveyor General, Auckland, 4 April 1886, BAAZ 1108/108c ANZ-Akd

<sup>1319</sup> correspondence April 1886, BAAZ 1108/108c ANZ-Akd, letter 21 April 1886, A Barron to Mackenzie (chief draughtsman) LS-W1, 2351, ANZ

<sup>1320</sup> File note 19 April 1886, LS-W 1, 2351, ANZ

<sup>1321</sup> Marchant to Chief Surveyor Wellington, 19 April 1886, LS-W 1, 2351, ANZ

forwarded to Butler for his comments.<sup>1322</sup> On the advice of Butler, Marchant replied that the survey costs for Waimarino would be made a charge against the land as was done in other blocks. He could not give an estimate of the actual costs at this time.<sup>1323</sup> The survey costs for such a large block were likely to have caused some concern among owners and may well have been an incentive for some to consider selling, especially as they understood they would still receive a secure land grant in return.

With much of the work being conducted by the Wellington office, it was expected at this time that the various parts of the main Waimarino survey using parties of men under the authorised surveyors would complete their work within three to four months.<sup>1324</sup> Much of this work seems to have been organised by John Annabell, who was also working on parts of the block himself. This was a very tight time frame for such a large block and clearly involved focussing on those boundary areas considered most problematic, with as little field work as possible.

Even so, it was still not quick enough for Butler, who constantly placed pressure on the Wellington survey office to carry out the work with the utmost priority, and as rapidly as possible. For example, Butler sent an urgent telegram to Marchant in May 1886, reporting that he had heard that Wilson was proposing completing another block he was working on before Waimarino. Butler insisted that Waimarino should be finished first.<sup>1325</sup> Accordingly, Marchant instructed Wilson that the Waimarino survey had to take precedence over all other survey work. This was ‘most urgent and important’.<sup>1326</sup> Marchant also wrote to John Annabell reiterating the need to understand that the Waimarino survey was ‘very urgent and should be completed as soon as possible’ and to let his brother know this too. Marchant also indicated that there was already some Maori opposition to field work for the survey. He appeared to believe that it was also Butler’s responsibility to prevent this; ‘I submit that we look to him to put a stop to such action’.<sup>1327</sup>

The surveyors clearly believed that Butler was in a position to either persuade Maori to allow the survey, or to at least to prevent obstruction. They also felt obliged to rely on Butler to send them Maori guides to various parts of the block to point out place names and assist the survey.

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<sup>1322</sup> Letter from Hipango to Marchant 30 April 1886 and attachments, LS-W 1, 2351, ANZ

<sup>1323</sup> Marchant reply 10 May 1886, LS-W 1, 2351, ANZ

<sup>1324</sup> Correspondence John Annabell to Chief Surveyor Wellington, June 1886. LS-W 1, 2351, ANZ

<sup>1325</sup> Telegram Butler 4 May 1886 LS-W 1, 2351 ANZ

<sup>1326</sup> Telegram Marchant to Wilson 14 May 1886, LS-W 1, 2351 ANZ

<sup>1327</sup> Marchant to J Annabell 23 June 1886, LS-W 1, 2351 ANZ

This also placed Butler in very strong position to send those who supported him to explain localities in ways that would support the purchase and the interests he was dealing with. This again may have helped convince some owners that their best hope of protecting their interests lay in cooperating with Butler.

Although the surveyors generally accepted the necessity for working quickly and ‘expeditiously’, and to assist land purchase as much as possible, Butler’s unrelenting pressure and his apparently cavalier attitude to survey requirements did cause some tension. The surveyor Wilson apparently had his work obstructed by Maori in disputes over the survey of the claim boundaries to be excluded by Court order in the southwest of Waimarino. Thorpe had after all only been able to indicate the southern boundary very vaguely on the sketch plan for the Court, as he could find no one to help him. Even with this, it seems the surveyors felt bound to stick as closely as possible to what the Court had awarded based on this uncertain information. This, not surprisingly, brought them into conflict with local people when they attempted to define boundaries on the ground. Wilson asked for Maori guides but was unimpressed with those that Butler sent. Butler, meanwhile, brushed off reports of Maori obstruction to the survey as unimportant. He claimed to the Chief Surveyor on 24 June 1886, that there had been no serious opposition to the survey of Waimarino and it was continuing very satisfactorily. He accepted that some protests were bound to be made and were to be expected, ‘but the Annabells are not easily stopped’.<sup>1328</sup> This gives the clear implication that Butler, and the Government, were determined to push ahead with the survey and purchasing, regardless of community opposition.

The Annabells might have been willing to do whatever it took for the survey, but other surveyors were clearly not happy with the way the Waimarino survey was being conducted. In July 1886, Annabell reported that Dunnage and Wilson could not continue with their survey for want of guides. Butler was expected to visit them to assist.<sup>1329</sup> Shortly afterwards Butler urgently informed the Chief Surveyor that Wilson could not find Maori guides to point out place names for the boundary. He asked Marchant to instruct Annabell to allow Wilson to make a topographical survey anyway (without Maori help).<sup>1330</sup> Wilson, meanwhile was clearly frustrated with the guides he had been sent. He reported a few days later that the guide sent to him had misdirected a survey party, causing the ‘wrong’ area to be laid off near the

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<sup>1328</sup> Butler to Chief Surveyor Wellington, 24 June 1886, LS-W 1, 2351, ANZ

<sup>1329</sup> Annabell to Chief Surveyor Wellington, 16 July 1886. LS-W 1, 2351, ANZ

<sup>1330</sup> Butler to Chief Surveyor, 17 July 1886, LS-W 1, 2351, ANZ

northern boundary of the Raetihi block. Wilson reported that he had asked Butler for more help twelve days ago, but had heard nothing and was becoming anxious (about progress).<sup>1331</sup>

In the meantime, in response to Butler's request to push ahead the survey anyway, Marchant duly instructed Annabell that Wilson had to push on the Waimarino boundary with the greatest expedition, following the directions of guides, but if that was not available by using topographical data instead. He noted that the Minister of Lands was demanding that the survey be completed.<sup>1332</sup> Marchant also instructed Annabell to push on the completion of the Waimarino boundary survey and then carry a close topographical and trig survey over the block and ascertain the boundaries for Court subdivisions. He was also to obtain full information as to the character of the country for road routes, town sites and similar so the Government was able to establish settlements all over it in a comprehensive scheme. He was to arrange the work between the various parties so that the whole block was at least trigged.<sup>1333</sup>

This continued pressure and the apparent disregard for obtaining local information caused more difficulties with Wilson. In a letter to the Chief Surveyor Wellington, of 26 July 1886, Wilson noted that it seemed the Chief Surveyor thought he did not want to complete the surveys. He assured him he was quite as anxious to have them done and he was perfectly prepared to defend his actions since he had begun work on the Waimarino block. He reported that he would now start immediately without a guide and would 'survey the block rightly or wrongly' but in doing so he refused to take any responsibility for the accuracy of the work or any unnecessary expense it might involve.<sup>1334</sup> A proposed draft reply on this letter noted that there was no suggestion he was not doing his best to complete the survey but 'very great pressure was being made by the govt. to have the survey finished'. It was accepted that he could use his own judgment but he was warned that it was useless for him to do anything he was uncertain about in the absence of guides, or other means of knowing where the boundaries were.<sup>1335</sup> A letter along similar lines was later sent to Wilson assuring him there was no suspicion he was not doing his best but 'great pressure was being made by Government to have survey finished'. This also advised him to use his judgement but warned

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<sup>1331</sup> Memo Wilson to Chief Surveyor 20 July 1886, LS-W 1, 2351, ANZ

<sup>1332</sup> Marchant to Annabell, July 1886, LS-W 1, 2351 ANZ

<sup>1333</sup> Marchant to Annabell 20 July 1886, LS-W 1, 2351, ANZ

<sup>1334</sup> Wilson to Chief Surveyor Wellington 26 July 1886, LS-W 1, 2351, ANZ

<sup>1335</sup> Annotations on Wilson letter 26 July 1886, LS-W 1, 2351, ANZ

against actions where he was uncertain and lacked guides or other means of knowing what the boundaries were.<sup>1336</sup>

Wilson was wise enough to understand that this warning was not meant to be taken too seriously and evidently did decide he had no alternative but to push on without guides. Butler was advised that Wilson had reported that, as he was being pushed so much to do the boundary, he was doing it without guides or anything. It was noted that it might be advisable for Butler to visit again and help arrange matters.<sup>1337</sup> The concern about this seems to have been about protecting the Crown interest, rather than that of Maori communities. Butler also continued to deny there was any great problem. He reported that he had ‘sent several guides’ to Mr Wilson and all had a ‘thorough knowledge’ of the country where he was working. He would now send someone else, but did not know what more he could do.<sup>1338</sup>

Butler showed no indication at all that he regarded local knowledge as particularly necessary or desirable, especially to protect Maori interests. Wilson was not particularly concerned with Maori interests either, but he was clearly aware that a failure to consult locally might inevitably involve the survey office in more work and expense to sort out disputes later. Butler, however, seemed supremely confident that his purchasing would make these potential problems irrelevant. This was not because he believed that he was taking Waimarino Maori interests into account. Presumably, instead, he anticipated his purchasing would simply override such interests and possible disputes by making the land involved Crown land ‘free’ of such claims. It is not clear what kind of ‘guides’ Butler was sending. Presumably they were people who had agreed to cooperate with him, regardless of how well they knew local areas. Surveyors were obliged to rely on those people Butler selected, even when they found them unhelpful or unreliable. It is also possible that the people Butler sent were not keen to provide details of areas of the block where they knew local communities did not want to sell. It did not matter either way to Butler, because as he indicated it was really just a formality. If Maori guides were unavailable or unreliable, he expected surveyors to proceed anyway on other data they had, such as compass work based on trig stations, to produce something for the Court.

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<sup>1336</sup> Copy of letter to Wilson from Chief Surveyor, LS-W 1, 2351 ANZ

<sup>1337</sup> Note to Butler 29 July 1886, LS-W 1, 2351, ANZ

<sup>1338</sup> Butler to Chief Surveyor Wellington, 30 July 1886, LS-W 1, 2351, ANZ

Although Wilson had been assured that he could rely on his judgment and that he should not proceed where he was uncertain, he clearly felt under pressure to proceed with the survey anyway. He later reported that Butler's next efforts in providing a reliable guide had also been 'unsuccessful' and he had anyway gone on at once and with some difficulty found some of the places for the boundary. He had cut traverse lines and used compass work for the boundary along the lines of where a Maori member of his party 'thought it ran'. He had reached the Mangaturuturu stream by this time and was traversing along it although he reported that as it rose in Ruapehu he could not traverse the entire length.<sup>1339</sup> He was advised that he did not need to traverse the entire stream to the gorges of Ruapehu. He could work from a fixed position and use trig and compass work. He was also advised he could continue to ask Butler for assistance.<sup>1340</sup>

Wilson was not the only one who had difficulty with the guides Butler was sending. The surveyor, James Thorpe, also believed he was required to rely on guides Butler sent, but found them unsatisfactory. He reported in August 1886, that several Maori had been named to show him the Ngati Pare claim and if they acted 'properly' he did not expect the survey of this claim to take more than a month. However, if they attempted to vary from the Court plan, 'I assume I have to refer to Butler'.<sup>1341</sup> Thorpe had some difficulty with the guides Butler sent and reported in early October 1886, that a guide sent by Butler was 'useless'. He claimed the guide had seemed 'perfectly unacquainted' with the country and had caused the survey to lose time. He had written to Butler about this, but the reply had not arrived. He reported he had since seen Butler, who had advised him to go ahead and make the best possible plan with the information he had.<sup>1342</sup> As noted, Butler had earlier trained in survey work and presumably knew where he could avoid field work.

A few weeks later Thorpe sent on the plan he had made of the southern boundary and the Ngati Pare claim. He reminded the survey office of the difficulties he had with the guides sent to him. He claimed one knew nothing and the other one's places 'did not agree' with the Court plan. Thorpe conceded that maybe the original sketch had been 'faulty' over this but he had anyway 'done the best I could with the materials' and 'Mr Butler is satisfied'.<sup>1343</sup> Thorpe

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<sup>1339</sup> Wilson report 10 August 1886, LS-W 1, 2351 ANZ

<sup>1340</sup> File note 20 August 1886, on letter from Wilson, LS-W1, 2351, ANZ

<sup>1341</sup> Thorpe to Chief Surveyor Wellington, 4 August 1886, LS-W1, 2351, ANZ

<sup>1342</sup> Report of James Thorpe, 4 October 1886, LS-W 1, 2351, ANZ

<sup>1343</sup> Letter James Thorpe to Chief Surveyor, Wellington, 15 October 1886, LS-W 1, 2351, ANZ

clearly preferred to take the Court award based on a very uncertain plan and Butler's advice, in preference to any conflicting Maori claims about the area.

It is not clear what Waimarino Maori understood from surveys that were being conducted in parts of the Waimarino block at this time. It does seem that there was considerable potential for misunderstandings. For example, in July 1886, the chief Winiata te Kakahi, of the Manganui a te Ao area, asked Marchant for a survey of his land estimated at around 50,000 acres. He assured Marchant that he was not claiming this for himself, but on behalf of communities living in the area, estimated at 309 people and twelve hapu.<sup>1344</sup> Marchant replied that the Waimarino block was being surveyed, although this clearly was not what the chief Winiata had meant.<sup>1345</sup> As noted, much of the work was extension of trig work and triangulations that had already been explained to Maori as being quite separate from surveys for the Land Court and purchasing. The areas where there seems to have been most obstruction to the surveys was in the relatively small amount of field work on boundaries and this seems to have been the result of concerns about possible loss of land, not what might have been expected if there was widespread support for Butler's activities.

By August 1886, a number of the surveyors on the Waimarino block were reporting progress with boundary work and establishing at least major trig stations, although more detailed field work was being avoided by relying on calculations and compass work. For example, in mid-August, John Annabell reported he had traversed the Makotuku stream near the Raetihi block and intended to do the rest by compass work. He was also intending to move on to a triangulation of the Waimarino plains.<sup>1346</sup> By August 1886, Marchant was also asking the various surveyors to fill in gaps as they finished the parts assigned to them and a file plan shows roughly the areas the various surveyors were working on (2351/14).<sup>1347</sup> The progress with the survey work by this time may also have helped the Government decide to make the application for a Court award in August 1886.

It seems that much of the work was still being conducted by triangulation and compass work rather than field work on the ground. This was especially true of the interior of Waimarino where ground work appears to have been limited to selecting, clearing and establishing sites for major trig stations. In September 1886, for example, Joseph Annabell reported that he

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<sup>1344</sup> Letter 26 July 1886 Winiata te Kakahi to merchant, LS-W 1, 2351, ANZ

<sup>1345</sup> Reply from Merchant 14 August 1886 LS-W 1, 2351 ANZ

<sup>1346</sup> Report of J Annabell, 13 August 1886, LS-W 1, 2351, ANZ

<sup>1347</sup> Telegrams and sketch plan, late August 1886, LS-W 1, 2351, ANZ

understood his instructions were to complete the Waimarino survey by triangulation work using large triangles.<sup>1348</sup> As information was compiled, by October 1886, the surveyors were beginning to prepare plans based on their work, from which an overall ‘proper’ plan of Waimarino could be prepared. By this time, John Annabell was also reporting that Butler was pressing for the Waimarino map to be prepared by early January when the Court sitting was likely. He further reported that Butler had advised that the data gathered from major trigs would do for the subdivision requirements of the Court.<sup>1349</sup> As Butler placed more pressure to have the plan completed on time, the Chief Surveyor Wellington also instructed Annabell and Thorpe to complete their plans as soon as possible.<sup>1350</sup> The completion of plans still involved a considerable amount of work and these also had to be compiled into one overall plan. Annabell replied that he expected the plans to be completed by late January 1887.<sup>1351</sup>

By mid-January 1887, the various Wellington surveyors were beginning to send in the plans they had prepared from the data they had gathered or calculated for Waimarino. For example, on 14 January Joseph Annabell sent in a tracing of the western boundary of Waimarino from the Manganui a te Ao to the Ohura River, of which 26 miles had been surveyed and 24 miles ‘sketched carefully’. He included a note on the natural features of the country in the area and noted that Maori were living at Popotea, Tieke, Utapu, Kirikiriroa, Whakahoro and other places on the river.<sup>1352</sup> On 15 January 1887, Thorpe also sent in rough plans of the area around Retaruke.<sup>1353</sup>

While the Wellington surveyors pressed on with their work, attention turned again to the Auckland office and the information it might be able to supply for the northern part of Waimarino. The Wellington office now had the tracing the Auckland office had first sent but in October 1886 had asked for any further information including whether there were overlaps with other claims. Again the focus was on other Land Court blocks such as Okahukura and Tauponuiatia, rather than the Aotea boundary, the southern part of which was clearly shown on tracings as being included within the Waimarino boundary.<sup>1354</sup>

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<sup>1348</sup> Report J R Annabell September 1886, LS-W 1, 2351, ANZ

<sup>1349</sup> Report by John Annabell, 22 October 1886, LS-W1, 2351, ANZ

<sup>1350</sup> Chief Surveyor letters to Annabell and Thorpe 23 November 1886, LS-W 1, 2351 ANZ

<sup>1351</sup> Annabell to Marchant, 23 December 1886, LS-W 1, 2351, ANZ

<sup>1352</sup> J R Annabell 14 January 1887, LS-W 1, 2351, ANZ

<sup>1353</sup> Thorpe 15 January 1887, LS-W 1, 2351, ANZ

<sup>1354</sup> Plans of October 1886, sent between Wellington and Auckland offices on LS-W 1, 2351, ANZ

The Auckland survey office replied in October 1886, that Cussen's topographical work was available but was on a different scale to what was required. More detailed surveys were planned for the area that would take in northern Waimarino, but these were 'not even started yet' and there did not appear to be much chance of it.<sup>1355</sup> Marchant wrote to the Auckland office again in December 1886, asking for progress on information for the northern part of Waimarino, as he had to finally approve a plan of Waimarino by 23 January 1887, the day before the Court was due to begin sitting.<sup>1356</sup> In early January 1887, the Auckland office sent on a tracing of the northern part of the block with all the information available, including the adjoining blocks that had recently been adjudicated on by the Court at Taupo.<sup>1357</sup> The survey offices at this time seemed concerned to ensure the various Land Court block boundaries in the interior district were 'in agreement'.<sup>1358</sup> On 17 January, Marchant asked for confirmation about the boundaries including at the confluence of the Whakapapa and Whanganui rivers and whether the 88,000 acres was still part of Waimarino.<sup>1359</sup> The reference to the 88,000 acres was to the area within the Rohe Potae external boundary now included within Waimarino as shown on the tracing on file. Marchant seems to have been making certain it had not in the meantime been included in one of the adjoining blocks the Land Court was adjudicating on. However, Percy Smith was in no doubt, replying that 'Waimarino remains just the same - 88,000 acres is part of Waimarino'.<sup>1360</sup>

Clearly, even though it was usual practice to ensure there was no overlap between block boundaries, both senior survey officials were in no doubt in this case that the Aotea block boundary need not be taken account of. It was just a question of which Land Court block it might be absorbed into. There is no indication from either of them of any uncertainty as to whether this boundary needed to be respected, suggesting they already had directions from the Government not to do so. It has been noted in the previous chapter how a number of upper Whanganui/Tuhua chiefs expressed concern about the inclusion of the Aotea boundary within Waimarino, expecting it to be corrected when the 'proper' survey was done. However, even though it was not made clear to those chiefs during the purchase, it seems that the Government had already decided the boundary would not be respected. The failure to openly

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<sup>1355</sup> Memo Auckland survey office to Chief surveyor Wellington, 28 October 1886, BAAZ 1108/108c ANZ-Akd, copy on LS-W 1, 2351, ANZ

<sup>1356</sup> telegram Marchant to Auckland office 30 December 1886 BAAZ 1108/108c ANZ-Akd

<sup>1357</sup> Auckland office memo 8 January 1887, LS-W1, 2351, ANZ

<sup>1358</sup> For example, letter 25 January 1887 Cussen to Assistant Surveyor General Auckland. BAAZ 1108/108c, ANZ-Akd

<sup>1359</sup> Marchant 17 January 1887, LS-W 1, 2351, ANZ

<sup>1360</sup> Percy Smith telegram date stamped 18 January 1887, LS-W 1, 2351 ANZ

acknowledge this to the chiefs made Butler's work easier and less likely to be obstructed, but raises issues of good faith and fair dealing with those chiefs.

As with the original sketch plan for the Waimarino title hearing, it seems that the 'proper' plan was also eventually completed under considerable pressure and in a great rush to be available in time for the Court hearing. It appears from the correspondence with the various surveyors that there were only a matter of days between when various plans were received and the final 'proper' plan compiled. It also seems that there may also have been a number of tracings prepared at this time, which may also have been used for additional information and possibly also at the Court hearing, although this is not certain. The 'proper' survey plan for Waimarino appears to be ML 776, (map 7 of this report) which is annotated as certified approved by the Chief Surveyor Marchant, on 20 January 1887.<sup>1361</sup> This new plan shows considerably more topographical detail for the Waimarino block than ML 772, although there are still large blanks and areas where no place names are shown. The new plan also showed, as owners had feared, a revised acreage for Waimarino. The original sketch plan for the title investigation had estimated around 490,000 acres. When some parts were excluded as a result of the title hearing, this had become around 455,000 acres. This was what Butler had based his calculations as to average share per owner on, and also the average share price he was willing to pay. The new 'proper' plan now showed a revised acreage of 458,500 acres and increase of 3,500 acres. It remained to be seen how this extra acreage might be taken into account when most of the purchase had already been completed.

As with the title investigation plan (ML772) this plan ML 776 may also have been subject to some tidying up after 20 January 1887 and may not have been the exact plan produced before the Court in early 1887. Correspondence of early 1887, for example, indicates that amendments may still have been made to the Waimarino plan after 20 January and there were a number of tracings available, which may also have been used before the Court. For example, the acting Registrar of the Wanganui Native Land Court noted on 26 January that a plan for Waimarino had been sent to the Wellington office and that a tracing appeared to be omitted.<sup>1362</sup> On 27 January 1887, Thorpe also reported he was sending on tracings of Waimarino to the Chief Surveyor.<sup>1363</sup> The survey office may have continued to work on this plan for a while as on 1 February, the Registrar of the Land Court Wanganui had to ask the

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<sup>1361</sup> Linz – ML 776

<sup>1362</sup> H C Jackson 26 January 1887 LS-W 1, 2351, ANZ

<sup>1363</sup> Thorpe to Chief Surveyor Wellington 27 January 1887, LS-W 1, 2351, ANZ

Chief Surveyor Wellington for four copies of the Waimarino plan to be sent as soon as possible as the Land Purchase Department urgently required it.<sup>1364</sup>

Regardless of when the plan was actually finished, it certainly does not seem to have been easily available for public scrutiny until just a few weeks before the Court hearing of the Crown award, which eventually began on 30 March 1887. This had implications for Whanganui Maori understanding of what was involved in the claimed purchase and what important place names and community interests might be affected, should they be shown on the map at all. This was particularly true for those communities in the northern part who had seen no surveyors but Cussen, who was supposed to be engaged in general trig work, and no survey work on the ground except what they thought had been agreed over the railway and the Aotea Rohe Potae external boundary. They had no means of knowing for sure that the northern boundary had not been ‘corrected’ as they expected. As Hamer has noted, it is far from clear whether adequate time was available between the completion of the ‘proper’ plan and the hearing, to fulfil the obligation to have it made widely available for inspection so any objections could be made.<sup>1365</sup>

While there was considerable pressure to have the ‘proper’ plan of such a large block as Waimarino completed in time for the hearing of the Crown application, it should be noted that the actual time taken over the survey, almost a year, provided Butler with a significant window of opportunity to implement most of his purchasing strategy while many local communities were still far from clear about what land and places were involved.

### **8.3 Collecting information for the Crown case**

As indicated, the surveyors were also under instructions to submit reports on the natural features of the Waimarino block, natural resources and the prospects for roading and other features necessary for settlement over the whole block. On 17 January 1886, Thorpe sent in a preliminary report on the natural features and resources of the Waimarino block as discovered during survey work for the ‘proper’ plan.<sup>1366</sup> This report included a preliminary assessment of the country for settlement, as far as Thorpe could identify from the very limited field work undertaken. He noted that much of the country was very rugged and covered in bush with just

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<sup>1364</sup> E B Dickson to Chief Surveyor Wellington, 1 February 1887, LS-W1, 2351, ANZ

<sup>1365</sup> Hamer, p 18

<sup>1366</sup> Preliminary report by James Thorpe, 17 January 1887, LS-W 1, 2351, ANZ

a relatively few plains and flat valley areas, including the Waimarino Plains. He reported that even along the Whanganui River there were few flats big enough to suit the establishment of special settlements. He regarded much of the soil as fair quality, judging it, as was common at the time, by the type of forest or bush cover it grew. He reported that the soils of the Waimarino Plains were light and sandy and seemed 'poor', but he noted Maori cultivations on them, including potatoes. He also reported that there were few good sites for roads, although it was possible a road could be taken up the Retaruke Valley to meet the railway and the other likely site was along the Manganui a te Ao valley to the Waimarino Plain, near the route of the present Maori track. He had found evidence of some coal near Retaruke, but a more accurate idea of resources required more detailed survey work. Nevertheless, overall he thought the country was 'valuable' and worthy of settler attention. He noted Maori in the area were generally not obstructive to trig work, but 'they refused to accompany me as guides to give the names of places etc. - although I repeatedly offered ordinary wages for the time they might be so engaged'. As a result, he had been 'unable' to show many Native names on the plan.<sup>1367</sup>

The lack of obstruction to trig work suggests that local communities were under the impression that, as they had been assured previously, this work was for general topographical information and not for Land Court requirements or purchasing. In contrast, local communities were very careful not to give away place names that might be used for such purposes. In fact, their attempts to be careful over this were irrelevant. Under pressure from Butler and the Government, and in spite of assurances, trig surveys were clearly used as a major means of completing the survey work for the interior and northern part of the Waimarino block in particular. This was to a large scale, with little detailed field work and very little input or understanding from local communities, including over important place names.

In the meantime, land purchase officials also appear to have sought further information that would ensure Government interests were protected in the award hearing and that might help confirm Butler's ideas of where Crown and non-seller awards should be located. It was in the Crown interest in the hearing to claim that the sold interests contained the most valuable land and resources, such as timber, while remaining non-seller interests were largely limited to the least valuable areas. The information from the surveyors working on the Waimarino survey

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<sup>1367</sup> Thorpe preliminary report 17 January 1887, LS-W 1, 2351, ANZ

plan had been lacking in detail, especially for the interior. The Government also wanted to take account of the requirements of the public works office for railway and anticipated roading purposes for opening the block for settlement. John Rochfort, the surveyor who had explored the central route and who was now engineer in charge of the public works office, Ohakune, appears to have been contacted and he replied on 28 February 1887, shortly before the partition case for Waimarino came before the Court.

Rochfort included a sketch plan with his letter, (SO 2351/66) map 6 of this report. This appears to have been based on a survey office tracing, which he then annotated with details gained from his work on the railway route. This included details of known villages and natural features, along with comments on the suitability of land for settlement.<sup>1368</sup>

In his accompanying letter, Rochfort described the quality of the land the railway was expected to pass through in the Waimarino block. He considered the land from the Makotuku Stream at the southern end of the block to the Mangaturuturu stream as generally poor, for both land and timber. Once the Mangaturuturu was crossed there was a general improvement in quality going north and improving more once the Manganui a te Ao was crossed. The land then became more open about a mile north of the Makatoto stream and the land was poor, although the bush surrounding it was 'good' and the timber of 'fair' quality although stunted from the high elevation. He reported that the bush included rimu and pines, manawao and totara.<sup>1369</sup>

The more open area he described was the 'Waimarino Plains', the district traditionally known as 'Waimarino' by Maori of the area. Rochfort went on to mention Ngatokorua, Peehi Turoa's village on the Waimarino plains and this is also shown on his sketch plan. Rochfort recommended that a reserve be made near the village for a township that he expected would become important (presumably as a result of the railway). He requested that 20 acres be included in this for public works requirements. He thought the railway might probably go east of Ngatokorua and then follow the valley towards Roto Aira for about a mile before crossing to the high terrace 'north of the Native's village'.<sup>1370</sup> The sketch plan actually shows the railway line west of the village, presumably a later amendment.

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<sup>1368</sup> Sketch plan SO 2351/66, 'Plan of Waimarino Block' 1886-87, MA1, 1924/202 v1 ANZ

<sup>1369</sup> Rochfort letter to Lewis 28 February 1887 NLP 87/89. MA1, 1924/202 v1 ANZ

<sup>1370</sup> Rochfort letter to Lewis 28 February 1887 NLP 87/89. MA1, 1924/202 v1 ANZ

Rochfort also described the land and timber further north, noting two trial railway lines were being surveyed where the line re-entered the northern forest. He described the land and timber as remaining fairly good to near Otapouri. He recommended another reserve near there extending as far as the Whanganui River, presumably to protect the valuable forest on it. He noted the land in his proposed reserve contained a larger amount of totara, with large tall trees. He believed the valuable totara on this block alone 'will probably repay the total cost of the purchase from the Natives'. Rochfort also reminded the office that stations were required along the railway line 'every five miles on an average'. This required areas for housing engineers, paddocks and rights of grazing and cutting timber for bridges, where these were required.<sup>1371</sup>

Rochfort's comments again tend to confirm the relatively cheap price officials believed the Waimarino block was being acquired for. Presuming Rochfort was basing his comments on the expected cost to the government for acquiring the whole Waimarino block, of an average of 3/6 per acre, his comments that the northern totara forest on the block was worth more than this alone, indicates the Government was knowingly paying a very low amount to the owners. The recommendations for reserves and for providing for railway and other purposes also tends to confirm that the Government was intending to seek awards of land that would ensure it received the greatest benefit expected to flow from railway development. This raises issues of government good faith over Ballance's promises that Maori would be enabled to share fully in such benefits, if they cooperated with government policies.

The reports from Rochfort and Thorpe were compiled well after purchasing in Waimarino began, although they would be useful in confirming where Butler might allocate reserves so as not to endanger Crown interests. It seems that the Government had decided to take the risk to begin purchasing as soon as possible, based on sketchy information available at the time, such as the already existing knowledge of the totara forest, as well as an assumption that the railway would inevitably raise the value of adjoining land. The Government may well have been acting quickly to try and prevent private speculators tying up the land and preventing managed settlement, although the Government had significant legislative measures to protect against this. It also seems the Government was willing to act rapidly in order to ensure it gained most from any expected benefits, even at the cost of marginalising Maori and preventing them from participating adequately or fairly in expected benefits. If Waimarino

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<sup>1371</sup> Rochfort letter to Lewis 28 February 1887 NLP 87/89. MA1, 1924/202 v1 ANZ

Maori were to participate in any of the expected benefits at all, the location and quality of reserves was now critical.

#### **8.4 Applications for subdivision of Waimarino**

Having gazetted the Native Minister's application for partition of the claimed Crown interest in Waimarino, the Government also seems to have finally felt obliged to notify the original applications for subdivision or partition made by Waimarino owners that had been made in March and April 1886, shortly after the ownership award was made. The Government officially notified these applications just ten days after the notice of the Crown application, by gazette of 30 December 1886, although the actual date of the notice was the same as the date of the notice of the Crown application, 20 December 1887.<sup>1372</sup>

As noted in earlier chapters, these owner applications had been made by Hoani Paiaka and 84 others (application 86/312), Matiaha Hurutara and others (application 86/313), 'Aperira' (for Waimarino including Owhango) (application 86/347), Tohiora and 6 others (application 86/362), Kote te Terepaenga and 53 others (application 86/394) and Hipirini Pihopa, Huriwaka Rawiri and others (application 86/779).<sup>1373</sup> While it had taken four months for the Crown application to be notified, these applicants had been waiting almost twelve months, in spite of their many requests to the government to allow their applications to be heard before any dealing in land went ahead.

By this time, it seems there was considerable disillusionment among owners over the way the Waimarino purchase was being conducted and, while they found they could not withdraw their signatures from the deed, groups of owners do appear to have decided to act together to seek a more reasonable, negotiated approach with the Government. As part of this, it seems that in February 1887, before the Court hearing for Waimarino applications had begun, all the owner applicants went to the Land Court and asked for their applications for subdivision to be dismissed. This was apparently an attempt to have all partition applications, including from the Crown, abandoned. The first of these applications came before the Land Court on 10 February 1887. This was the application for Hoani Paiaka and 84 others (86/312).<sup>1374</sup> Hoani Paiaka explained to the Court that they had all assembled that morning to hear the Court

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<sup>1372</sup> *NZ Gazette*, 1886, vol 2, no 69, of 30 December 1886, notice dated 20 December 1886, p 1725.

<sup>1373</sup> *NZ Gazette*, 1886, vol 2, no 69, of 30 December 1886, notice dated 20 December 1886, p 1725

<sup>1374</sup> MLC-Whanganui MB 12 p 289

dismiss the application in this case and asked that the claim be struck off. There were no objections and the Court dismissed the application as requested.<sup>1375</sup> The Land Court then indicated that it would dismiss the application cases as requested, but at the same time it warned that it need to be understood that the Crown also had its own claim notified and in all probability the case would be proceeded with on that claim.<sup>1376</sup> The Court then went on to dismiss the remaining five owner applications as requested.<sup>1377</sup>

The owners followed this Court action with a letter to the Government two days later, dated 12 February 1887. In translation, this letter explained that they had withdrawn all their applications, leaving Waimarino ‘to be now dealt with in a clear manner’. It was explained that this course had been adopted, not to be antagonistic or objectionable, but because ‘the whole of the people feel convinced that this is the proper course’. The letter asked Ballance to come and see the people who were all gathered in town for the hearing so that both races, Maori and Pakeha might thoroughly understand ‘for although there are crooked parts in the affair we still look to you to straighten them’. The letter was signed by Paiaka Te Pamonga, Matiaha Hurutara, Te Pikiotuku, Ngatai Te Mamaku and others.<sup>1378</sup> A file note by Sheridan indicates that a reply, sent on 21 February, indicated that Ballance was very busy but would come to Wanganui, as requested, as soon as possible.<sup>1379</sup>

No evidence has been found of Ballance’s visit to discuss this issue before the hearing. A newspaper report has been found indicating that Ballance did arrive on a visit to Wanganui on 1 April 1887, after the hearing had begun and the Land Court had declared the Crown case open.<sup>1380</sup> The reports indicate that Ballance met with the local harbour board and with his constituents, but no mention is made of any meetings with Whanganui Maori.<sup>1381</sup> It is possible that private, unreported meetings may have been held that Ballance did not want publicly mentioned. It also seems that government officials may have held meetings in the district, in around mid-January 1887.<sup>1382</sup> Unfortunately no official records survive of any meetings held. It does seem clear, that even if Ballance did agree to some talks, he was not about to engage in the kind of negotiations sought by the chiefs. Nor does he seem to have any intention of

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<sup>1375</sup> MLC-Whanganui MB 12 p 289

<sup>1376</sup> MLC-Whanganui MB 12 p 290

<sup>1377</sup> MLC-Whanganui MB 12 pp 290-291

<sup>1378</sup> Letter 12 February 1887 to Ballance and Vogel, NLP 87/60 MA1, 1924/202 v 1 ANZ

<sup>1379</sup> File note, NLP 87/60 MA1, 1924/202 v 1 ANZ

<sup>1380</sup> *Wanganui Herald*, 2 April 1887 p 2

<sup>1381</sup> *Wanganui Herald* 2, 6 April 1887, p 2

<sup>1382</sup> Letter 29 October 1887, NLP 87/341, 88/159, MA1, 1924/202 v1 ANZ

stopping the Court case. Ballance had asked Waimarino leaders to trust in his government and cooperate with Butler. He had also told the Whanganui people at the Aramoho hui that his government supported continued discussions over their concerns. However, now when the leadership was seriously concerned over Waimarino, it seems he was not inclined to seek a negotiated solution to Waimarino concerns.

### **8.5 The Native Land Court hearing into the Crown application, March-April 1887**

The Native Land Court hearing for the Crown application for partition of its claimed interest in Waimarino began on Wednesday, 30 March 1887. It continued until 6 April 1887, when the Court finished making its awards to the non-sellers and the Crown. The actual hearing of evidence took no more than 5 days with the Court decision delivered on 5 April. The case was heard by Chief Judge Macdonald, Judge Puckey and an assessor, Paraki Te Waru. The Court interpreter was Frank Puckey and the Court clerk was H Jackson.<sup>1383</sup> On 5 and 6 April, the Court made awards to the non-sellers and the Crown. When the hearing for the Crown award in Waimarino finished, Chief Judge Macdonald also ceased presiding at the Court sitting.<sup>1384</sup> This indicates that the Court and the Government regarded this hearing as being particularly important. As well as the official Land Court minutes for this hearing, land purchase officials also had their own people keep a record and these notes have survived on file.<sup>1385</sup> They highlight just how brief some of the Court minutes could be and at times, provide a slightly different account of some of the evidence presented.

The Crown case was conducted by Butler (now described as a land purchase officer in the Court minutes). On the opening day of the hearing, 30 March 1887, Butler told the Court that there had been 1006 owners in Waimarino originally, of which 85 names were duplicates. Of these, 78 had sold their interests and 7 had not. Butler therefore claimed that the Crown had acquired all the interests in the block except for 101. He then submitted a list of the 101 non-sellers to the Court, arranged according to their hapu.<sup>1386</sup> Butler also produced the ‘deeds of sale’ and asked the Court to award to the Crown the shares of all those who had sold, ‘leaving the non-sellers to prove the extent of their claims’.<sup>1387</sup>

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<sup>1383</sup> MLC-Whanganui MB 13 p 122

<sup>1384</sup> MLC-Whanganui MB 13 p 158

<sup>1385</sup> Hand written hearing notes, MA1, 1924/202 v1 ANZ

<sup>1386</sup> MLC-Whanganui MB 13 pp 123-4

<sup>1387</sup> MLC-Whanganui MB 13 p 124

Topia Turoa told the Court there was uncertainty about where the interests of those Butler claimed had sold were actually located on the ground. He asked the Court for time to allow the people to discuss the matter outside of Court with Mr Butler.<sup>1388</sup> Butler, however, told the Court he had opened a prima facie case for the Crown and it should be up to non-sellers to prove their claim. The Court accepted the purchase deeds as evidence and declared the case opened.<sup>1389</sup> The Court then adjourned until the following day 31 March 1886.

The next day, 31 March 1887, the Waimarino case began with Hori Pukehika asking the Court to adjourn the case. He claimed the Waimarino block was in a different position to other lands and he asked the Court to seriously consider those who had suffered by the way the block had been treated with. He told the Court that he and others had asked Judge O'Brien to reopen the case so that those 'who have been left out of the land might be put in'. Judge O'Brien had declined, saying they had to speak to the Chief Judge.<sup>1390</sup>

The Court minutes record that the Chief Judge replied that an application for rehearing had been made for Waimarino on the ground of the applicants being absent. However, he found that as the claim had been duly gazetted, notices 'no doubt' sent to all and 'after all the requirements of the law had been fulfilled' the case had been proceeded with. This Court now had no other action in respect of that matter 'but to accept the work of the Court upon the original investigation'.<sup>1391</sup> As described earlier in this report, a number of applications for rehearing of the ownership of Waimarino had been made to the Land Court. These had included one from Te Heuheu Tukino, dismissed by notice dated 6 October 1886, and another by Neta te Wheoro and others concerning a rehearing of the Mangapapa part of the block, dismissed by notice dated 20 October 1886.<sup>1392</sup> A number of other applications for rehearing, from Te Rangihuatau and another, Matiaha Hurutara and Ngatai Te Mamaku and others had been more recently dismissed by Chief Judge Macdonald by notice of 1 February 1887.<sup>1393</sup> The Chief Judge may have been referring to these more recently dismissed applications.

Topia Turoa then told the Court that they had met with Butler after the Court adjourned and Topia had given the boundaries of the land the Crown could have, but Butler would not agree

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<sup>1388</sup> MLC-Whanganui MB 13 p 124

<sup>1389</sup> MLC-Whanganui MB 13 p 125

<sup>1390</sup> MLC-Whanganui MB 13 p 125

<sup>1391</sup> MLC-Whanganui MB 13 p 126

<sup>1392</sup> *NZ Gazette*, no 54, 14 October 1886, p 1317; *NZ Gazette* no 57 4 November 1886, p 1442

<sup>1393</sup> *NZ Gazette*, 1887, no 9, 10 February 1887, notice dated 1 February 1887

and therefore ‘nothing was finished’.<sup>1394</sup> This seems to have been an indication of an attempt to engage the Government in constructive negotiation to reach a more reasonable agreement over how part of the block might be set aside for the Crown. By this time, there appears to have been a widespread belief among communities of the area that the original title investigation and subsequent purchase had significantly failed to meet expectations of partnership, good faith and cooperation promised by Ballance. It was also believed that the tactics employed had not been ‘straight’ and that the whole matter required discussion and negotiation to achieve a more equitable resolution that provided for both Crown and Maori.

The Court, however, was not required to consider the wider context of events outside of the evidence presented to it. The notes of the partition hearing indicate that Topia had also asked the Court if he could explain what had taken place between Butler and himself over the boundaries. The Court, however, had told him that he had to tell that in his evidence and it would now call for evidence from non-sellers.<sup>1395</sup> The Court minutes record that the Court proceeded to call the non-sellers to give evidence about their interests on the ground, ‘to prove their claim’ as Butler had put it. It seems that most non-sellers had decided not to cooperate over the hearing by this time. Only three were found to be present in Court, while one other was apparently sick at Putiki.<sup>1396</sup> The view of most non-sellers appears to have been represented by the first of the non-sellers present, Turihira Kereti, who told the Court he was unable to point out his hapu boundaries and nor could he call any witnesses as ‘all my people have returned home to this land’.<sup>1397</sup> Another person present, Wiripine Atira, claimed to be an owner who had not sold, but whose name was not included in Butler’s list of non-sellers.<sup>1398</sup>

It seems that many of the owners in the main part of Waimarino, having failed to stop the hearing had now decided not to participate in it, hoping this would prevent the Court reaching a decision. However, this approach was not followed by some of the chiefs of the northern or Tuhua part of the block. As previously noted, they had consistently opposed having the Waimarino block boundaries penetrate into Rohe Potae lands and had sought to have the ‘proper’ survey boundaries reflect that. Many of them had not been included as owners in the block, because they did not believe Waimarino should have included their Tuhua lands and

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<sup>1394</sup> MLC-Whanganui MB 13 p 126

<sup>1395</sup> notes of partition hearing, MA1, 1924/202 v1 p 176 ANZ

<sup>1396</sup> MLC-Whanganui MB 13 p 126

<sup>1397</sup> MLC-Whanganui MB 13 p 126

<sup>1398</sup> MLC-Whanganui MB 13 p 127

they did not believe they had agreed to have a Land Court operate to determine their interests there. However, some of them also had interests extending into Waimarino and some had been included as Waimarino owners. They appear to have been willing to take this opportunity to clearly state their understandings of their interests in Court.

## 8.6 The non-seller cases

The first of the non-seller cases, as described, had refused to give evidence as ‘all my people have returned home to this land’.<sup>1399</sup> The second witness, Taituha Te Uhi was one of the northern chiefs who apparently decided to give evidence. He told the Court he was willing to point out his claim on the land. He was listed as a Waimarino owner (owner 751) and a non-seller (non-seller number 91 on the list Butler submitted to the Court). He was also placed by Butler under the Ngati Hinewai hapu. The Court minutes, therefore, record Taituha’s evidence under the heading ‘Ngati Hinewai’.<sup>1400</sup> However, when he gave evidence, Taituha showed his relative inexperience with the Court requirement to prove exclusive and separate hapu interests in the block. Instead, he gave evidence of his interests based on his own connections to land where he acknowledged a number of hapu had interests, apparently reflecting a much more traditional view of overlapping interests. He told the Court that he was an owner in Waimarino and that he lived at Tuhua. He gave his hapu as Ngati Hauaroa and Ngati Hinewai and then went on to give his claim through Ngati Hinewai. He gave the boundaries of his Ngati Hinewai claim as beginning at Ngatokorua (the village on the plains) then to Waipapa and then to the boundary of Arimatia which he also claimed to own. He gave another boundary beginning at the Hikumutu stream, following that stream in a southerly direction to Opouretehou, then to Manganui to Autawa, east to Raurimu, then to the Whakapapa stream and following that stream to the Whanganui River. The boundary then followed that river to the beginning again. He told the Court that the land within that boundary belonged to Ngati Hinewai, Ngati Reremai, and Ngati Hauaroa.<sup>1401</sup>

Taituha also told the Court that he had ancestral rights outside those boundaries and a claim at the Retaruke stream. He told the Court he would call a witness to give the boundaries of that part. He also claimed at Whatangata, and could call a witness about that, and claimed at Mangapurua although he could not give the boundaries there. He said he did not claim

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<sup>1399</sup> MLC-Whanganui MB 13 p 126

<sup>1400</sup> MLC-Whanganui MB 13 p 127

<sup>1401</sup> MLC-Whanganui MB 13 p 128

anywhere else but in those areas. He also told the Court that two other chiefs, Tanoa Te Uhi and Tuao, had identical claims with him. Their claims were through ancestry and he also claimed they had lived on all those portions mentioned, as had their fathers and grandfathers.<sup>1402</sup>

Cross-examined by Butler for the Crown, Taituha Te Uhi said he knew Piripi Tuaia who was a relative of his. He agreed Tuaia also had a claim on certain portions he had claimed. He explained that Tuaia had a claim at Taumarunui but not towards Mangapapa. He told the Court that Wi Manuaute had a claim at Te Maire outside the boundaries he had given. Timoti Tohoponapaki also had a claim there. He denied that either Tamapiri Tapaka or Kahu Karewao had any claim on his portion. He agreed with Butler that his children were owners in Waimarino and he had sold their interests to the Crown. He did not know Matuahū.<sup>1403</sup>

Te Rangipuhia gave evidence to the Court as a witness for Taituha Te Uhi. He seems to have been one of the witnesses Taituha said he could provide for his claims to various parts of the block. Te Rangipuhia told the Court he lived at Whakahoro, up the Whanganui River and could give evidence on Taituha Te Uhi's land at Retaruke. He gave the boundaries as beginning at Tokahura on the Whanganui River, then to Wharekoretawa, to Aruheroa a hill, then to the Kaiwhakaoka stream. From there it went to Titohi atua Rere, to Maruera, then to Pukeatua, Kairinga, Tauhuroa, Pohoari, Tikapu, Popohia, Tarata, Te Nihiowhati, Te Tamatuki, Kohuturoa, Kaitieke and on to the boundary of Aotea at Koio. From there, the boundary went to Pourere, a hill, to the Retaruke stream and followed that stream to Paparukuhia. It left the stream and went to Mangapuwhero to Arupe, Whakatangikoarao, Huakainga, Mangatapu, Tara o te Marama then to the Whanganui River. It followed that river to Whakahoro and to the beginning.

Te Rangipuhia told the Court that the Ngati Hauaroa and Ngati Reremai hapu 'alone own these lands' and Ngati Hinewai had no claim on that part. He did not know the boundary of the land called Whatangata and he could not give the boundaries of the portion called Mangapurua. He said that Taituka Te Uhi, Tanoa and Tuao had no houses at Whatangata. He also said 'we are not living at Mangaopurua at present, it was a stream. He told the Court that Ngati Haua owned Whatangata and Mangapurua.<sup>1404</sup>

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<sup>1402</sup> MLC-Whanganui MB 13 pp 127-8

<sup>1403</sup> MLC-Whanganui MB 13 pp 128-9

<sup>1404</sup> MLC-Whanganui MB 13 pp 129-130

Te Rangipuhia further told the Court that the ancestor for Ngati Haua on the land was Tamahina and another was Rangimarukai. Tamahina was a descendant of Tamakana but he could not trace descent on that line. Rangimarukai was also a descendant of Tamakana and he gave the descent along that line. He told the Court that Taituha Te Uhi, Tanoa and Tuao had places of residence at Te Ohi and at Hinaupungarehu, Waikoriri, Te Uaroa, Paparauponga, and Paparukuhia, all on the Waimarino block. He said the three had houses at all those places but there were no houses now at Paparauponga and Paparukuhia although their ancestors had houses there. He did not know the names of Taituha's settlements on the more northern part of the block.

When cross-examined by Butler, Rangipuhia told the Court that a great many others, over 100 of them, had claims to the places named as belonging to Taituha, Tanoa and Tuao and they all had equal claims. He then said others had larger claims in these places than the three. Cross-examined by the assessor, he said he had larger claims, as did Ngatai. Te Haia Te Whetu also owned largely in the block. In reply to questions from Taituha, he agreed that Te Ohi was a settlement of his, but he had not heard of his residence at Tawararo.<sup>1405</sup>

The apparently contradictory evidence may have been because Butler was referring to recognised Court determined owners for Waimarino, who theoretically all had equal shares, while Te Rangipuhia was also referring to acknowledged customary interests. Some of these, such as Ngatai had not been recognised as owners in the Waimarino block and they appear to have believed as noted, that their lands should not be in the block. Others, such as Taituha, appear to have been included in the lists because of other lands they claimed in the block. It seems interesting that Taituha only provided a witness for his interests in the Retaruke part of Waimarino, but not for the more northern part, which many of these chiefs believed should not be properly included in the block. The evidence provided shows the inexperience of Taituha and Te Rangipuhia in explaining matters according to their understanding, rather than stating exclusive claims favoured by the Court.

The next witness was Hakiaha Tawhiao, who was recorded in the Court minutes as being sworn as a witness for descent from Taituha. The Court minutes record a very short descent line from Tamahana to Tamahina differing from the earlier one given. However, in cross-examination by Butler, the subject changed to Hakiaha's view of the various claims to the

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<sup>1405</sup> MLC-Whanganui MB 13 pp 130-131

block. In this respect, he appears to have been treated by Butler as a supporter of the Crown case. He told the Court, for instance, that Piripi Tuhaia had a large claim in the block. Through ancestry, he had a claim at Whakapapa, and to the land between there and Taumarunui. He also told the Court that Kahu 'Karewa', whose father was a chief, had a claim at Taumarunui and 'over the whole of that land'. Kahu's brother was Manuaute. Hakiaha also said that Timoti Tohoaponaki had a claim. Topine te Mamaku also had a large claim on the land described by Taituha and his mana was above all those owned in the northern part of the block around Retaruke.<sup>1406</sup> All those named, were owners with interests in the northern part of the block, who had sold their interests to Butler. Presumably Butler was seeking to establish that those with the greater interests there had sold and therefore the Crown had acquired the greater interest.

Piripi Tuhaia (owner 938) seems to have been the same owner that Taituha Te Uhi had acknowledged as a relative in his evidence. Taituha Te Uhi had agreed that Tuhaia had interests in some of the land he claimed around Taumarunui but denied this also extended to Mangapapa. He had also acknowledged that Wi Manuaute and Timoti Tohoaponaki had interests in the area, but outside the boundaries he had given. He appears to have been one of the Tuhua chiefs who had originally objected to northern Tuhua lands being included in the Waimarino block boundaries, as previously described.<sup>1407</sup> He seems to have resisted selling until not long before the partition hearing. Butler's records show that he had sold his interest on 14 January 1887 for the substantial sum of £150.<sup>1408</sup> Wi Te Manuaute (no 939) is also recorded as selling his interest on the same day.<sup>1409</sup> Why they changed their minds at this late stage is not known. It is also not clear whether they believed they were only selling those parts of their interests outside their Rohe Potae area and within what they thought was the real Waimarino block. One possible clue is Tuhaia's later insistence, as already described regarding Butler's arrangements, that he had been promised a substantial additional sum of £1000 and a pension. He believed this promise had been made at or around the time of a meeting with officials at Taumarunui on 16 January 1887.<sup>1410</sup> This was also around the time

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<sup>1406</sup> MLC-Whanganui MB 13 p 132

<sup>1407</sup> For example, as a signatory to a letter of 16 April 1886, NLP 86/151, MA1, 1924/202 v1 ANZ

<sup>1408</sup> MA-MLP 7/6 owner no 938, confirmed by official notes. NLP 87/341, MA1, 1924/202 v1 ANZ

<sup>1409</sup> MA-MLP 7/6 owner no 939, ANZ

<sup>1410</sup> Letter 29 October 1887, NLP 87/341, 88/159, MA1, 1924/202 v1 ANZ

Butler recorded buying his interest. However, officials later denied they had agreed to anything other than the payment made to him for his interest in the block.<sup>1411</sup>

The Court minutes record that the Court considered the case for Taituha Te Uhi, Tanoa Te Uhi and Tuao now closed, although neither of the latter two had actually given any evidence.<sup>1412</sup> Taituha had probably also harmed his case in the eyes of the Court by acknowledging interests other than his own in some of the lands he claimed. It is not recorded why his other witnesses for other parts of the block were not called.

The next case was for Tarewa Heremaia, the third of the non-sellers present in Court. She immediately asked for an adjournment, which the Court refused. She told the Court that Paori Kuramate would conduct her case. The witness Hakiha Tawhiao, who was already on oath, gave evidence for her. He told the Court he knew her and her proper hapu was Ngati Haua. He explained she claimed to lands described by Te Rangipuhia and her claim was exactly the same and ‘quite as great as Taituha’s’.<sup>1413</sup>

This finished the day’s hearing and the non-seller cases were continued the next day, 1 April 1887. The fourth non-seller, Mata Ihaka, who had been described as being ill, was then called by the Court. Her husband told the Court that she was lying sick at Putiki and that he could not point out her claims or boundaries on the map of Waimarino, and he did not know anyone present at Court who could.<sup>1414</sup> Paori Kuramate then appeared again for Tarewa Heremaia’s case, but told the Court he could not call any witnesses ‘as all her old people have gone home’ and there was no one left in Court to state her case clearly.<sup>1415</sup> The Court then asked if there were any more non-sellers present in Court and was told there were none.<sup>1416</sup>

It seems from this that most non-sellers had decided to refuse to give evidence in Court in an effort to circumvent the Crown case. This was a very risky tactic as had been shown with the original title hearing. However, presumably it was hoped that if the Court could not identify non-seller land, then nor could it identify land to be awarded to the Crown. Possibly it was also hoped that this refusal might encourage the Crown to negotiate more reasonably out of Court. The threat of this may have been one reason why the Chief Judge decided to sit at this

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<sup>1411</sup> NLP 88/159, MA1, 1924/202 v1 ANZ

<sup>1412</sup> MLC-Whanganui MB 13 p 132

<sup>1413</sup> MLC-Whanganui MB 13 p 132

<sup>1414</sup> MLC-Whanganui MB 13 p 133

<sup>1415</sup> MLC-Whanganui MB 13 p 133

<sup>1416</sup> MLC-Whanganui MB 13 p 133

hearing. However, it seems that Butler (and the Court) were determined to go ahead with the Crown case regardless.

### **8.7 Arrangements over claimed errors in lists**

While the hearing was continuing, Butler seems to have continued working on his lists of sellers and non-sellers and arrangements over claimed errors. A memo in the Court minutes of 1 April, just before the non-seller cases continued, notes that Butler had ‘come to an arrangement’ with Wiripene Aritia who had claimed to be an owner who had not sold but who had been omitted from Butler’s list. However, the Court minutes stop mid-sentence on what this arrangement actually was.<sup>1417</sup> The agreement itself is therefore not recorded in the minutes. However, Butler’s own records indicate that he agreed she had been a victim of ‘personation’ and he had agreed to make a subsequent payment to her of £60 on 1 April 1887.<sup>1418</sup> By this stage therefore, as far as Butler was concerned she had already become a seller.

### **8.8 The Crown case**

Butler was then called on to present the Crown case for Waimarino. Butler began by calling Te Rangihuatau as a witness. Cross-examined by Butler, he told the Court that he was a member of Ngati Maringi and his hapu had a large claim on the Waimarino block. He explained that the principal members of the hapu were Te Ori, Matuahu, and Te Kuru. Te Rangihuatau claimed he was related to Te Kuru who was younger than him, but more influential as ‘I have given him my mana’. He said Matuahu and Te Piki were in the same position. Te Rangihuatau gave the boundaries of Ngati Maringi land as beginning at Waipapa (he indicated this was shown on the plan before the Court as no 1 in red pencil) then to Whakapakirangi (shown as ‘no 2’ in red pencil). From Whakapakirangi, the boundary went to Matahiwi following the Hiumutu stream on to Kopanga and then to Porere and then to the beginning. The pencil markings indicated are not evident on the present plan ML 776 and Te Rangihuatau may well have been referring to a separate tracing.

Te Rangihuatau told the Court that Ngati Maringi might well have other lands in the block but he could not describe them. He also knew the names of those lands but could not give the

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<sup>1417</sup> MLC-Whanganui MB 13 p 133

<sup>1418</sup> MA-MLP 7/6 owner no 177 ANZ

boundaries. The names he knew of, or had heard of, were Waitea at Ohonga on the Waimarino block. This was the only name he had heard of.<sup>1419</sup> Te Rangihuatau also told the Court that he had an ancestral right at ‘Waimarino proper’ under Tamahana. He agreed that he had told Butler and Stevens that he was the principal man there. He agreed that Topia Turoa also had a claim there. In response to questions from the Chief Judge, he said that he had told Butler and Stevens he was the principal man there because he believed that Butler was paying money to men there, as though they were chiefs. He was disgusted by this and said he was the principal man. He claimed ‘that statement was and is correct’. He claimed this was before money was paid to him. He agreed that Butler had told him what he was to be paid for his interest.<sup>1420</sup>

In reply to Butler, Te Rangihuatau stated that Tautahi Wiremu Pakau was of Ngati Maringi and was interested from Waioa to Otaupouri and at ‘Waimarino proper’. He claimed that Pakau had equal rights with Topia at Ohonga. He also said that Hohepa Te Huri was a member of that hapu and interested in the lands described. Te Karahi te Panikena belonged to the same hapu and had the [same?] claim as Topia. Also Tukaiaora, Pikikotuku, Paurini te Huotewaka, Hikaka and Rangihuatau. He claimed all these people had similar interests as Topia.<sup>1421</sup> According to later sketch maps, Otaupouri and Ohongo were clearings in the large totara forest in the northeastern part of Waimarino.<sup>1422</sup>

Judge Puckey then appears to have asked Rangihuatau to explain his understanding of all the other hapu of the area and where they were located. In response, Te Rangihuatau referred to various hapu and what he knew about them. He began with Ngati Pare. He said they were interested in land at Otuhiwi, but he didn’t know the boundaries. He then said they used to live at ‘Otuiwi’, but no longer lived there and they were not living at ‘Waimarino proper’. He claimed he knew Ngati Hinewai, but denied they had any interests in the Waimarino block. He told Puckey that Ngati Kahukurapango were interested in the same lands as Ngati Maringi and had equal interests to them. Ngati Tamahuatahi claimed at Koroa and had no other claims in the block. He could not give their boundaries. He said the Ngati Hinekura boundaries went from Te Arawhata near Popotea, then to Pukutitio, Whareriki and on to Ngapukewhakatara then west to the head of the Puatawha stream. From there the boundary went to Ngapuketurua

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<sup>1419</sup> MLC-Whanganui MB 13 pp 134-5

<sup>1420</sup> MLC-Whanganui MB 13 p 135

<sup>1421</sup> MLC-Whanganui MB 13 p 135

<sup>1422</sup> Sketch plan of totara forest c 1898, LS1, 40348

then to the Whanganui River, to Tieke, and then to the beginning again. He explained that Tieke was a 'burying place'. Ngati Kuratangiwharau lands were at Poutahi outside the Waimarino block. He knew of no other lands belonging to them. Ngati Kahukurapane lands were at Ruaiwi and he could not give their boundaries.<sup>1423</sup>

Continuing to answer cross-examination from Puckey, Te Rangihuatau claimed that Ngati Matakaha lands were on the west side of the Waimarino block. Ngati Poumua lands were outside the block at Whatawhatarangi. They lived outside the block and had interests in lands at Otapouri in the northeast portion of the map. He claimed they had equal interests to Ngati Reremai. Ngati Tauangarore lands were at Mangatiti. Ngati Rangi, and Kaiorete Hemuera who belonged to them, had their settlement at Manganui a te Ao. They were interested in lands at Kinikini and Pukepote. Ngati Wairehu were interested in lands at Kinikini. He told Puckey they might have other lands, but he did not know of them. He said Ngati Atamera had lands at Wairau, but he did not know of any of their other lands. In response to later questioning, he said Ngati Atamira had interests in lands near Ruapehu. Ngati Tamakana lived at Te Kawakawa, Rangitaipa and at Koau. Ngati Tara lived at Pukepoto and Te Ruakaka.<sup>1424</sup>

In response to further questions from Puckey, Te Rangihuatau said that Ngati Ngaronoa had lands at Wairau, but he did not know where else they lived. Ngati Tukaiaora lived at Te Ruaiwi. He believed that Ngati Hinekohara had no claim or interest in the block. He said he knew Ngati Hinewai, but claimed the evidence given by Taituha was incorrect. He admitted the interests of Ngati Haua, but claimed 'we all have interests in their lands'. He said Ngati Tumanuka had interests in the same lands as Ngati Tukaiaora and Ngati Kahukurapane. He told Puckey that Ngati Waewae had no claims in the block and their lands were on the other side of Whakapapa. Ngati Kaweau lands were at Tauranga Pipiriki and Ngati Whatio lands were at Tuhua. Ngati Ruakopiro lands were at Ruaiwi. He stated that Tarewa Heremaia had a claim at Pakihuiti and she was interested in the same lands as Taituha Te Uhi. Ngati Kapakapa also had lands near Ruapehu and lived at 'Waimarino proper'. They had stock running there and Te Wao and Te Peehi had horses there.<sup>1425</sup> Cross-examined by the assessor, Te Rangihuatau stated that there were no hapu on the list whose claims extended from one end of the block to the other.<sup>1426</sup>

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<sup>1423</sup> MLC-Whanganui MB 13 pp 136-7

<sup>1424</sup> MLC-Whanganui MB 13 p 137

<sup>1425</sup> MLC-Whanganui MB 13 p 138

<sup>1426</sup> MLC-Whanganui MB 13 p 139

Te Rangihuatau also stated that Ngarori te Waitarorangi had a claim at ‘Waimarino proper’ and from Ohonga to Otapouri. Tamingaona, a relative of Ngarori, also had a claim there, as did Maari te Huri and Te Aitu Whakariki. He said all their claims were equal and the whole of Ngati Maringi had claims from Waimarino to Ohonga and on to Otapouri. Ngati Kahukurapango had the same, and Ngati Kahukurapane had claims at Ruaiwi. He explained that Ngati Kopakapa were not in the list as a hapu, but some of their people were in the list of owners. Winiata Te Kakahi had a claim in lands from Mangaturuturu to Manganui a te Ao, as did his wife who was Te Rangihuatau’s sister. She also had a claim at Waimarino proper. Peehi was living at Ngatokorua, and ‘we all have a claim there’. Ngati Poumua had a claim at Otapouri. However, Te Rangihuatau claimed that Te Kapiti, Hohepa Patumoana, Poriwhera, Te Wharepapa, Puketohe, and Hataraka had no claim there. Their claim was at Mangatiti. Te Rangihuatau stated that he wanted to explain further about Ngati Kahukuraponga, but the Court minutes simply note that he made ‘no fresh statement’.<sup>1427</sup>

The next witness for the Crown was Warahi Panikena. In answer to Butler, he stated that Ngati Maringi had a claim at ‘Waimarino proper’ with Matuahu as their chief. Their lands went as far as the junction of the Whakapapa and Whanganui streams. Matuahu was the principal owner. Ngati Kahukurapango were on the same lands, and also at Manganui a te Ao. The two hapu lived together. Warahi could not trace their boundaries on the map, but noted they had plantations at Owango and eel weirs at Otapouri.<sup>1428</sup>

The third Crown witness was Tutawa. He stated he belonged to Ngati Ngaronoa. He stated that their interests began at the mouth of the Manganui a te Ao River, then along to Paretea, to Maramarua a trig station, then to Horopapa, Paturua, Tamatuku, Retaruke, Oruhiroa Paparengarenga, a settlement named Aruheroa, Maungaroa, and to the Mangapurua stream. The boundary then followed that stream to the Whanganui River. He stated this land belonged to several hapu. He also claimed at Rangitaiapa but said he had no claim at ‘Waimarino proper’. He knew of a Ngati Maringi claim at Manganui a te Ao, but not a Ngati Kahukurapango claim there. His people had cultivations at Rangitaiapa, but outside the boundaries given by Topia. The hapu who had claims within the boundary he gave were Ngati Matakaha, Ngati Ngaronoa and he said some of Ngati Rangi, Ngati Atamira, Ngati Tamakana and Ngati Tara also owned the part he described.<sup>1429</sup>

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<sup>1427</sup> MLC-Whanganui MB 13 pp 139-40

<sup>1428</sup> MLC-Whanganui MB 13 p 140

<sup>1429</sup> MLC-Whanganui MB 13 p pp 140-141

The fourth Crown witness was Wiremu Kiriwehi Matutoro. He stated that he belonged to Ngati Wairehe, and that hapu owned land from Paturangi, along a ridge to Pokekawera then north to Te Ahu to Ngapukewhakatara then east to Rakakautangi, a hill. From there the boundary went to the mouth of the Whangaia stream to Manganui a te Ao the starting point. The claim also went through Marupehu across the Manganui a te Ao to Makino. He could not give the boundaries. Near the Orautoha stream Ngati Wairehe had a settlement, Whakapohi, and their mana extended to Ruapehu. Ohihenga was a cultivation and across the Mangaturuturu stream there was a settlement called Waitiri. Others were Ngatuaune, Oherua on the Waimarino plains and on to Hauhungatahi, which also belonged to his hapu. He claimed the evidence of Taituha Te Uhi was wrong, as Ngati Poumua had claims on Kakahi at the north of the block. The principal person of Ngati Poumua was Ruihi Topia. In answer to Judge Puckey, Kiriwehi stated that Ngati Wairehe all had equal rights in the land described.<sup>1430</sup> Topia Turoa was recorded as the final witness for the day for Butler. He stated that he did not know the lands of Ngati Tukaioira and that ‘they own the whole of this block’.<sup>1431</sup>

These witnesses were being asked to state their claims and in some cases it was their first chance to give evidence as the original title hearing had been so brief. Nevertheless, regardless of their own perceptions, most were sellers, and they were giving evidence by arrangement with Butler. Butler was seeking information and attempting to draw out evidence that was designed to effectively strengthen the Crown case that it had purchased extensively and in the most valuable parts of the block. By contrast he was seeking to discredit the evidence of non-sellers to show their claims were very limited or insignificant. It seems he was only partially successful at this stage. Much of his witness evidence seemed contradictory. There was some challenging of non-seller rights but there was also a great deal of uncertainty over actual boundaries and especially locating them on the map. Some witnesses, such as Topia Turoa, seemed distinctly reluctant. Many also, instead of claiming the sold interests were relatively large as might be expected, insisted that all interests were relatively equal. Te Rangihuatau had even managed to be quite critical of Butler’s tactics in the payments he made to owners, possibly undermining his case that he had purchased from the most influential people.

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<sup>1430</sup> MLC-Whanganui MB 13 pp 141-2

<sup>1431</sup> MLC-Whanganui MB 13 p 142

## 8.9 Further evidence from Te Rangihuatau

In a later report, Butler claimed that a large number of owners had entered into a ‘conspiracy’ to defraud the government by repudiating their own interests, which they had sold and magnifying those of others who had not sold. He claimed that this had been done at the instigation of Topia Turoa who had not only encouraged the witnesses to give false evidence but used ‘every means in his power to intimidate those who were inclined to speak the truth’. Butler claimed that at one point Topia had even assaulted Panikena Te Huri ‘who gave straightforward evidence’.<sup>1432</sup> This was presumably the second Crown witness, named Warahi Panikena in the Court minutes.

Butler also claimed that Te Rangihuatau had ‘at first’ been ‘led away’ by Topia, but eventually gave valuable assistance and induced others to do so as well. Butler reported, however, that Te Rangihuatau did eventually give important evidence for the Crown, without which ‘it is difficult to estimate the loss that might have been sustained by the Crown’.<sup>1433</sup> This appears to acknowledge just how seriously the government was taking the successful prosecution of this case, and its recognition of just how much damage the policy backed by Topia might have caused. It also highlights the bitterness now evident between Butler and Topia Turoa, a huge change from just a year earlier when Butler had relied on the influence and cooperation of Topia to make any headway at all with the Waimarino purchase.

It is not known how Butler managed to persuade Te Rangihuatau to desert Topia’s policy and return to supporting the Crown. It may have had something to do with competitiveness. In his evidence, Te Rangihuatau had claimed he was a principal man at Waimarino proper and that he and other chiefs had similar interests to Topia. Possibly Butler managed to exploit some rivalry between them. It is also possible that Butler may have been able to offer some other inducement to persuade Te Rangihuatau to assist the Crown. This may have included some inducement about Tieke where Te Rangihuatau was living at the time, as will be discussed further in the following chapter.

Butler also accused Topia of intimidation in his report and possibly to protect Te Rangihuatau from this, or to protect him from general criticism for the evidence he was to give, Butler

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<sup>1432</sup> Butler report on purchase and allocation of reserves in Waimarino, 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

<sup>1433</sup> Butler report on purchase and allocation of reserves in Waimarino, 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

seems to have decided to have him sign a written statement or affidavit for some of his evidence. This was then submitted to the Court, without Te Rangihuatau having to present it in person. This appears to be why the Court hearing opened again at 10 am on Saturday 2 April, and then almost immediately adjourned again until the following Monday.<sup>1434</sup> The formal opening on the Saturday appears to have been only in order to receive the signed, written statutory declaration of Te Rangihuatau. This was referred to in the Court minutes of Monday 4 April. These minutes note that on the Monday, the Court read out the written statement made by Te Rangihuatau on the Saturday 2 April, respecting the interests of certain hapu in the Waimarino block. The Court noted this had been signed by Te Rangihuatau as being a true statement, after he had taken an oath as to its correctness. His signature was witnessed by Judge E W Puckey.<sup>1435</sup> This may have also been one way in which the Chief Judge's presence assisted the Crown case. He may have advised that this course of action was acceptable.

While the minutes record that Te Rangihuatau had signed the statement and sworn an oath that it was correct, they did not claim that he actually wrote the statement. There also appears to be no written record in the minutes of the statement. This was a most unusual proceeding for the Land Court, even while it may not have been illegal. As previously noted, the usual policy of Land Courts was to require witnesses to attend and give their evidence in person where it was also able to be subject to cross-examination. In this case, the Court minutes note that Taituha Te Uhi told the Court he had no questions to ask Te Rangihuatau regarding the statement the Court read out. Whether he realised that this was his only opportunity to effectively question the veracity of the statement is not clear.

As well as the written statutory declaration received on the Saturday by the Court, Te Rangihuatau also appears to have continued to briefly give some evidence in person. He did this when the hearing first resumed on Monday 4 April. In this evidence, he stated that Ngati Tamakana were largely interested at Manganui a te Ao. He claimed that Ngati Tukaiaora who had not sold their interests had no claim there. He claimed some lived at Taupo and some at Otaki. He also stated that Ngati Ruakopiri were interested at Manganui a te Ao and Waimarino. He claimed that Tarewa Heremaia was largely interested at Tataramoa and

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<sup>1434</sup> MLC-Whanganui MB 13 p 142

<sup>1435</sup> MLC-Whanganui MB 13 p 144

Tuhua.<sup>1436</sup> This was followed by the Court reading out his written statement as described and Taituha Te Uhi saying he had no questions.<sup>1437</sup>

As noted, there were a variety of reasons why Te Rangihuatau may have decided to give the evidence that was so critical to the Crown case. He may have been attempting to enhance or confirm what he saw as his customary influence and have it recognised by officials. He may also have felt he was countering the undue influence of Topia Turoa and others. He may also have been convinced that the best options for himself and his people lay with cooperating over the purchase rather than 'repudiating' it as Topia Turoa seems to have done. His early evidence suggests that while he may have supported 'Pakeha law' generally, he was not necessarily impressed by the tactics Butler was using. Whatever his reasons, it does seem that Butler was willing to encourage him to provide evidence that supported his case by further monetary payments. For example, Butler's expense records indicate that on 24 March 1887, just before the hearing, he paid £5 to Te Rangihuatau for expenses in attending the Court and regarding the Waimarino purchase.<sup>1438</sup> This was presumably in anticipation of Te Rangihuatau being an important Crown witness. On 4 April, just after Te Rangihuatau had submitted his statutory declaration, Butler recorded paying him another £5.<sup>1439</sup> This was presumably to encourage him to withdraw from Topia's policy and agree to give evidence more useful to the Crown. It may also have been a promised down payment should he provide the evidence in the declaration. On 19 April 1887, soon after the hearing finished, Butler paid Te Rangihuatau another £20 for services regarding the Waimarino purchase and attending the Native Land Court.<sup>1440</sup> Possibly this later payment was the final instalment dependent on his continuing support for the Crown case for the rest of the hearing. The total payment of £30 was a significant sum for just attending and presenting evidence at this time.

Even though it could be argued that the payment of this large sum may well have influenced the evidence he was giving, the Court appears to have treated Te Rangihuatau as a critical and reliable witness. Shortly after this last payment, on 20 April 1887, Te Rangihuatau wrote to Ballance and Lewis asking for £100 for food, because of the losses he had suffered while engaged with the Waimarino [hearing]. He explained that Butler had given him £20 but this had not been enough. He reminded them that he had always strenuously supported the

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<sup>1436</sup> MLC-Whanganui MB 13 p 144

<sup>1437</sup> MLC-Whanganui MB 13 p 144

<sup>1438</sup> MA-MLP 7/10 p 110 voucher 2753 ANZ

<sup>1439</sup> MA-MLP 7/10 p 116 voucher 116 ANZ

<sup>1440</sup> MA-MLP 7/10 p 118 voucher 146

‘Governor’s strong arm’. He may well have felt, as Butler was to confirm, that the Crown case might have been in great difficulty without him. However, Lewis recommended to the Native Minister that this request be refused and Ballance agreed.<sup>1441</sup> It seems that once the hearing was finished, land purchase officials were reluctant to acknowledge the extent of Te Rangihuatau’s assistance.

### **8.10 Butler’s evidence on sellers**

In the meantime, as the hearing continued on 4 April, Butler went on to state his evidence about the sellers in the Waimarino block. He submitted his list of sellers and read out the names. He had continued purchasing even during the hearing and now claimed that one more owner had sold. This meant that now he claimed 821 owners had sold, while 100 were non-sellers. The most recent purchase had apparently been that of the sick woman Mata Ihaka who had been described as being too ill to attend the Court. Butler had apparently felt no compunction about persuading the ill woman to part with her interest. His records show that he had purchased her interest that same day, 4 April 1887, for £100, well above the ‘standard’ share price.<sup>1442</sup> His expenses also show that he paid a Mrs Littlewood, for meals supplied to an ‘invalid Native’ at the Native Land Court sitting for the period 14 March to 17 April 1887 and that he charged this to the Waimarino purchase account.<sup>1443</sup>

### **8.11 The Court judgment on the Crown and non-seller awards**

The hearing resumed again on 5 April 1887, for the Court to deliver its judgment on the case.<sup>1444</sup> In its judgment, the Court noted that Butler, on behalf of the Crown, now claimed that 100 owners were non-sellers and a list of these had been read out. He had asked the Court to award to the Crown the interests of the persons who had sold. The Court also noted that Major Topia had asked for an adjournment to enable the parties to come to an arrangement, but this had been ‘fruitless’. When the Court had called the non-sellers, only three were present. It noted that Taituha Te Uhi had provided evidence as to his claim ‘but it was not of a satisfactory nature’.<sup>1445</sup> The Court gave no reasons why it had come to this conclusion. The

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<sup>1441</sup> Letter Te Rangihuatau to Ballance and Lewis 20 April 1887 and file notes 7 June 1887, NLP 87/135 MA1, 1924/202 v1 ANZ

<sup>1442</sup> MA-MLP 7/6 owner no 616, ANZ

<sup>1443</sup> MA-MLP 7/10 p 117 voucher 117 ANZ

<sup>1444</sup> MLC-Whanganui MB 13 pp 145-148

<sup>1445</sup> MLC-Whanganui MB 13 p 146

Court also noted that evidence was called on behalf of the non-seller Tarewa Heremaia and that when called, Tarihira gave no evidence.<sup>1446</sup>

The Court went on to note that the ‘Crown agent’ had then called witnesses to prove where the interests of the various hapu to which sellers and non-sellers belonged were situated. The Court found that these witnesses, ‘excepting Wiremu Kiriwehi’ were ‘very reluctant in giving reliable evidence’. The Court found that ‘indeed it soon became apparent to the Court that there was a widespread 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’, the Court noted that Te Rangihuatau had made a statutory declaration regarding the hapu boundaries, which was received by the Court and admitted as evidence.<sup>1447</sup>

The Court claimed that it had not been its misfortune 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’.<sup>1448</sup>

The Court when on to note that, after considering the questions submitted, it had decided that the interests of the non-sellers came to 41,000 acres and that the ‘residue’ of 417,500 acres ‘belongs to the Crown’.<sup>1449</sup> The Court went on to list the non-seller awards under various hapu names. The hapu listed were Ngati Pare (2250 acres), Ngati Maringi (2250 acres), Ngati Hinewai (30 acres), Ngati Kahukurapango (1350 acres), Ngati Tamahuatahi (300 acres), Ngati Hinekino (3640 acres), Ngati Kuratangiwharau (1350 acres), Ngati Kahukurapara (900 acres), Ngati Matakaha (4050 acres), Ngati Poumua (2400 acres), Ngati Tauengaarero (6750 acres), Ngati Te Wairehu (2250 acres), Ngati Atamira (1800 acres), Ngati Tamakana (2250 acres), Ngati Ngaroroa (900 acres), Ngati Tukaioa (3150 acres), Ngati Hinehowhara (30 acres), Ngati Hinewai no 2 (1350 acres), Ngati Tumanuka (1350 acres) and Ngati Ruakopiri (1500 acres).<sup>1450</sup>

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<sup>1446</sup> MLC-Whanganui MB 13 p 146

<sup>1447</sup> MLC-Whanganui MB 13 p 147

<sup>1448</sup> MLC-Whanganui MB 13 p 147

<sup>1449</sup> MLC-Whanganui MB 13 p 147

<sup>1450</sup> MLC-Whanganui MB 13 pp 147-8

The Court also included additionally, an award of 950 acres to two individual non-sellers, Tarewa Heremaia and Te Moana. No hapu name was listed in this case.<sup>1451</sup> The first of the individuals, Tarewa Heremaia, was one of the few non-sellers who had attended Court. However, as noted, she had been unable to state her case, all her old people having left.<sup>1452</sup> Presumably she was being rewarded for her attendance. It is not clear why Te Moana was also treated individually. It became evident later that he was the nephew of Tarewa and possibly it was because of this family connection. Possibly, as his name had been added to the ownership lists after Butler compiled his initial list, Butler may have also realised he had not previously provided for him. It is also possible that Butler deliberately made this reserve with just two owners in anticipation of being able to purchase it. At the time, he may well have anticipated including a minor would also help any sale, although legislative changes later undermined this.

The various acreages, as listed, came to a total of 40,800 acres, rather than the 41,000 acres the Court first noted. No explanation was given in the Court minutes as to how this total acreage for non-sellers was calculated, or how it was decided to allocate acreages between hapu. However, it seems highly likely the awards were based on Butler's advice and recommendations and his calculations of the number of sellers and non-sellers. There is also no record of how Butler decided on his recommendations. However, it is known that Butler initially claimed that the Crown had purchased 820 shares, while the non-sellers retained 101 shares.<sup>1453</sup> On this basis, Butler appears to have simply taken his original estimate of 400 acres per share (now out of date according to the latest survey plan) and multiplied this by the 101 non-sellers. This calculation gave an award of 40,400 acres for the non-sellers. Another individual share of 400 acres appears to have been added to this, possibly because as described, Butler had received another claim from an owner, Wiripene Aritia, during the hearing. This brought the total to 40,800 acres, the same acreage as the Court set out in its lists of hapu awards. Presumably, having disposed of the non-seller awards, the Court could then award the 'residue' of the block to the Crown.

There is also no record of how it was decided that this 'residue' came to 417,500 acres. What seems to have happened is that the Court again relied on Butler and his calculations. This time, although Butler had calculated the average acre per share for purchase purposes and the

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<sup>1451</sup> MLC-Whanganui MB 13 pp 147-8

<sup>1452</sup> MLC-Whanganui MB 13, p 133

<sup>1453</sup> MLC –Whanganui MB 13 p 124

amount the non-sellers should be awarded, by using the original estimated acreage of the block, he had calculated the 'residue' the Crown should have by subtracting the non-seller award from the new, larger, acreage on the new survey plan of 458,500 acres (458,500 – 41,000 = 417,500 acres). This selective use of the original and revised estimated acreages appears to have provided a significant advantage to the Crown. Effectively, it gained the whole surplus acreage now estimated for the block. In contrast, if the Court had followed the normal procedure of making the awards proportional according to the shares, using the new acreage, this would have given the Crown an award closer to 408,717 acres (at 821 shares) and the non-sellers closer to 49,783 acres.

The Court then indicated that on the next day (6 April 1887) it would 'allocate' the several awards now made. It also noted that 'it will be the non-sellers own fault if they are located on the precipices and pinnacles'.<sup>1454</sup>

The righteous indignation of the Court appears to highlight just how seriously the Crown had taken the tactics of Topia and his supporters, and how potentially damaging to Butler's case they may have been. Butler had relied on certain witnesses to assist his case and their failure may well have seriously damaged it. The comparison with the Court's treatment of Taituha Te Uhi's case is interesting. His evidence and witnesses were also presumably found unsatisfactory and his case was dismissed without further explanation. Yet, when Butler's witnesses were found to be unreliable, rather than throwing out his case, the Court had taken unusual steps to ensure it succeeded. It had then criticised the witnesses and the non-sellers for being unreliable, rather than Butler. The assumption appears to have been that the Crown case was essentially good and therefore anything that threatened it was evidence of malice.

The Court implied that Topia had intimidated witnesses and therefore special steps were necessary to obtain evidence. This was in marked contrast to the normal Court approach of refusing to even acknowledge what went on outside of Court. Interestingly, while the Court seemed willing to rely on the authority of Te Rangihuatau to give reliable evidence, it also implicitly acknowledged the status of Topia as a 'chief' who had encouraged his people to enter a conspiracy. This was even though Te Rangihuatau had denied that Topia had any special status and claimed that he in fact was the 'principal' man at Waimarino.

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<sup>1454</sup> MLC-Whanganui MB 13 p 148

Native Land Courts, including for the Waimarino title case, had regularly allowed their procedures to be manipulated by officials, without seeking to find out the reasons behind this. The issue of trustees recommended for minors and the use of supposedly objective witnesses being a case in point. The Court had also just heard significant evidence that suggested many of those with real interests in the block had been left out of ownership lists. This made the Court's indignation at the perceived conspiracy by Waimarino owners seem a little contrived. However, it did highlight one of the reasons Maori were so concerned about the Land Court process. In spite of Ballance's assurances that no one would be forced to go to Court, this clearly was not the case. Even non-sellers who wished to live quietly on their ancestral lands outside the Court and land purchase process, as Peehi Turoa had indicated was his choice, would not be allowed any choice but to appear before the Court when required, or risk a damaging or even vindictive Court response. In this case, the Court appears to have made no attempt to even give the appearance of carrying out its responsibilities to locate non-seller interests on the ground in an objective manner, telling non-sellers it would be their own fault if they got the precipices and pinnacles.

### **8.12 The completion of the Waimarino purchase deed**

The Waimarino purchase deed was now finally dated 5 April 1887, the same date as the judgment. This date was inserted on all copies of the deed and they were certified by Judge Puckey on 5 April 1887.<sup>1455</sup> This presumably allowed Butler to include even his last minute purchasing in the deed. As well as inserting the date in the purchase deed, the final amount paid to the sellers was also now inserted in the deed. This was shown as £35,000 for the 821 shares. As previously noted, this was considerably less than the £50,000 set aside in 1886 for paying owners for their interests calculated on the basis of the old survey. Given the Court award to the Crown of 417,500 acres, the actual purchase price for the area now awarded to the Crown worked out at an average 1/8 per acre. This was well below the average of 2/6 per acre originally intended to be paid to the owners. It was also well below the 4 shillings per acre that Ballance had claimed even isolated, inaccessible land in the district might be expected to obtain at this time.

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<sup>1455</sup> ABWN 8102 w5279 box 105 folder 121/7 Deed no 659, ANZ

### 8.13 The Native Land Court allocations to non-sellers and the Crown

The next day, the 6 April 1887, the Court made its orders for Waimarino.<sup>1456</sup> Just prior to the orders being made, Topia Turoa asked the Court to read out the deed of sale and the names of those who had sold. He then wanted to know when the reserve of 50,000 acres would be returned to the sellers. The Court replied that the portion ‘to be returned’ to the sellers was ‘a matter of arrangement’ between the government and the sellers and something the Court had nothing to do with at present. However, it was ‘quite distinct’ from the portion awarded to the non-sellers of ‘41,000 acres or thereabouts’.<sup>1457</sup>

The Court went to make an order for the Crown for what was described as Waimarino 1 block, for 417,500 acres. The Court ordered that the freehold of Waimarino no 1 was to be vested in the Crown and that title should be issued accordingly.<sup>1458</sup> There was no requirement in this order for any surveys before title would be issued.

Having made the Crown award for Waimarino 1, the Court then made another seven orders for non-seller awards, listed as Waimarino 2 to 8. The Waimarino 2 award was for 3640 acres for Ngati Hinekura. Waimarino 3 of 18,350 acres was for individuals from Ngati Maringi, Ngati Kahukurapango, Ngati Tamahuatahi, Ngati Tangiwharau, Ngati Kahukurapane, Ngati te Wairehe, Ngati te Atamira, Ngati Pare, Ngati Tamakana, Ngati Tukaiaora, Ngati Tukaiaora, Ngati Tumanuka, Ngati Ruakopiri and Ngati Ngaronoa. Waimarino 4 of 3450 acres was for Ngati Maringi, Ngati Kahukurapango Ngati Atamira, and Ngati Ruakopiri. Waimarino 5 of 13,200 acres was for individuals from Ngati Matakaha, Ngati Poumua, and Ngati Tauengaarero. Waimarino 6 of 1350 acres was for Ngati Hinewai (no 2). Waimarino 7 of 950 acres was for Tarewa Heremaia and Te Moana, and Waimarino 8 of 60 acres was for Ngati Hinewai and Ngati Hinekohara. The total acreage of these reserves now came to 41,000 acres. These orders were all dated 5 April 1887 and confirmed 7 April 1887. All the non-seller reserves were to have certificates of title issued when a ‘proper survey’ of the reserve was made.<sup>1459</sup> The Court also provided details of hapu estates in the orders for each reserve with acreages for each hapu.<sup>1460</sup>

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<sup>1456</sup> MLC Whanganui MB 13 pp 149-158

<sup>1457</sup> MLC-Whanganui MB 13 p 149

<sup>1458</sup> MLC-Whanganui MB 13 p 151

<sup>1459</sup> MLC-Whanganui MB 13 pp 151-155

<sup>1460</sup> MLC-Whanganui MB 13 pp 156-157

Again, there is no record in the minutes of how the Court decided to divide up these awards into just seven areas and allocate the various hapu and individuals among them. Presumably, this 'allocation' was also made on the advice of Butler and possibly partly on evidence submitted, although no record appears to survive of the crucial evidence provided in the written declaration of Te Rangihuatau. The seven non-seller reserves varied widely in size, ranging from 60 acres for Waimarino 8, to 18,350 acres for Waimarino 3. In some cases, separate reserves appear to have been made for just a few individuals (Waimarino 7) while in other cases a large number of hapu appear to be combined into the one reserve (Waimarino 3). Presumably, Butler followed to some extent the locations provided in evidence and his own knowledge of where various people lived. However, as shown, the size of the reserves appears to have been based on Butler's calculations of theoretical interests, (400 acres per owner) based on the old estimated acreage of the block, and on every share being about equal. This bore only a very slim resemblance to what might have been the actual customary interests non-sellers believed they were retaining.

While his calculations were based on an assumption of relatively equal interests, Butler had made it very clear in his purchasing, that in reality some interests were relatively greater than others. However, Butler's careful management of witnesses for the Crown case to ensure non-seller cases were challenged, the lack of evidence presented from non-sellers and the Court's previous refusal to hear partition applications from owners, had effectively prevented detailed consideration of relative interests and where they might be located. This left Butler with considerable flexibility about the location, and more importantly the extent of non-seller reserves. The non-seller awards, based on Butler's theoretical calculations, also enabled him to limit the extent of the seven reserves, regardless of where he may have understood customary claims actually extended.

Butler must have had some idea of where these seven non-seller reserves would be allocated at this time, although there is no mention in the Court minutes of any reference to them on any map or tracing. Plan ML 776 unfortunately seems to have some later amendments and therefore it is not clear what map information was available at the hearing. Some faint lines are visible on ML 776 possibly indicating reserves 5 and 2. However, these lines may have been added later. Otherwise, the non-seller reserves do not seem to be clearly indicated on this map. The non-seller reserves are shown on plan SO 10161. This appears to be an annotated

version of ML 776, a ‘working plan’ for the purpose of allocating the acreages on the map.<sup>1461</sup> This plan is not referred to in the Court minutes and it is not clear whether it was submitted in evidence. If it was, it is also not clear how these reserves were shown originally, as this working plan clearly shows a number of amendments over time. The final locations of the non-seller reserves 2-8 are shown on map 8 of this report, based on plan SO 10161 and later title surveys and reports on the reserves.

This map shows that, as Clayworth has noted, most of the non-seller reserves were located along rivers, the Whanganui, Manganui a te Ao and Whakapapa.<sup>1462</sup> This reflected traditional settlement areas of importance and the importance of waterways to traditional food sources and means of transport (although the final surveys of these reserves left some of them, for example, Waimarino 6 and 7 separated from the river). The major exception for the non-seller reserves was Waimarino 4, which was located on the Waimarino plains. This was, nevertheless, still the site of an old and important settlement, Te Peehi Turoa’s village of Ngatokorua.

It seems that most of the non-seller reserves were intended to be located in areas of traditional importance to their owners, although it is not clear they included the full extent of those areas. Butler was also basically just drawing lines from trig station to trig station of areas that approximated his calculated acreages. While they may well have included some areas of traditional importance and at least some existing settlement and cultivation sites, it was a very crude representation of interests. By limiting the reserves to just seven areas, they also inevitably excluded many areas that were traditionally important that owners did not want sold. This has further implications when it seems likely that Butler had assured non-seller communities that sites they valued could be cut out. The non-seller reserves also generally seem to be in areas of traditional importance, rather than the expected areas of new economic development, although reserves 4 and 6, while apparently linked to traditional areas, also happened to be located along the route of the anticipated main rail and road routes. The major exception again seems to be reserve 7. This was located on the edge of the totara forest but, according to later correspondence, apparently did not include any settlement or cultivation sites and was covered in a frontage of totara forest and behind this a mix of other bush on rough, broken country.<sup>1463</sup> The owners later explained they lived along the Whanganui River

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<sup>1461</sup> Linz plan SO 10161

<sup>1462</sup> Clayworth, chapter 10

<sup>1463</sup> Report on reserve, 19 August 1898, LS1, 40348 ANZ

and had no cultivations or settlements in the reserve.<sup>1464</sup> It seems, as will be explained, that Butler chose this location and allocated it to only two owners to facilitate the expected purchase of it.<sup>1465</sup>

What does seem notable with the non-seller reserves, is that Butler managed to have them combined into just seven reserves in total, ‘freeing’ up large expanses of the block for settlement. Even in those reserves along the rivers, the actual area of river edge reserve is limited and they are concentrated in just a few areas. This does not reflect the known settlement patterns of the time, where settlements and sites of importance were known to be spread along the length of the Whanganui River in particular. Butler had also succeeded in substantially gaining the northern Tuhua area for the Crown, in spite of the protests of the communities of the area. In the process, he ensured that the Crown had gained the majority of the prized totara forest in this area. A separate report, written by Peter Clayworth, outlines the later history of these non-seller reserves as well as the reserves provided for the sellers as provided for in the purchase deed.<sup>1466</sup>

#### **8.14 Seller reserves in the Waimarino block**

As noted, the Land Court had refused to become immediately involved in the reserves to be allocated for sellers in Waimarino, as this was a matter between the government and sellers in terms of the purchase deed. The deed provided for ‘good and effectual’ seller reserves, to be decided by agreement between the Government and the chiefs of each hapu. As noted, sellers may have regarded this provision as providing for the kind of much-requested consultation between the Government and Maori that Ballance seemed to have promised. This apparent provision for consultation may also have encouraged chiefs, such as Topia Turoa, to seek to engage in out of Court negotiations with the government in 1887, to achieve a more equitable agreement over the Crown interests in the Waimarino block.

However, what actually seems to have happened is that Butler himself took on the responsibility for deciding the location and extent of the seller reserves, with minimal input from either the Government or the chiefs. While the Government had to approve his recommendations it seems to have been willing to allow him to make these largely himself as

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<sup>1464</sup> Application for removal of restrictions on alienation, on reserve 1898, LS1, 40348 ANZ

<sup>1465</sup> Clayworth, p 193

<sup>1466</sup> Clayworth, Peter, ‘‘Located on the Precipices and Pinnacles’; a Report on the Waimarino Non-Seller Blocks and Seller Reserves’, report commissioned by the Waitangi Tribunal, 2004

long as he protected the Crown interest. The ‘consultation’ between government and chiefs of each hapu, effectively became Butler’s decision making, with very little apparent opportunity for chiefs to influence what was done. Butler’s decisions were also made under the authority of the Land Purchase department. This department was required to give priority to Crown purchase requirements and it was given responsibility to recommend to the Native Minister whether to approve Butler’s decisions.<sup>1467</sup> This was not the kind of high level direct negotiations between the Government and the chiefs that the sellers may have been expecting.

In July 1887, Butler reported on what he had done with regard to the ‘reserves provided for in the deed of conveyance’. He had forwarded the lists of grantees to the Under Secretary of the Land Purchase department with ‘the areas to which I think they are entitled’. He claimed the decisions had been made ‘after consultation with a representative chief of each hapu as specified in the deed (both as to areas and locality)’. He made no mention of who these chiefs were or how he decided they were ‘representative’. There is also no record of what these consultations involved and the views and understandings of the chiefs with regard to them. It seems that Butler would have had to take some account of chiefly and community feeling, if for no other reason than to avoid provoking outright resistance. However, it also seems that he was quite willing to interpret the deed to suit the Crown interests as far as possible.

In a later part of his report, Butler described an example of how this consultation seems to have been conducted. He noted in the case of minors, that ‘most of the chiefs’ believed their case would be met by slightly increasing the reserves of their parents. However, ‘I did not see my way to agree’ and to prevent any injustice he made alternative arrangements.<sup>1468</sup> He seems to have felt no obligation to take notice of the views of ‘most chiefs’ if they conflicted with his own, and he felt able himself to decide what would be ‘just’. He also appears to have kept no record of this consultation process, making it impossible to determine just how much say chiefs really had over the reserves and what kind of consultation occurred. His view, and the Government seems to have accepted this, seems to have been that the deed promise of consultation between the Crown and a representative chief of each hapu, actually meant unceremonious discussions between certain selected chiefs and the land purchase officer, with the land purchase officer making the final decisions.

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<sup>1467</sup> NLP 87/234, MA1, 1924/202 v1 ANZ

<sup>1468</sup> Butler report 8 July 1887, NLP 87/234 MA1, 1924/202 v1 ANZ

Later complaints about the adequacy of seller reserves would confirm Butler's view, as noted earlier with regard to the special agreements he made, that technically the purchase of interests and then the return of the seller reserves by Crown grant, had extinguished all customary rights and placed the Crown in a powerful position in deciding the extent and location of the seller reserves. It has already been described in chapter 7, how Butler claimed that he had allocated the Ngati Kahukurapango seller reserve E in that part of the block in which its owners were interested. However, he had also claimed that he had not been required to do this, and such a procedure was 'not compulsory' under the terms of the purchase deed. Instead, Butler his allocation in this case was a 'concession' on the part of the Crown to the sellers. In support of this, Butler claimed that the purchase had technically extinguished Maori customary title over the whole block (apart from the non-seller awards). Therefore sellers could not 'disapprove' of the reserves set apart for them and 'in strict accordance with the terms of the deed' they could not demand (or claim any right) to have their reserves located in any part of the block they might want. Butler also claimed that there was nothing in the purchase agreement that would 'justify' those it was made with, from making such a demand.<sup>1469</sup>

The provision for 'agreement' over the seller reserves in the purchase deed therefore seems to have been interpreted by Butler, supported by the Government, as counting for very little. Butler's view was that the purchase had extinguished all interests of the sellers in the land and, as a result, they were technically reliant on the Crown to make 'concessions' as it might decide, with no grounds for 'disapproving' of this. This was supported by later views of officials, as will be explained further in the next chapter, that the seller reserves were actually 'gifts' from the Crown, and the former owners had no right to insist on anything. Officials would also later claim that the purchase deed contained 'no condition at all as to reservation of kaingas or cultivations' if such reservations 'would interfere with the settlement of the block in any way'.<sup>1470</sup> This was a long way from the assurances of consultation, joint development and protection of interests promised by Ballance on behalf of the Government when the purchase began. It is also not at all clear that if sellers had fully understood that Butler would make this interpretation of the deed, and have it supported by government, they would have been so willing to 'cooperate' with him over signing the deed.

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<sup>1469</sup> Butler letter to Lewis 30 July 1887 NLP 87/236 pp 298-300, MA1, 1924/202 v1 ANZ

<sup>1470</sup> Memo T W Fisher to Chairman Native Affairs Committee 17 November 1910, Le1/1910/21 ANZ

Butler described how he actually decided to allocate interests in seller reserves in his report of 8 July 1887. He reported that he had calculated the reserves based on 50 acres ‘for the most important adult owners’ with a ‘proportionally smaller area for those holding lesser interests’.<sup>1471</sup> This was quite different to the equal interests Butler assumed every owner held when he was calculating his purchase price and when he was buying the interests of every owner. Butler went on to report that in the case of those ‘who were proved by evidence before the Court to have no real interest’ an area of 10 acres each was allowed. It is not entirely clear what Butler meant by this. He seemed to be saying that the 1887 Court hearing had accepted evidence that some owners, who had sold, had no ‘real interest’ in the block. This was even though the original title investigation had presumably found they did, or they would not be in the list of owners. Alternatively, Butler had originally helped to compile lists of owners for the title investigation and now the evidence he had helped provide for the later Court hearing was being used to prove they really had no interests. Either way, this again seems to highlight the way officials and land purchase officers could manipulate the Court process to serve their own purchase objectives. Unfortunately, the 1887 Court acceptance of a statutory declaration of evidence and apparent failure to include this in the permanent record of the Court, makes it difficult to determine how some sellers were found to have no real interests. The end result though, appears to have been that Butler felt able to allocate some sellers interests equivalent to ten acres, allowing him to provide larger reserves to placate others, while still keeping the overall seller reserve acreage as low as possible.

With regard to minors, of whom he acknowledged there was ‘a considerable number’, Butler reported that he had arranged that those interested in poorer parts of the block should get 50 acres each, while others should get 25 acres. Those children, whose parents or trustees had sold their interests but retained their own, should get 20 acres each.<sup>1472</sup> Butler went on to remind officials that the majority of minors would inherit further interests by right of succession, ‘which will become more valuable as time goes on’. Taking the circumstances into consideration, and a recent Native Land Court ruling that children could not be considered to hold interests outside their parents, Butler claimed that minors in the block had been ‘very liberally treated’.<sup>1473</sup> Regardless of Butler’s views over his treatment of minors, it is not clear that many owners or trustees would have appreciated at the time they sold minor

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<sup>1471</sup> Butler report 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

<sup>1472</sup> Butler report, 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

<sup>1473</sup> Butler report, 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

shares, that they would be considered to have such lesser interests when it came to reserves. It is also not clear that those agreeing to the large number of children in the ownership lists would have realised the consequences of this. Butler had done very well out of minors. He had not only found them a rich source for purchasing, but now he was able to reduce the reserves made for them.

It seems that, regardless of the understandings he may have assisted to create during the purchase, Butler and the Government regarded the 50 acres as no more than a notional average and numerous sellers would receive considerably less than this. In addition, the Government had no intention of making ‘good and effectual’ grants to individual sellers. Instead these interests would simply be allocated within a larger ‘tribal’ interests in a few larger reserves. This was confirmed by Sheridan, in response to persistent requests from Taiwiri for her 50 acre grant. He noted that, in fact, she had been allocated an interest ‘to the extent of 50 acres’ in seller reserve B and when that reserve was surveyed and Crown granted she would be no more than ‘a tenant in common with some 200 other owners’.<sup>1474</sup> Sheridan also noted that it was intended to survey and set the allocated reserves apart as soon as possible and that Taiwiri should be informed accordingly.<sup>1475</sup> However, Sheridan was referring to the larger seller reserves, not to the separate 50 acre block Taiwiri was seeking.

It seems doubtful that when they agreed to cooperate with Butler, sellers fully understood and agreed that they would be allocated an interest ‘up to’ 50 acres in a larger reserve, where if they wished to separate their interests out they would still need to pay the costs of the Court and of partition surveys. Nor is it clear that they understood that the necessity for providing road access to and within these larger reserves would reduce their usable land even further, or that such land also had to include any mahinga kai, waahi tapu and any existing settlement and cultivation areas for their own subsistence, as well as land for new economic uses.

Although it suited Butler to allocate seller interests within larger tribal reserves, this was not a recognition of continuing tribal authority. Sellers may have believed that the purchase deed may have included some recognition of this in the provision for consultation with chiefs of each hapu over seller reserves. However, in practice, this seems to have meant no more than the convenience of enabling the Government to lump seller interests in a few ‘tribal’ reserves. Butler clearly felt no obligation to consult in any meaningful way. In addition, legally, all

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<sup>1474</sup> Sheridan file note, 5 July 1889, NLP 89/173 MA1, 1924/202 v1 ANZ

<sup>1475</sup> File notes July 1889, NLP 89/173 MA1, 1924/202 v1 ANZ

sellers were regarded as having individual transferable interests, free of any collective or traditional community controls.

Butler's recommendations on the locality of seller reserves indicates, as will be described in more detail concerning Tieke in the next chapter, that he felt able to be very flexible in what evidence he chose to base his recommended localities on. In many cases, the areas where he allocated seller interests were only very loosely based on the recorded evidence and in many cases Butler only chose one of a number of localities claimed by sellers.

As noted the seller reserves were also located in a relatively few areas, mostly around areas of traditional importance. Only Waimarino E appeared to be located anywhere near the anticipated new transport routes or the known valuable totara forest. It does seem clear that in making the seller reserves and deciding on localities, Butler was careful to protect the Crown interest as much as possible. This not only involved ensuring large areas of land were clear for settlement but that many of the known valuable resources such as timber were also located on Crown land. Butler finished his 1887 report on seller reserves, for example, by recommending survey reports be obtained on the block, and steps taken to preserve from damage the 'valuable totara and other timber known to exist on different portions of the block and more especially the totara forest near the junction of the Piopotea and Whanganui rivers'.<sup>1476</sup> This was presumably the same totara forest that Rochfort had estimated would repay the total cost of the purchase of the Waimarino block.<sup>1477</sup>

Butler gave no reasons for his choice of seller reserve localities in his report. He did acknowledge, however, that there could well be objections to some of the reserves on the plan 'but I do not think any importance need be attached to them' as he claimed 'all owners have been fairly and carefully considered'. Butler also warned against too much attention being paid to owners who might want to swap from one reserve to another, as they had also been carefully calculated according to the value of the land where they were located.<sup>1478</sup>

Although Butler was careful to make distinctions between sellers and non-sellers in his allocations and in the larger reserves allocated, it seems that in practice many of the more southern Waimarino communities especially contained both sellers and non-sellers and there was less separation between them than the purchase process assumed. Butler seems to have

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<sup>1476</sup> Butler report, 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

<sup>1477</sup> Rochfort letter to Lewis 28 February 1887, NLP 87/89 MA1, 1924/202 v1 ANZ

<sup>1478</sup> Butler report, 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

practically recognised this in choosing to allocate many of the reserves, both seller and non-seller, in close proximity. Reserves C and D were located adjacent to each other, for example, and reserves B, 5 and 2 all shared some boundaries (see map 8 of this report). This not only saved the government money on survey expenses. It also helped gloss over the fact that, technically, numbers of communities were divided between sellers and non-sellers and many of these people shared common relationship connections, settlements and interests.

As will be shown in more detail in the next chapter on protests, it seems clear that many sellers understood they were withholding important areas from sale and agreeing to sell other areas to promote development. In fact, under the purchase deed, they were regarded as having sold all their interests and they then became reliant on Butler allocating back to them those areas they believed they had protected in agreement with him. This complicated process protected the Crown interest and placed it in a position of considerable power. However, it also meant that sellers had to trust in the goodwill and good faith of Butler and the Government in honouring the agreements about reserve lands they believed had been made.

Butler's report of 1887, was accompanied by a schedule of his proposed six seller reserves, named Waimarino A to F. As with the non-seller reserves, these were heavily concentrated in areas of traditional importance. The largest, Waimarino A of 14,900 acres was described in his report as being located at the Manganui a te Ao. Waimarino reserves B-D totalling some 13,860 acres were described as located at the Whanganui River and Waimarino F of 420 acres was described as on the Whakapapa River.<sup>1479</sup> Waimarino E was described as at Waimarino and shown as 4060 acres, although it was also located on the Whakapapa river (see map 8 of this report). The seller reserves, as allocated by Butler at this time, came to an estimated total of 33,240 acres, although this total would be continued to be adjusted for some time, as will be described.

On receiving Butler's report and recommendations, TW Lewis of the Land Purchase Office recommended to Native Minister Ballance on 30 July 1887, that Butler's suggestions should be approved. He also advised that the reserves should be surveyed as soon as possible so that the boundaries of Crown land could be definitely known. In addition, the Forests Department should be requested to take immediate steps to protect 'the valuable forests on the Crown portion of the block'. This was approved by Ballance on 1 August 1887.<sup>1480</sup>

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<sup>1479</sup> schedule of reserves, NLP 87.234, MA1, 1924/202 v1 ANZ

<sup>1480</sup> File notes TW Lewis 30 July 1887, and Ballance 1 August 1887., NLP 87/234, MA1, 1924/202 v1 ANZ

Following this, Lewis informed the Surveyor General that the Native Minister wanted the interests of the non-sellers in Waimarino as defined by the Native land Court and the Native reserves in the attached schedule (for sellers) to be surveyed as early as possible so that the residue of the block could be dealt with as Crown lands.<sup>1481</sup> This reflected the approach taken by the Court when it made the awards. No survey had been required by the Court for Waimarino 1 for title to be issued. However, the titles to the other non-seller reserves required ‘proper surveys’ before title could issue. The Crown also had an obligation to fulfil the terms of the purchase deed by laying off reserves for sellers. These reserves also had to be properly laid off before the Crown could be certain of what constituted the remaining Crown land in Waimarino 1.

The schedule of seller reserves by early August had already apparently been subject to some amendment. The seller reserves were now listed as Waimarino A at Manganui a te Ao of 14,700 acres, Waimarino B on the Wanganui River of 9320 acres, (altered from 9520 acres as on map) Waimarino C on the Wanganui River as 3130 acres (altered from 2930 acres on map) Waimarino D on the Wanganui River as 1440 acres, Waimarino E at Waimarino of 4035 acres and Waimarino F on the Whakapapa River as 420 acres.<sup>1482</sup> The reference to the map was presumably to the working plan Butler was using (SO 10161) or copies of it so surveyors could work to his allocations. The alterations referred to were apparently as a result of the late swapping of some interests between B and C.<sup>1483</sup> The total acreage for the seller reserves was now 33,045 acres, less than the earlier report, although with no reason given as to why. On the same date, Lewis informed the Chief Conservator of State Forests that the Native Minister wanted immediate steps taken to protect the valuable forests known to exist on the part of the Waimarino block that was now the property of the Crown.<sup>1484</sup>

By August 1887, the Waimarino seller and non-seller reserves were estimated to contain just over 74,000 acres in total, while the Crown award of Waimarino 1 (excluding the seller reserves) was now around an estimated 384,500 acres. Through seller and non-seller reserves, Waimarino Maori had managed to retain less than an estimated one fifth of the block. Surveys of the reserves still had to be made, however, before it could be certain how they and Waimarino 1 were exactly located on the ground.

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<sup>1481</sup> Lewis memo 5 August 1887, MA-MLP 3/5 pp 687-688, ANZ

<sup>1482</sup> Lewis memo 5 August 1887, MA-MLP 3/5 pp 687-688, ANZ

<sup>1483</sup> Lewis to Butler, 1887, MA-MLP 3/5 p 685 ANZ

<sup>1484</sup> Lewis to Chief Conservator of Forests, 5 August 1887, MA-MLP 3/5 p 689. ANZ

## 8.15 The adequacy of the reserves

Peter Clayworth is covering the later history of the reserves and their apparent adequacy over time.<sup>1485</sup> This section is concerned with issues over the apparent adequacy of the non-seller reserves in terms of protection of the interests of those who refused to sell and the non-seller reserves in terms of the assurances in the purchase deed, the apparent expectations of owners in agreeing to cooperate with Butler over the purchase, and in terms of what Butler would have known was economically adequate, given the information available to him at the time. The Land Court had already awarded the non-seller reserves according to Butler's recommendations and calculations. As shown, these calculations were essentially an artificial construct, created for the purposes of land purchase and with very little requirement to represent the reality of interests on the ground. Butler had, for example, manipulated his calculations so the Crown gained all the benefit of the extra estimated acreage of the block. Butler's management of the Crown case had also ensured that non-sellers interests were limited as far as possible and the Government refusal to recognise the Aotea Rohe Potae boundary meant that many Tuhua people had already been excluded anyway at the time of title investigation. In addition, in the Court's own words, it had refused to take any role in actively protecting the interests of those who had decided not to sell, claiming that as they had refused to participate in the Court proceedings, they were to blame if they were left with the precipices and pinnacles. Some of the consequences of the failure to adequately protect the lands of those who had refused to participate in the process will be addressed further in the following chapter on protests.

It might be expected that the Government would have been more careful to create acceptable or at least adequate reserves for those who had agreed to cooperate in the purchase process. After all, the cooperation of these owners had been critical to the success of the purchase and the Crown gaining control of large areas of land and resources in the block. The purchase deed had also appeared to confirm this spirit of cooperation and mutual benefit. As has been noted, the seller reserves were also critical to the fulfilment of government promises of fair participation in the expected benefits of development, along with promised protection of areas of importance that sellers wanted to retain, if they agreed to cooperate with government policies.

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<sup>1485</sup> Clayworth, 'Located on the Precipices and Pinnacles' a report on the Waimarino Non-seller Blocks and Seller Reserves, 2004.

However, in spite of the assurances that may have convinced communities to cooperate, Butler was allowed to interpret the agreement over seller reserves very narrowly and apparently with little regard for seller needs let alone ‘comfort’. It also seems likely, given the evidence over the type of special arrangements he made, that this interpretation was also at variance to the impressions and assurances Butler himself had made in persuading chiefs to ‘give way’ on the sale. Further evidence on what chiefs and communities may have been led to expect over the seller reserves is explored in more detail in the following chapter on protests. This section looks in more detail at the kind of limitations the Government and Butler may have willingly imposed for the seller reserves.

It has already been noted that the apparent provision of even an average 50 acres for each seller, even where this was provided, is likely to have been regarded at the time as an inadequate area of land to be economically viable in the district. Sellers may not have had much idea of what 50 acres actually contained and they may have had to trust it would be sufficient. However, Butler knew and the Government was in possession of information that while anticipating the land would be worthwhile for settlement, still noted that in many cases it was marginal for economic activity. As noted earlier, in the years 1883 to 1884, a number of surveyors had reported on the suitability of the Waimarino block lands for settlement. The surveyor, Cussen, for example, described much of the land as poor and not generally suited for agricultural purposes, although there were areas of valuable timber. He estimated that farm holdings would mostly need to be 1000 acres and upwards, although ‘here and there’ a small farmer might find enough good land to settle on.<sup>1486</sup> Butler would have been aware of these reports, yet he still proposed, and was authorised to allocate, seller reserves of up to 50 acres.

Sellers may also have been persuaded that the purchase deed promise of ‘good and effectual grants’ mean that the anticipated grant of 50 acres was still more valuable than a much larger area of communally held land. This was a common argument of the time because Crown granted land and individual title was treated as legally superior, and therefore more valuable, to customary and even Crown granted land held in multiple ownership. There were clear advantages to holding a Crown granted block of 50 acres with secure individual title. It avoided the need for partitioning required for land held in multiple ownership, along with all the costs, delays and disputes usually associated with this. It was also clear where the land was, what it contained and it was ready for immediate economic use, such as leasing. This

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<sup>1486</sup> *AJHR* 1884, sess II, C-1, appendix 2, p 31, report of L Cussen

kind of understanding may well have been encouraged by Butler, as indicated by his special written agreements described in chapter 7. These appeared to clearly confirm 50 acre reserves to individual sellers. This kind of seller expectation was also indicated in official correspondence with one seller, Taiwiri, who persistently sought the 50 acre reserve she believed had been promised to her once she sold her interests.<sup>1487</sup>

However, this expectation was dashed by the decision to allocate seller reserves in a few reserves with all owners as tenants in common. This still required the partitioning sellers may have expected to avoid, with all the associated costs and delays of that process, further possible loss for purposes such as roading and the economic loss through not being able to use the land immediately. This made the value (and adequacy) of the 50 acre grants considerably less than might have been expected. The assumption must have been that sellers would have to live elsewhere and rely at least partially on other lands for their survival. It is not clear that this was at all apparent to those who agreed to sell.

In the event, the Waimarino district never provided the economic benefits to anywhere near the extent anticipated by the Government in the mid-1880s. Officials were aware in the 1880s, that the Waimarino lands were rough and marginal, but they still believed they were 'valuable' for settlement. In practice, they proved much more difficult to farm and use economically than was originally anticipated, for many years, as the 'bridge to nowhere' most famously testifies. The anticipated transport routes 'opening up' and providing access to the lands were also much delayed and eventually reduced. As will be described in more detail in chapter 10, although much of the urgency of the Waimarino purchase was due to the 'imminent' construction of the Main Trunk railway, it actually took 23 years to complete with similarly delayed economic development. This made the seller reserves even more marginal. However, regardless of this, given the information and expectations of the time, the decision to offer no more than 50 acre seller reserves still seems inadequate for economic viability.

There is no evidence of government consideration of how this 50 acre interest for sellers was intended to be economically viable at the time. If it was assumed that sellers would supplement their living with traditional forms of harvesting, there is also no evidence of concern to ensure that important mahinga kai were identified and included within the reserves. Nor is there any evidence of efforts by Butler to ensure the reserves contained

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<sup>1487</sup> Letter 22 June 1889 NLP 89/173 MA1, 1924/202 v1 ANZ

valuable resources, such as timber to help make up for the marginal state of the land for farming. Rather, as will be seen, Butler's reports indicate that he was most concerned to ensure valuable resources such as timber were contained within the Waimarino 1, the Crown award.

It may also have been assumed, including by sellers, that family members could combine their individual 50 acre awards into family farms that would be closer to an economic size unit for farming. A family of five, for example, could expect an aggregate of 250 acres, although this was still less than a marginal farm size in the area. However, Butler undermined even this, when he actually allocated interests in the reserves. In most cases he insisted that minors, for example, should receive considerably lesser interests than adults, meaning any family combination was actually substantially less.

It seems that Butler did not even intend to allocate 50 acre reserves to all sellers. With a 50 acre average, the 821 sellers might also have expected a total seller reserve of 41,050 acres, still under the maximum aggregate of 50,000 acres provided for in the purchase deed. In addition, as Topia Turoa had indicated to the Court at the partition hearing, many sellers still appeared to expect the total 50,000-acre reserve, unaware of the significance of the wording up to a maximum, or that the reserve could be reduced for those who had not sold. In fact, the purchase deed, while it provided a maximum aggregate acreage, provided no guaranteed minimum and this seems to have enabled Butler to provide lesser amounts in reserves as he saw fit. The official total acreage set aside for sellers was later published in the *Kahiti* of 1895, as 33,115 acres.<sup>1488</sup> This was almost 8000 acres short of what many owners may have expected when they sold. In his report on the later history of reserves, Peter Clayworth also indicates that in some cases, even this total may have been an overestimate, once reserves were finally surveyed off.<sup>1489</sup>

It is also not clear that Butler had fully taken into account other requirements he knew sellers would consider important. For example, it is not clear how the 50 acre average was also supposed to cater for culturally important areas such as urupa, waahi tapu and mahinga kai. Again the decision to create just a few large reserves was useful for the Crown. However, it inevitably meant that some important areas would be missed out and considered sold. Chiefs

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<sup>1488</sup> *Kahiti o Nui Tireni*, 1895, no 20, 15 May 1895, pp 181-186

<sup>1489</sup> Clayworth, Peter, 'Located on the Precipices and Pinnacles'; a Report on the Waimarino Non-Seller Blocks and Seller Reserves', report commissioned by the Waitangi Tribunal, 2004

may have expected some serious consultation over this, but Butler was allowed to treat their concerns with impunity. Again, it seems highly unlikely sellers would have agreed to such an interpretation when they agreed to cooperate.

While there are issues of the adequacy of the reserves, both economically and for other purposes, it also seems clear that in a number of cases Butler also did not intend even these reserves to be protected. In contrast, it seems clear that Butler may have allocated at least some of the reserves in a way that would assist in the further purchase of them and that he fully intended the purchasing to take place quickly. This raises the issue of to what extent he was really required to consider the adequacy of the reserves for Maori at all, and whether instead he was, in at least some cases, simply creating reserves that could be further alienated in a new round of purchasing. This again seems to have been anticipated without apparent consideration of the impact of this on Waimarino Maori. Instead, the main focus was again on the perceived interests and requirements of the Crown.

It has already been noted that Butler seemed intent on purchasing in the non-seller reserve Waimarino 7 and, presumably to facilitate this, he had allocated it to just two non-sellers, one of them a minor. The presence of minors had also been helpful to his earlier purchasing. Waimarino 7 was, ironically, one reserve that did appear to have economic potential because of the totara forest on part of it. However, in this case, the Government actively prevented efforts by the owners to make economic use of this reserve while also retaining the land. It seems that Butler's early intention to purchase it was stalled for some time by a change in the law regarding purchasing from minors. As a result it was decided to leave purchasing until Te Moana was considered an adult in November 1891.<sup>1490</sup> Title to the land also had to wait for the proper survey of 1894 to 1895.

It seems that once they had title, the owners did try to gain an income from reserve 7 based on milling the totara forest it did contain, but they were prevented from doing this by government restrictions placed on the alienation of the land. When they applied to have the alienation lifted in 1897, the owners explained as noted, that they did not live on the reserve and had no cultivations or settlements on it. They wanted to find a way of earning money to help pay expenses and make an income from it.<sup>1491</sup> They intended to enter a 21 year lease with a timber miller to lease the land and pay a royalty for the timber removed. When the timber was milled

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<sup>1490</sup> NLP 88/146, MA1, 1924/202 v 1, ANZ

<sup>1491</sup> Application to remove restriction, 1898, LS1, 40348 ANZ

the land was to revert back to the owners.<sup>1492</sup> A tracing on file shows that non-seller reserves 6 and 7 were both at the edge of the totara forest with most of the forest expected to be located within Waimarino 1 or Crown land.<sup>1493</sup> Reports on reserve 7 also indicate that by 1898 and just shortly after the title survey, most of the totara had already been burned off reserve 6, apparently by accidental fire, meaning the owners of that reserve also missed out from any expected income from the forest trees.<sup>1494</sup>

After considering the application, officials advised that it should be declined in case milling activities in the reserve endangered the nearby valuable government totara forest, including through the accidental spread of fire.<sup>1495</sup> Carroll nevertheless noted that while the restrictions could not be removed because of the very great risk to the government forest, if the owners wanted to part with it, the Government should buy the reserve at a fair valuation. Carroll noted, as had been reported, that it was widely believed that as the forest became more accessible it would be considered much more valuable and the owners would get a good price.<sup>1496</sup> Instead, land purchase officials appear to have decided to gain control of the reserve as soon as possible, both as protection for the forest and to save having to pay a higher price in future, effectively denying the owners this potential benefit. In December 1898, land purchase officer Goffe wrote to Sheridan suggesting he contact the two owners of reserve 7 when he travelled upriver to see owners in other blocks he knew might sell ‘as they want money for the Court’. He suggested contacting Tarewa first as she was considered the most important owner.<sup>1497</sup> This indicates that land purchase officials were still using similar tactics of targeting owners in debt and using those considered most influential to pressure others.

The Land Purchase Office also remained committed at this time to purchasing land it expected to be valuable, as cheaply as possible from Maori owners in Waimarino. In early 1899, Sheridan informed the Surveyor General that ‘it is absolutely necessary for the preservation of the Waimarino forest’ that the government should acquire the 950 acres of reserve 7. He felt they might have to pay an ‘extravagant’ price for this of £2 per acre but the expense in this case would be justified.<sup>1498</sup> Percy Smith replied that they would be doing ‘very

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<sup>1492</sup> Letter 7 January 1898, LS1, 40348, ANZ

<sup>1493</sup> Tracing showing totara forest and nearby reserves on LS 1, 40348, ANZ

<sup>1494</sup> Report 19 August 1898, LS1, 40348, ANZ

<sup>1495</sup> Correspondence March 1898 and report 19 August 1898, LS1, 40348, ANZ

<sup>1496</sup> Note by Carroll on letter informing of Government decision not to lift restrictions, September 1898, LS1, 40348, ANZ

<sup>1497</sup> Goffe to Sheridan, 29 December 1898, LS1, 40348 ANZ

<sup>1498</sup> Sheridan to Surveyor General 9 January 1899, LS1, 40348, ANZ

well' to get the land at £2 per acre as there was a lot of good totara on it.<sup>1499</sup> After some negotiations the Land Purchase office believed it had an agreement to sell at £800 for the reserve but complained that private speculators were 'tampering' with the owners.<sup>1500</sup> This price was considerably less than the £2 per acre the office appeared willing to go to, while still considering the price justified.

It seems that Tarewa had been 'tampered' with by private speculators including the miller who had originally offered the timber lease. They apparently convinced her that the price offered was too low and Sheridan admitted she had 'reliable information to go on'.<sup>1501</sup> As the government considered Te Moana now already 'committed' to the sale, this raised the possibility that the reserve would need to be partitioned between the non-seller Tarewa and the Crown, as having purchased the interest of Te Moana. Sheridan promptly asked for a report on the reserve so the Crown could pursue an award of the best part to protect its interests. Pinches, the timber miller, then complained to Seddon that the government had denied the owners significant royalties from leasing timber rights to him and were now trying to force a low price by threatening Tarewa that if she did not agree, the government would open up the whole question of her rights in the block.<sup>1502</sup> In response, Sheridan noted that the same speculator had offered an even lower purchase price. Sheridan also complained that Tarewa was backed by private speculators who were spreading through the North Island with no regard for Maori land legislation and to the detriment of Crown interests. He suggested an official warning be sent to interpreters warning them not to become engaged in such activities.<sup>1503</sup> Within a short time anyway, Sheridan noted the purchase had been completed.<sup>1504</sup> This purchase was for the £800 originally offered, an average of just under 17 shillings per acre.<sup>1505</sup> This was significantly less than even the £2 per acre originally believed to be 'very good'.

It also seems that Butler intended purchasing further in Waimarino E, as indicated by an annotation on plan SO 10161 by Butler of 10 April 1891. This annotation explained changes required to Waimarino E that had not been raised before 'because it was expected the persons

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<sup>1499</sup> Percy Smith note 9 January 1899, LS1, 40348, ANZ

<sup>1500</sup> Sheridan to Surveyor General 21 June 1899, LS1, 40348, ANZ

<sup>1501</sup> Sheridan note 23 June 1899, LS1, 40348 ANZ

<sup>1502</sup> Letter Pinches to Seddon, 30 April 1899, LS1, 40348, ANZ

<sup>1503</sup> Sheridan reply on letter by Pinches, LS1, 40348, ANZ

<sup>1504</sup> Sheridan file note, 17 August 1899, LS1, 40348, ANZ

<sup>1505</sup> Clayworth pp 83-84

for whom it is intended would have sold their rights to it'.<sup>1506</sup> This may also have referred to the two chiefs Butler had made a special arrangement with, for 500 acres each. As noted in chapter 7, Butler and other government officials were most reluctant to provide this land promised and eventually succeeded in insisting the chiefs take money instead. In 1891, the chiefs were still insisting on the land and Butler was still involved in trying buy off the agreement.

In other cases, purchasing in the reserves, while it was not considered out of the question, was not considered so urgent. It also seems that the delays over building the railway and the confusion and delays over surveying the reserves may have caused the government to delay purchasing in the meantime. In 1892, for example, government officials noted that it was not intended to purchase 'at present' in the reserves.<sup>1507</sup> As Clayworth has noted, by the late nineteenth century, further legislative change and Carroll's taihoa policy prevented further extensive purchasing until later in the twentieth century.<sup>1508</sup> However, it seems that at the time he was allocating reserves, Butler was anticipating further sales of interests, particularly in those reserves considered most valuable, a policy which would have even further reduced the adequacy of land left to Waimarino Maori.

### **8.15 Delays with the surveys of Waimarino reserves**

By August 1887, the Government appears to have had Court awards and official reports enabling it to make the non-seller reserves in Waimarino 2 to 8 and the Waimarino seller reserves A-F. As noted in the Court awards, the owners could not legally gain title or use these reserves until surveys were completed. Until these surveys were made, the government could also not be certain of exactly what was Crown land in the remaining Waimarino 1. Although the government had the information to begin making these reserves by August 1887, it would be another around eight years, around 1894-1895, before most of the reserves were actually surveyed.

The exception to this was the Waimarino non-seller reserve A, where work on surveying the boundaries appears to have begun about four years later, in 1891. In 1890, the Wellington Survey office was asking for reserve information from the Native Department and noted the

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<sup>1506</sup> Linz SO 10161 plan showing reserves nd

<sup>1507</sup> Sheridan teleg 8 February 1892 , MA1, 1924/202 v1 ANZ

<sup>1508</sup> Clayworth, pp 84-87

survey was about to begin near reserve A.<sup>1509</sup> The survey of reserve A seems to have been completed by 1892.<sup>1510</sup> It is not clear why this particular reserve was surveyed before the others. However, evidence of the time indicates it may have been because demand to open land for settlement was greatest in the southern part of the Waimarino block.

Although the estimated acreage of Waimarino 1 was known it was still not clear exactly where Waimarino lay on the ground until the reserves were laid off. Acknowledging this, the Government appears to have been reluctant to deal in what was expected to be confirmed Crown land in Waimarino 1 while the reserves for sellers and non-sellers were still to be made. For example, in 1891, some sawmillers asked about leasing totara forest in the upper Whanganui River area, around the Makomiko creek, and described as being on the Waimarino bridle road. It was in the block expected to be Waimarino 1 but the Crown Lands Commissioner wrote to the Surveyor General expressing reluctance to lay the request before the Lands Board before the Native reserves had been cut out.<sup>1511</sup> This caused the Lands and Survey office to instruct local survey offices not to lease the totara bush, because the Native reserves had not been cut, and also because more information was required on the extent and value of the totara forest, which was expected to be very valuable.<sup>1512</sup>

However, in the southern part of the district where there was more pressure for settlement, the Government appears to have begun work surveying Waimarino A reserve to enable nearby lands to be opened for settlement. For example, in 1891, as reserve A was being surveyed, 14,000 acres of land for settlement was notified in the Waimarino block, 14 miles from Pipiriki.<sup>1513</sup> In 1892, the Wellington district Lands and Survey office also notified rural lands open for sale or selection in a number of blocks including the Waimarino-Atuahae area, in the Manganui, Makotuku and Rarete survey districts.<sup>1514</sup> This was also in the southern part of the Waimarino block.

While work began on reserve A, continued delays meant surveying on the other seller and non-seller reserves does not appear to have begun until late 1894. The Land Purchase Department kept reminding the Survey Office of the need to complete the work. Delays in

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<sup>1509</sup> Memo 2 April 1890 Wellington survey office to Native Department, NLP 90/68, MA1, 1924/202 v1 ANZ

<sup>1510</sup> Note on minute sheet for Assistant Surveyor general 29 September 1892, MA1, 1924/202 v1 ANZ

<sup>1511</sup> Letter Crown Lands Commissioner to Surveyor General, 14 September 1891, BAAZ 1108/108c ANZ-Akd

<sup>1512</sup> Memo Lands and Survey Wellington to Chief Surveyor Auckland 8 October 1891 BAAZ 1108/108c ANZ-Akd

<sup>1513</sup> *NZ Gazette* 1891 no 95 24 December 1891, p 1434

<sup>1514</sup> *NZ Gazette* 25 February 1892 no 18 p 414, notice dated 21 January 1892

surveys not only prevented certainty about remaining Crown lands in what would be Waimarino 1. Sheridan also warned in 1892, that the delays were likely to mean further expense and difficulties for the government when work was eventually begun. The delays were also causing harm to further purchases. This was because Maori believed the delays indicated broken promises by the Government over the Waimarino purchase, and they were then refusing to engage in other land sales.<sup>1515</sup>

There was also continuing confusion within the survey office over what had to be surveyed and how it was to be carried out. For example, the survey office seemed as confused as Maori over the meaning of the purchase deed for seller reserves. In 1892, it sought clarification of whether surveys for the 50 acre grants were supposed to be paid for by the government or the owners.<sup>1516</sup> The Land Purchase department had already decided this, with Sheridan noting in 1889, that only the outside boundaries of the reserves were to be surveyed. Reserve A while not subdivided was to contain the equivalent of 50 acres for each owner and therefore had to be exact. This also applied to the other seller reserves. He noted the Native Land Court would no doubt subdivide the reserve further into 50 acre blocks 'some day'.<sup>1517</sup> This confirmed that the government had no intention of making the effectual 50 acre grants many sellers had expected. They would have to bear the cost themselves of having the Court make the separate 50 acre subdivisions.

In early 1893, Sheridan was still complaining about delays with the survey of the majority of the Waimarino reserves. At this time, he noted that it was now six years since the Waimarino purchase had been completed and Waimarino Maori had been led to expect that their reserves would be surveyed and put under title within a few months from then. He believed this 'extraordinary delay' could result in 'serious loss' to the Government and a host of disputes over boundaries and other issues that otherwise might be avoided. He suggested that if no government surveyor was available, then reliable men should be employed for the surveying at once.<sup>1518</sup>

The Wellington survey office appears to have finally begun work on the remaining Waimarino reserves by late 1894. As part of this, the office also sought help from the Auckland office for the surveys in the northern part of the block. The continuing efforts of the

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<sup>1515</sup> Sheridan, file note 19 September 1892, NLP 91/53, MA1, 1924/202 v1 ANZ

<sup>1516</sup> Survey office 29 November 1892, NLP 92/134, MA1, 1924/202 v1 ANZ

<sup>1517</sup> Sheridan note 9 December 1889, NLP 92/134 MA1, 1924/202 v1 ANZ

<sup>1518</sup> Sheridan, 8 and 21 February 1893, MA1, 1924/202 v 1 ANZ

chiefs who made a special agreement with Butler for extra land additional to reserve E may also have helped move matters along. In 1894, as described, they had petitioned Parliament for the extra land promised. The Wellington survey office noted to Auckland that not only was the land purchase officer urging the completion of the survey of reserves for Waimarino, it now seemed that some owners in reserve E were asking for the right to select lands outside that reserve. However, the government could do nothing about this until the reserve survey itself was complete.<sup>1519</sup>

By late 1894, it seems that some progress was being made in having the Auckland survey office begin work on the reserves in the northern part of the Waimarino block. The Auckland office was instructed to survey seller reserves C and D and subdivisions 6 and 7. The seller reserves C and D were to be surveyed ‘exactly’ as shown on an attached tracing, while the Land Court subdivisions 6 and 7 were to be surveyed ‘as near as may be’ and as close as possible to the shape shown on the tracing. The Land Purchase Department also wanted all areas ‘to be full so that the Natives will have no cause for grumbling later on’.<sup>1520</sup> The requirement for the seller reserves to be ‘exact’ was presumably so that owners could later subdivide into the exact acreages they were entitled to. At this time the Auckland office did not have the surveyors available to carry out the work on the four northern reserves and suggested a private surveyor be hired to do it.<sup>1521</sup> It seems from correspondence of the time that reserves 6 and 7 in the northern part of the block were surveyed around 1895.<sup>1522</sup>

Surviving Wellington office survey records also indicate that survey work for seller and non-seller reserves in the rest of the Waimarino block also took place from late 1894 and through early 1895. For example, monthly survey reports for Wellington indicate that the surveyor Dalziell was working on Waimarino 3 and 4 and E by October 1894 and through January 1895. He continued work on surveying Waimarino E, F and 8 in February 1895 and moved on to Waimarino C and D through March and April 1895. During this later work he reported having his instruments destroyed, although it is not clear how this happened.<sup>1523</sup>

In the meantime, the surveyor Otway was working on the reserves along the Manganui a te Ao and Whanganui Rivers, beginning with Waimarino B, 5 and 2 in October 1894. While

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<sup>1519</sup> Lands and Survey Wellington to Chief Surveyor Auckland 1 March 1894 BAAZ 1108/108c ANZ-Akd

<sup>1520</sup> Lands and Survey Wellington to Chief Surveyor Auckland 30 October 1894, BAAZ 1108/108c ANZ-Akd

<sup>1521</sup> Auckland office to Surveyor general Wellington, 12 November 1894, BAAZ 1108/108c ANZ-Akd

<sup>1522</sup> Correspondence to Native Minister from Tuao and others, 1895, MA1, 1924/202 v 2 ANZ

<sup>1523</sup> LS-W 40/5 monthly survey reports 1894-95, ANZ

carrying out this work, Otway also carried out a traverse of the Whanganui River, where he reported Maori pulling down his survey stations. He also reported surveying a road route up the Mangatiti Valley to give access to the Crown land beyond and exploring the country behind the reserves he was cutting.<sup>1524</sup> While these two surveyors were working on the seller and non-seller reserves, the monthly reports also reveal that another surveyor, AA Seaton, were surveying 200 acre sections in selected areas of Waimarino for the Gladstone Farm Homestead Association.<sup>1525</sup>

The survey plans for the various reserves are also mainly dated 1895. Once the surveys were completed, the orders for the non-seller blocks were backdated to 5 April 1887, the date of the Land Court award. According to Clayworth, the non seller reserves as they were finally surveyed were listed as including around the same acreage as originally awarded by the Land Court.<sup>1526</sup> Further discrepancies noted after this time will be explained further in the Clayworth report.

In the meantime, owners continued to live on the block much as they had always done. Complaints continued about the title investigation and the purchase of the block, particularly once it was understood that all applications for rehearing had been dismissed. Complaints also continued about the Court and government awards as far as they were known, particularly in terms of expectations created by Butler about the ‘good and effectual’ grants of 50 acres for individual sellers. When the surveys did actually start on the ground, a new round of complaints began as owners in the reserves found that the surveys in many cases cut out areas of interest they believed Butler had secured to them or owners found that areas they believed should never have been included within Waimarino were not going to be protected in reserves.

The later history of these seller and non-seller reserves from the time they were created by survey in around 1895 is covered in detail in Peter Clayworth’s report.<sup>1527</sup> Although the completion of these boundary surveys has been chosen as a convenient place to end this report and begin the Clayworth one, it should be noted that issues over delays and the adequacy of the reserves in terms of the purchase deed and Government assurances did not immediately

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<sup>1524</sup> LS-W 40/5 monthly survey reports 1894-95, ANZ

<sup>1525</sup> LS-W 40/5 monthly reports for November 1894 –April 1895 ANZ

<sup>1526</sup> Clayworth, pp 41-46

<sup>1527</sup> Clayworth, Peter, ‘‘Located on the Precipices and Pinnacles’; a Report on the Waimarino Non-Seller Blocks and Seller Reserves’, report commissioned by the Waitangi Tribunal, 2004

end in 1895. The 1894 to 1895 surveys were just of the boundaries of the allocated reserves. Owners were still left with the problem of identifying their own interests on the ground within the reserves and of undertaking partitions to legally recognise these. Without this they could not use the land for many economic purposes such as leasing, which may have helped pay off the debts they were incurring on the land. File evidence indicates notes that even by 1905, officials were still pondering how the various individual interests in seller reserves A-F could be defined and at the same time, owners were pleading to have partitions so they could have some means of paying the rates and survey charges already imposed on the land.<sup>1528</sup>

Carroll appears to have responded to this by pushing to have some kind of internal partitions made in the seller reserves, so that at least owners could legally use the land to pay off debts they were accumulating. Carroll noted in 1905, that the relative interests in the reserves needed to be allocated as soon as possible and there was no principle to guide the Native Land Court as to how this might be done in these cases. He proposed that individual lots be made, which owners could then exchange amongst themselves, so that families could have their land together as much as possible. Sections could then be conveyed for the purposes of title from time to time as the owners were in a position to pay the costs of survey. In the meantime they could at least enter into occupation of the lots.<sup>1529</sup>

In February 1905, Marchant notified the chief surveyor at Wellington of this, asking for a scheme of subdivision to be drawn up for the reserves, noting the intention of enabling families to stay together as much as possible. The survey of the reserves for this would also require a roading plan to be made and no more than £100 was available for the purpose.<sup>1530</sup> Shortly afterwards the difficulties of making such subdivisions, including roads, became apparent. Marchant notified Carroll that the work of dividing the reserves into the small allotments required, along with the necessity for roading, was likely to cost more than the land was worth.<sup>1531</sup> Carroll accepted this and suggested instead that the reserves be first made accessible by road and then apportioned in a way that would at least make them suitable for occupation by family groups.<sup>1532</sup> Marchant then notified the survey office that cutting the reserves into individual interests was impractical and instead, roading should be provided and then sections made as small as was economic. This work was to start with reserves A and E

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<sup>1528</sup> File correspondence 1905, LS1, 40348, ANZ

<sup>1529</sup> Carroll file note 1905, LS1, 40348, ANZ

<sup>1530</sup> Marchant to chief surveyor, 3 February 1905, LS1, 40348, ANZ

<sup>1531</sup> Marchant to Carroll, 4 April 1905, LS1, 40348, ANZ

<sup>1532</sup> Carroll file note 8 April 1905, LS1, 40348, ANZ

but ‘without interfering with the progress of surveys on Crown lands for settlement purposes’.<sup>1533</sup> Shortly after this the survey was stopped for the winter. An owner seeking to make some improvements before the individual partitions were made was also told he had to wait until roads in the block were made.<sup>1534</sup>

As surveyors struggled to make the necessary partition surveys in a way that took account of owner interests, and roading requirements both within the reserves and to take account of outside roads traversing the reserves, while not making sections ridiculously small, another problem became evident. By now there were many successions to ownership in the reserves, further confusing how the partitions could be made. It was noted that the Land Court would have to make sense of this (incurring still more expenditure for owners) while the variable quality of the land also had to be taken account of when making fair partitions.<sup>1535</sup> The survey office was still struggling with these difficulties in 1906. A tracing for this time for reserve A shows proposed roads and sections in a complicated pattern of many tiny sections laid over ridges and valleys in the block, all just fitted in but so tiny as to be hardly practical for any kind of economic use.<sup>1536</sup>

The later history of this reserve is covered in more detail by Clayworth. For the purposes of this report, it seems clear from this that in spite of the promises of ‘good and effectual’ grants and the expectations created of these so the purchase could go ahead, almost 20 years after the purchase sellers were still facing apparently insurmountable difficulties in the full use of their land. This correspondence raises further issues of how much consideration was actually given to whether the seller reserves created would ever be practically usable for owners or whether in fact they were simply set up without proper consideration of such matters, or even with the purpose of allowing these difficulties so future alienation would be a much easier solution than retaining the land.

The next chapter of this report, in providing a brief overview of protests concerning the purchase and creation of reserves, highlights some of these issues further, particularly in relation to the apparent understandings and expectations of those communities caught up in the title investigation and purchase of the Waimarino block.

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<sup>1533</sup> Marchant to chief surveyor, Wellington, 8 April 1905, LS1, 40348, ANZ

<sup>1534</sup> File notes, July-August 1905, LS1, 40348, ANZ

<sup>1535</sup> Survey report 17 November 1905, LS1, 40348, ANZ

<sup>1536</sup> 1906 tracing of proposed roading and subdivisions for reserve A Waimarino, 1906, LS1, 40348, ANZ

## 8.16 Conclusion

The Crown made an application for the partition of a Crown award in Waimarino in August 1886. It took another four months before the application was notified for hearing in late December 1886. The delay seems to have been mainly to allow Butler to ‘mop up’ purchasing in Waimarino. Some of the delay may also have been caused by the need to complete a ‘proper’ survey plan of Waimarino, before title could be issued and transferred.

The ‘proper’ survey for Waimarino was conducted at the same time purchasing was taking place and took about the same time to complete. This delay may well have caused some disadvantage to Maori communities in decision making and understandings over land being dealt with. At the same time, a more adequate survey of such a large block was bound to be time consuming and it seems that the ‘proper’ survey for Waimarino was conducted under some considerable pressure and urgency, much as was the case for the purchase.

This requirement for urgency in the survey clearly came from the highest levels of government and was driven by a perceived need to complete the purchase as quickly as possible. This urgency in turn had significant implications for the conduct and thoroughness of the ‘proper’ survey. Surveyors were instructed to complete the survey as soon as possible and in doing this to rely on calculations, trig work and compass work as much as possible, in preference to field work. In a number of cases, surveyors clearly relied on guess work and without the benefit of information from Maori communities. In many cases, communities may also have been unaware of where boundaries were being made as surveyors did not need to cut lines unless ‘absolutely necessary’. The very rough and superficial survey work for the plan also raises the issue of how adequate the allocation of reserves would be based on this information. The willingness of the Government to risk this and possibly undermine protections for Waimarino owners also raises the issue of how committed the Government was to the provision of adequate reserves.

The survey work at this time focussed on some of the more problematic boundary areas while the plan of large areas of the block was simply compiled from general triangulations and other large scale survey work, as well as information collected for other surveys such as for the railway and, ironically, the external boundary survey for the Aotea Rohe Potae. In many parts of the block there was virtually no field work at all, other than the work undertaken for other purposes, leaving communities with little knowledge or understanding of this work for the ‘proper’ survey and what became the Crown award. For example, in the northern part of

Waimarino, communities saw no field work other than that conducted by Cussen for other purposes. They had no way of knowing whether the Waimarino boundary had been corrected to take account of the Rohe Potae boundary as they expected. Even under considerable pressure and with very little field work, the 'proper' survey plan for Waimarino was only just completed a few weeks before the hearing of the Crown award began. As with the title investigation, this raises issues of whether sufficient time was allowed for Maori communities to view and possibly object to the plan before the hearing began.

It seems that a number of communities objected to boundary work on the survey as they had done for the earlier sketch plan, indicating concerns about the possibility the surveys might lead to loss of land or include land they did not want sold. This supports the view that many communities understood the reserves were the same as withholding land for sale and they did not intend to sell large areas of land. Although Butler played down this survey obstruction, it does seem to have been serious enough to be noted by surveyors. Surviving correspondence indicates some Maori concern about the cost of the survey and a lack of knowledge about what the survey was for. This raises issues about Butler's management of the purchase and to what extent he was properly explaining the purchase and the surveys. The survey also highlights how closely survey work was expected to work to and support land purchase work. Butler's oversight over the survey no doubt provided considerable advantage in purchasing, but raises issues of interference in survey procedures and protections.

There is no indication in survey correspondence of any concern for protection of anything other than Crown and purchase interests during the survey. This is also noticeable with regard to the Rohe Potae boundary included within the Waimarino block. Survey officials appeared very concerned to ensure that Waimarino boundaries did not conflict with other Land Court block boundaries such as Tauponuiatia, but seemed to accept that there was no requirement to take account of the Rohe Potae external boundary, regardless of the known expectations and understandings of the Tuhua people.

The Government refusal to allow earlier partition hearings to go ahead may also have been linked to the lack of sufficient survey information and the further delays likely if partitions also had to be surveyed. This raises issues of the Government's willingness to press ahead with surveys required to support the Crown purchase claim, but the lack of interest in providing surveys to enable Whanganui Maori communities to better manage and legally identify their lands within the block. This appears to cut across government assurances of protection and fair dealing for Maori.

The various partition applications submitted much earlier by Waimarino owners were notified to be heard at around the same time as the Crown case. The owners withdrew these in an apparent attempt to prevent a Court determination of interests for sale. By this time it was also evident that there was considerable Maori opposition to Butler, from both sellers and non-sellers, indicating disillusionment with the way the purchase was conducted and the extent to which it met initial expectations of cooperation. The seriousness with which the Government viewed this opposition appears to be indicated by the step of having the Chief Judge also sit on the Waimarino case but at the same time the Government seemed unwilling to meet its own promises of consultation over Maori concerns. The seriousness of opposition to the purchase by the later stages also raises further issues of how 'willing' Maori owners were in the purchase, and to what extent the Government was willing to simply override Maori concerns to complete the purchase, in apparent contravention of assurances to consult and take concerns seriously.

The Court hearing for the Crown award for Waimarino was also very rapid given the large size of the block and the various interests involved. The hearing took just a few days in late March and early April 1887. At the end of the hearing the purchase deed was finally entered with the date 5 April 1887 and certified as evidence. The final amount paid to the sellers was also entered in the deed as £35,000 for the 821 sellers. Even with the smaller numbers involved, this was considerably less than the £50,000 originally authorised for paying owners. With the Court award of 417, 500 acres it actually worked out as an average price of 1/8 shillings per acre. This was well below the original 2/6 shillings per acre proposed and the 4 shillings per acre Ballance had assured Whanganui Maori even the most difficult, isolated land in the district was worth at the time. This raises the issue of to what extent the Government actually intended to honour promises of enabling Maori to share more fairly in the expected benefits of land settlement.

Like the earlier title investigation, this hearing also appears to have been closely managed by Butler in support of the Crown claim. At the same time, and even while he was conducting the Crown case, Butler was still completing purchases of interests. In conducting the Crown case, Butler used the purchase deed as evidence for the Crown award, claiming that 821 of 920 owners in Waimarino had sold their interests to the Crown. In seeking to have this claimed Crown interest awarded in terms of land in the block, Butler also sought to have witnesses present evidence that would prove that the seller interests (now claimed by the Crown) represented the most valuable parts of the block. Butler was assisted in this because

the Court had consistently refused to hear partition applications from owners in the block that might have provided more detail on the extent and location of various interests.

In presenting the Crown case at the hearing, Butler initially encountered some difficulties with witnesses. It seems that while many chiefs were present to hear the withdrawal of the partition applications, many sellers and non-sellers in the block under the leadership of Topia Turoa decided not to give evidence for the hearing of the Crown case, or at least obviously not reliable evidence, presumably hoping that this would prevent the Court identifying the land for the Crown. Butler finally managed to overcome this problem by persuading Te Rangihuatau to give evidence useful for the Crown case. This was partly achieved by enabling Te Rangihuatau to give some of his evidence by written statutory declaration, even though it was a normal procedure of the Court to only accept evidence presented in person. The Court failure to include this declaration as part of the Court minutes, or apparently any official record, makes it very difficult to understand what information later Court decisions were based on. It also presents difficulties in understanding the allocation of various reserves.

The Land Court was most indignant about the efforts to withhold evidence and accused the Waimarino people of ‘conspiracy’, declaring they would be responsible if they ended up with only the ‘precipices and pinnacles’. This raises issues of the Court objectivity in the case and the Court refusal to attempt to protect the interests of owners. Maori were routinely penalised by the Court for not being present to protect their interests in Court but they were apparently not allowed to refuse to participate when the Crown interest was being considered and they believed the proceedings were unjust.

In making its awards to the non-sellers, the Court appears to have accepted the advice of Butler and Te Rangihuatau, as most non-sellers did not attend. Those who did give evidence from the northern Tuhua part of the block largely had their claims successfully challenged by Butler. The Court also relied on Butler’s calculations of non-seller interests regardless of how these calculations may have deviated from the actual interests of non-sellers on the ground. The lack of partitions for owners again gave Butler an advantage in this and there is no indication of how he allowed for valuable resources such as timber in this. Based on his calculations, the Court found that non-sellers were entitled to 41,000 acres in the block. Butler then seems to have subtracted this from the new estimated acreage of the block as shown in the new survey plan to leave a ‘residue’ of 417,500 acres for the Crown. Effectively, this method enabled the Crown to gain the entire additional acreage of the block and the Court approved this. This highlights how closely the Court was willing to identify with and promote

government interests at this time and how openly vindictive and impartial it felt able to be when Maori challenged its authority. The Court also seemed willing to rely entirely on Butler to interpret the evidence provided to decide on the quantity and locality of these non-seller reserves. There is no indication in the minutes that the Court considered or was even provided with information on where on the block Butler intended to locate these reserves.

The Land Court refused to consider the reserves for sellers at this time, as the purchase deed made these a matter of agreement between the Government and representative chiefs of each hapu. As it turned out, Butler, acting under the authority of the Land Purchase Department, was also given responsibility for deciding on the acreage and location of these seller reserves and the owner interests to be granted in them. This raises issues of to what extent the Government actually entered into consultation and 'agreement' over these reserves, as the sellers had expected and the deed appeared to require. It also raises issues of how closely Butler's interpretations of what the reserves should be matched those of chiefs when they agreed to cooperate with him. Government officials relied on the legal technicality that the Crown had technically purchased and extinguished seller interests in the block and could therefore make such grants of seller reserves as it decided.

Butler, supported by the Government, insisted he had a right to decide on the extent and location of the seller reserves. In doing so, rather than allocating an average of 50 acres to individual sellers as may have been expected, he allocated a maximum of 50 acres to some adults with lesser amounts to those he considered had 'lesser' interests, including the large numbers of minors in the block, whose interests he had purchased through trustees. In the end Butler recommended seller reserves in total of just over 33,000 acres, well below the aggregate of up to 50,000 acres provided for in the purchase deed. Even if Butler had allocated up to the full 50 acres for each seller interest, it was already expected at the time that economic farms in the area would need to be upwards of 1000 acres in size. There is also no evidence that Butler took special care to ensure important mahinga kai or other important sites were included within reserves and he reported that he did not believe this was required in any of the 'concessions' of land for sellers.

The allocation of reserves raises issues of adequacy of those reserves in terms of assurances made to Whanganui Maori to gain their cooperation, the state of knowledge about land in the district at the time and in terms of the apparent assurances of the purchase deed. It seems clear that the relatively few areas of non-seller reserves were only a very rough representation of those areas non-sellers believed they retained and they had not wished to sell. They were

based on calculations of interests that did not necessarily bear very much resemblance to customary interests or uses of land. Once the Court had made findings as to the size of non-seller reserves there was little flexibility over this, but the reliance on Butler to allocate these when he clearly saw his duty to support Crown interests raises issues of likely disadvantage to non-sellers. The lack of survey detail may also have meant there was little opportunity for chiefs to indicate where important areas were located.

In the case of sellers, the responsibility given to Butler for deciding on and allocating seller reserves meant that his view of the implications of the purchase and the reserves was able to prevail without much consideration of conflicting seller viewpoints. This was further confirmed by the Government decision to treat the reserves as ‘concessions’ with no obligations to address seller wishes and understandings. The seller view that the system of purchasing and reserves would allow them to set aside selected land for settlement and development, while retaining other land for a variety of purposes outside of the purchase, turned out to be false. Sellers found instead that they were considered to have sold all their interests in the block and they were reliant on the grace and favour of the Government to grant to them such lands as it decided. It seems most unlikely that the chiefs who chose to ‘cooperate’ with Butler fully understood and agreed to this when they signed the deed.

The average of 50 acres or less for seller reserves does not seem to have been adequate for economic use, even in terms of government knowledge of the time. As noted, the Government was in possession of information indicating that 1000 acres was closer to an economic size for farm holdings in the district. This also did not allow for requirements such as roading, which was likely to further reduce the 50 acre average. It is also not clear how, or even if, the reserves were intended to adequately provide for economic use and other culturally important uses such as to protect mahinga kai and urupa. The decision of the Government to agree to just a relatively few reserves which would incorporate all seller interests further limited the ability of government to adequately meet seller expectations. If important sites happened to fall outside these reserves, they were lost to sellers regardless of their importance. This provided for Crown interests in leaving large areas available for settlement but tended to marginalise Maori into just a few areas and appears to have placed settlement interests ahead of assurances of protection to Maori of lands of importance and for their ‘comfort’. In addition, this system of lumping all interests in reserves, left owners with all the expenses and delays in defining their own interests on the ground.

Although the purchase deed had provided for ‘good and effectual’ grants for sellers, the delays in surveying and therefore issuing title for seller and non-seller reserves also raises issues of Crown good faith and fair dealing. As officials indicated, the delays were only likely to add to confusion and concern over boundaries and issues of what should be included in the reserves. Waimarino A reserve was surveyed within about four years of the decisions making on reserves. All the other seller and non-seller reserves took some eight years to be finally surveyed. The uncertainty caused by this, while at the same time, the Government was beginning to make Crown land available for a variety of settlement purposes caused further pressures and concerns in the district. In addition to the delays over boundary surveys, it seems there were even more delays over partitioning the reserves so they could be fully used by the owners. This was particularly problematic in the case of seller reserves, which were intended to be represent the land sellers wanted to retain and use for economic and other purposes. However, the system of allocating their interests, other than requiring them to move from communal to individualised ownership appears to have involved little or no consideration of the practical difficulties involved. As with systems of Maori land title generally, these difficulties meant that it was practically far easier to further alienate land in the reserves than retain and use it. This raises further issues as to how genuine the Government really was in providing for and protecting land sellers wanted to retain, even though these reserves appear to have been critical in gaining Whanganui cooperation over the purchase in the first place.

## Chapter 9 Continuing Protests over Waimarino

### 9.1 Introduction

Protests about the implications of the Waimarino investigation and purchase continued well after the Native Land Court awards to the Crown and non-sellers, and the subsequent government decisions on seller reserves in 1887. Many of these concerns have already been described in earlier chapters in the context of highlighting purchase tactics. These included claims of impersonation, error and fraud in purchasing, as well as protests about the kinds of tactics Butler was using, including making payments for a variety of services and charging them to the block, paying some sellers more than others, entering secretive agreements and favouring chiefs who he considered were most cooperative. By the end of the purchase process, and as Butler's real objectives became evident with the Court case for the Crown award, there were also many expressions of disillusionment that his apparent offers of cooperation and future benefit through reserves were merely devices intended to encourage sales, after which owners were marginalised from future decision making and opportunities in the block.

Issues also moved to understandings of the purchase deed with regard to consultations and expectations and adequacy of seller reserves and the adequacy of the reserves made for non-sellers. There was some confusion over the various reserves for some time, aided by the fact that the government failed to survey them on the ground, and issue title, until in most cases the mid-1890s. The process of allocating reserves and surveying them also raised further concerns from Whanganui Maori. These continuing protests highlight a number of long running issues stemming from the investigation, purchase and creation of reserves in Waimarino.

This chapter attempts to provide an overview of protests and the way they highlight some of the main issues arising from the investigation and purchase of the Waimarino block. It has not been possible, in the time available, and with such a large block, to describe all areas of concern in great detail. Instead, a number of cases have been highlighted, where documentary evidence has been found and where specifically required by the commission brief. These are intended to provide examples of the main types of issues and concerns raised. However, they are not exhaustive and it is acknowledged that there may well be many other examples, and more detail, than it was possible to provide in this chapter.

## 9.2 Continuing protests about the purchase of Waimarino

The Court awards and the allocation of seller reserves did not end the protests about the Waimarino block. Many of these have already been referred to in the context of highlighting the purchase tactics used by Butler and the expectations and understandings he may have created in order to win cooperation for his purchasing in the block. Complaints about impersonation, frauds and errors over purchasing continued for some years, as noted in chapter seven of this report. In most cases, officials were reluctant to consider allegations in case this opened the floodgates to more complaints. However, as already noted, in exceptional circumstances and where evidence was compelling, they were obliged to acknowledge some complaints and pay compensation. By June 1890, for example, officials reported they believed they had dealt with the last of the impersonation cases for Waimarino.<sup>1537</sup>

Complaints about errors in lists of owners and exclusion of owners from the lists continued well after this. In most cases, officials tended to dismiss these general complaints as either unproved or the complainants' own fault for not properly asserting their rights when they were given 'full opportunity' at the title investigation. In many cases they also implied that complaints were merely being made out of greed, to win still more money from the government, rather than as a result of errors or injustice in the process. Some of the complaints are likely to have been motivated by personal interest as people tried to salvage what they could when the full implications of the purchase became known. However, this also highlighted how easily officials could use the assumed impartiality and 'due investigation' of the Land Court process to dismiss what may have been genuine concerns.

What officials generally failed to acknowledge was that the Waimarino hearing had in fact been pushed through rapidly in just a few days, with very short notice and when it was known that many communities of the area did not want the Court to operate in the district. The numerous letters and petitions of complaint in these cases were also generally referred to Butler, enabling him to provide his view of the process in which he had been so closely involved. By the mid-1890s Butler had also been appointed a Native Land Court judge, giving his word a respectability and status that complainants had difficulty in challenging. This was another feature of the Land Court process, where so many judges were previously land

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<sup>1537</sup> Sheridan file note 5 June 1890 NLP 90/176 MA1, 1924/202 v1 ANZ

purchase officers, generally sharing their views and concerns and knowledge of how best to manipulate the process in the interests of purchasing.

As well as the cases already mentioned in chapter seven, complaints continued, for example, from owners who claimed to have never sold their shares. In many cases these were dismissed, especially where Butler or Grace could point to the records showing payments for interests. In some cases, they may well have been persuaded to sell and then later wished to repudiate this as the full implications became clear. However, in other cases, as the records show, Butler had also been paying for services, supplies and other expenses such as travel and it is not clear because of this, whether some owners fully understood what payments were being made for. For example, when a family claimed in 1895 that their mother would never have sold her share in Waimarino, Butler was able to point to his records that her share had indeed been sold to Garland Woon on 21 August 1886, [presumably during the period when Woon was purchasing at the Wanganui Land Court]. Butler noted on this, that many Utapu people had sold without the knowledge of their relatives.<sup>1538</sup> This was an acknowledgement of how the purchase process was being used to target and separate individuals from their wider groups and the known collective wishes of those groups.

The general official response to these complaints was to refuse to recognise them if at all possible and to insist that the claimants prove their rights in Court or take the matter to petition. For example, in April 1887, Ngahuia Pikiwaiwhare of Pirongia claimed that the interests of her daughter had been sold by someone else. Lewis's first reaction was to recommend that the government should not recognise any of these cases without clear proof or the door would be opened to 'unlimited fraud on the Crown'.<sup>1539</sup> Butler agreed, and commented that the writer had the opportunity of appearing in Court and proving her case. He did not think that this or any other similar claims should now be recognised. He claimed that the 'most careful enquiries were made before the different owners signed' and if they were to recognise these then large numbers of others would come forward claiming personation and 'demand a second payment'.<sup>1540</sup>

As described earlier, the Government was eventually obliged to pay compensation in some cases of fraud and error. In the meantime, other complainants did continue with formal

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<sup>1538</sup> Butler note December 1895, NLP 95/458 MA1, 1924/202 v 2 ANZ

<sup>1539</sup> Letter April 1887 and file note by Lewis, 1 June 1887, NLP 87/137, MA1, 1924/202 v1, ANZ

<sup>1540</sup> Butler note, 8 June 1887, NLP 87/137, MA1, 1924/202 v1, ANZ

petitions. One of these petitions, from Te Rangitutangatanga was presented to Parliament on 22 May 1888, seeking redress for wrongs in reference to the Waimarino block.<sup>1541</sup> This was described further in the Native Affairs Committee report on the petition of 21 August 1888. This noted that the petitioner claimed to have a large interest in Waimarino and had never signed the deed of sale, although his name was on the deed. He also claimed to have never shared in any purchase money. However, the Committee found that as the petitioner had furnished no evidence in support of his claim, it had no recommendation to make.<sup>1542</sup> Another petition from Wharawharaiterangi and others was presented to Parliament on 6 August 1888, asking for a rehearing of the Waimarino case.<sup>1543</sup> The Native Affairs Committee report on this referred it to the government for further inquiry.<sup>1544</sup> Nothing further seems to have happened in this case.

A number of individuals also complained of having been omitted from the original ownership lists, either by error or lack of understanding of the process. These protests illustrated some of the misunderstandings about the investigation and purchase process, often made worse by the urgency under which it was conducted. The protests make it clear, for example, that the ownership lists were often only vaguely representative of whole families, even though in many cases family members might be expected to all have interests. In some cases, for example, some siblings or one parent was omitted, while others were included. It may have been understood that some family members might represent others, but legally those who were omitted were not recognised as having any rights. It also seems clear that the Court relied on hapu ownership lists being prepared and submitted by the leaders of various communities. However, if those chiefs knew little of the Court process they could make mistakes or allow errors that effectively excluded some interests. Those leaders were also used to pressure communities into cooperating with Butler to sell their individual interests. Individuals found themselves with legal powers to sell their interests but with little in the way of legal means of protecting their interests when chiefs failed to include them in lists, or the lists were amended in error.

For instance, an 1896 petition from Te Hurinui Tukapua, who petitioned a number of times, claimed his name had been wrongfully struck out of the list of owners for Waimarino.<sup>1545</sup> He

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<sup>1541</sup> *JHR* 1888 p xxxiii, petition 88/80

<sup>1542</sup> *AJHR* 1888 I-3 p 30 report on petition 88/80 21 August 1888

<sup>1543</sup> *JHR* 1888 p xxxvii, petition 88/461

<sup>1544</sup> *AJHR* 1888 I-3 pp 31-32

<sup>1545</sup> Le1/1896/10, petition 96/501, 96/187 ANZ

claimed that his name was originally on a list handed in for Waimarino by Wiremu te Kiriwehi for the Ngati te Wairehe hapu and this list was not objected to and accepted by the Court. During the purchase, however, he saw that Butler had struck his name out of the list of owners. He explained that his mother and three younger brothers were all accepted owners in Waimarino, but he had suffered from being struck off.<sup>1546</sup>

This petition was referred to the Chief Judge of the Native Land Court, Judge Davy. He reported on 31 July 1896, that he found that in referring to the lists for Waimarino a great many names had been struck out 'as is usually the case'.<sup>1547</sup> He found no record of the reasons for this. He also found that the petitioner had not been included in the Ngati te Wairehe list but in the Ngati Tara list and then struck out of that list. He found no explanation for this and could not say whether the petitioner should have been admitted. However, 'if all the persons who were struck out of the lists as originally formulated by the conductors were to petition, there would be some scores of them'. The judge found that the names actually admitted and passed was 1005. The greater part of the block was then acquired by the government.<sup>1548</sup> This legalistic view and refusal to look beyond the records at hand was typical of Court responses at this time. The fact that the rest of the petitioner's family was included in the lists was also not apparently regarded as relevant.

The Native Affairs Committee at first had no recommendation to make on the petitions, but in light of the petitioner's persistence and the new evidence about the confusion over lists, the Committee further reported that it had now been shown that the petitioner had good grounds for his complaint and recommended further inquiry and such relief as may be required.<sup>1549</sup> Officials were, however, reluctant to seriously consider this kind of case. A file note from the Judge of December 1896, indicated that his view was that the greater part of the block was now Crown land, and it was too late to question ownership.<sup>1550</sup> The petitioner did not give up and managed to gain the support of a Wellington Member of Parliament in 1900, to seek further inquiry into the case.<sup>1551</sup> However, at this time, Butler commented that the petitioner was no worse off than others who had their names struck out. Sheridan also noted that he

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<sup>1546</sup> Petition Le1/1896/10 ANZ

<sup>1547</sup> Report 31 July 1896, MA 1, 1924/202 v 2 ANZ

<sup>1548</sup> Report 31 July 1896, MA1, 1924/202 v 2 ANZ

<sup>1549</sup> *AJHR* 1896 I -3, pp14, 22 report on petitions of Te Hurinui Tukapua

<sup>1550</sup> File note, 1 December 1896, J96/1451, MA1, 1924/202 v2 ANZ

<sup>1551</sup> NLP 1900/105, MA1, 1924/202 v2 ANZ

knew of no grounds for more favourable consideration of this case and it would mean ‘opening a very wide door which it will afterwards be very difficult to close’.<sup>1552</sup>

Another similar petition was made at around the same time, in 1896. This was from Katarina Maihi and 18 others, claiming to have been excluded from the title to Waimarino owing to the ignorance of their hapu conductor.<sup>1553</sup> They claimed to belong to Ngati Hekeawai, a hapu they claimed had been admitted by Topia Turoa and others as having interests in Waimarino. They claimed their relatives were also descendants of the same ancestor as admitted in Waimarino. The petitioners had, however, been excluded owing to the mistakes made by their conductor. Chief Judge Davy also reported on this petition on 1 August 1896.<sup>1554</sup> He could find no list for a hapu named Ngati Hekeawai and could not check for the relatives referred to, as their names had not been supplied. He noted that ‘in any case’ as he had already stated in other petitions concerning Waimarino, the major portion of the block had already been acquired by the Government ‘and it is too late now to raise questions of ownership’.<sup>1555</sup>

The complaints from small groups and individuals continued into the twentieth century, although in most cases, the reluctance of officials to reconsider these cases prevailed and gradually individuals appear to have given up seeking redress through official channels, especially when they were consistently informed it had become too late to have such concerns considered. For example, in 1915, Hohepa Kawana and 19 others petitioned Parliament for a grant of land out of the Waimarino block as they had been left landless by the sale of the block and were left out of the arrangements over it.<sup>1556</sup> The Under Secretary of the Department of Lands and Survey reported that ‘the Crown has fully carried out its obligations under the deed of purchase, and no further claims in regard to the matter can be admitted’.<sup>1557</sup> The Native Affairs Committee had no recommendation to make on the petition in reporting on 1 October 1919.<sup>1558</sup>

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<sup>1552</sup> File note by Butler and note by Sheridan 15 October 1900, NLP 1900/105, MA1, 1924/202 v2 ANZ

<sup>1553</sup> Le1/1896/10 petition 96/156, ANZ

<sup>1554</sup> Report on petition, 1 August 1896, Le1, 1896/10 ANZ

<sup>1555</sup> Report on petition, 1 August 1896, Le1, 1896/10 ANZ

<sup>1556</sup> Le1/1917/17, petition 1917/90, ANZ

<sup>1557</sup> Report on petition, 1 October 1917, Le1/1917/17 ANZ

<sup>1558</sup> Le1/1917/17 note of recommendation 1 October 1919, ANZ, *AJHR* 1919 I-3 p 8

### 9.3 Protests about landlessness

Another major issue raised by protests following the purchase was the issue of whole communities being left landless by the purchase. As previously noted, the Crown had begun making attempts to provide for the settlement and sale of resources of what was now regarded as Crown land in the Waimarino block by the early 1890s. Settlement and the construction of the railway took much longer than anticipated, but there was early optimism that the district would be subject to significant development. It was recognised that roads were vital for settlement and considerable effort was expended on road making, including on what was expected to be the main trunk road through the district, between Taumarunui and Ohakune, known at this time as ‘Rochfort’s track’. This is described in more detail in the following chapter. Other roads developed were ‘Field’s track’ (the Wanganui-Murimotu Road) and the Pipiriki-Ohakune Road.<sup>1559</sup> From the late 1890s, extensive work was also undertaken to remove snags and improve the navigation of the Whanganui River for riverboats. This was intended to provide transport for materials for the Main Trunk railway and to make the upper reaches of the river more accessible for settlement.<sup>1560</sup>

The Government also began opening areas of Crown land in the Waimarino block for settlement. It has already been noted that in 1892, for example, large areas adjacent to the Manganui a te Ao River and reserve A were opened for settlement, apparently resulting in reserve A being surveyed well ahead of other seller and non-seller reserves. In 1899, sections were also offered for sale or lease along or near the Manganui a te Ao River and nearby Waimarino 3 reserve.<sup>1561</sup> In the late 1890s, the Government also began further investigations of the ‘great totara forest’ now included in Crown land in the northern part of the block.<sup>1562</sup> By 1900, endowment land for the Wanganui River Trust along the Whanganui River was also being surveyed and cut into sections for sale or lease for grazing.<sup>1563</sup> The Department of Lands reported in 1910, that the balance of the Waimarino Crown land still available and suitable for settlement was 70,000 acres.<sup>1564</sup>

As the Crown began dealing in Waimarino lands considered Crown lands, the extent of landlessness created by the purchase became more evident. In many cases, Maori were living

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<sup>1559</sup> *AJHR* 1889 C-1A p 23 *AJHR* 1892 C-1 p 48

<sup>1560</sup> *AJHR* 1896 C-1, C-15

<sup>1561</sup> Hamer, supplementary report p 6 citing MA1, 1924/202 v2 ANZ

<sup>1562</sup> Correspondence LS1, 40348, ANZ

<sup>1563</sup> Hamer, supplementary report p 6

<sup>1564</sup> *AJHR* 1910 C-1 p 20

and harvesting as they had always done, but technically they were now considered to be ‘squatting’ on what was now Crown land in Waimarino. They came to official attention as land they were occupying came to attention for some government purpose. For example, in 1898, a Crown Lands ranger, S Murray, reported that Maori in the northern Tuhua area were felling trees in the government totara forest. It was also clear they had cultivations near but outside reserves 6 and 7.<sup>1565</sup> In the next few years, surveyors reported Maori occupying and claiming various Waimarino Crown lands along the river and inland along the Retaruke and Kaitieke valleys as far as Otaupouri.<sup>1566</sup> The initial Government response was to regard these people as ‘trespassers’ who should be ordered off. For example, in 1899, Marchant, now Commissioner of Crown Lands, reported that he had issued instructions to warn those Maori in the totara forest that they were trespassing and to remove themselves ‘instantly’.<sup>1567</sup>

This stance seems to have been softened a little by Carroll’s influence from the turn of the century. He also seems to have attempted to find ways of providing for those who seemed most desperate. However, he only seems to have been able to operate in a very limited way to lessen the worst of the impact of the purchase and to blunt the most embarrassing opposition. He does not seem to have been willing or perhaps able to institute anything that might fundamentally question the integrity of the purchase. Within a few years Carroll’s influence was also waning as the political climate became much more intolerant of Maori aspirations and complaints. In the meantime, officials such as Sheridan, who had been closely involved in the purchase and its consequences, seemed content to ride out complaints advising that they be resisted as much as possible. They were willing to act against ‘squatters’ where they were directly in the way of developments but otherwise were content to allow ‘squatting’ to continue until lands were required. This tended to blunt and divide resistance allowing officials to deal with issues separately. In the meantime, officials were content to wait until the landless gave up and they and their complaints ‘disappeared’, leaving the Crown in effective control. This approach is illustrated in some of the following case studies.

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<sup>1565</sup> Report S Murray to Surveyor General, 23 December 1898, and sketch map showing cultivations, LS1, 40348, ANZ

<sup>1566</sup> For example, correspondence 1899-1904, LS1, 40348, ANZ

<sup>1567</sup> Marchant to Surveyor General 13 July 1899, LS1, 40348 ANZ

#### **9.4 The northern Tuhua area and landlessness**

One of the most obvious areas of landlessness was in the north of the Waimarino block where many communities had chosen not to participate in either the title investigation or the later purchase. As described, these people had believed their Tuhua lands within the Aotea Rohe Potae boundary were anyway protected from the Land Court by the Rohe Potae compact with the Government until adequate systems with significant Maori participation were established for title investigation. In addition, most had refused to cooperate with Butler, rejecting his purchase tactics and preferring to retain land under their own control. As described, they had consistently approached the Government throughout the title investigation, survey and purchase of the Waimarino block asking that Tuhua be excluded from it when the ‘proper’ survey was made. Some of those Tuhua chiefs recognised as most influential in the district such as Ngatai te Mamaku had also been left out of the Waimarino ownership lists, appearing to confirm that Tuhua lands were not included.

Some Tuhua chiefs had been included in the lists, including Tuao, Tanoa and Taitua. This may have been because their interests extended down into the Waimarino ‘proper’ area. It is also likely that their names were put in by others who recognised their interests. This may have been accepted by Butler as giving the lists some credibility if he wanted to claim the Tuhua area as part of the block. However, it is not clear how much these chiefs participated in the Court process themselves. The fact that they do not appear to have submitted ownership lists of their communities (as became evident later) indicates that they did not participate to any extent and that they did not believe they needed to protect those community interests at this time. This is consistent with their belief that while they may have personally had some interests south into Waimarino, they did not believe the block affected the lands of their Tuhua communities. These chiefs refused to sell their interests in Waimarino and continued to insist that Tuhua should not be included within it.

During the Court hearing for the Crown and non-seller awards, some of these chiefs had given evidence in an effort to prove the extent of their interests in the block. They had also been awarded non-seller reserves. However, they remained clear that they did not accept that Tuhua lands, especially those within the Rohe Potae boundary, should be regarded as part of Waimarino. They continued to ask the government to respect the agreement over protection for the Rohe Potae boundary they believed had been agreed during the Rohe Potae negotiations. They were also very critical of Butler’s purchase tactics and having refused to enter into any agreements over the sale and to take any of the money offered, they believed

they should be left alone on their ancestral lands, with the settlements, cultivations, urupa and other sites they had always used. It took some time for them to realise that even though they had refused to engage in the new system, including the purchase, they could still be effectively left with just over 1000 acres of their former lands. In addition, although the reserves were ostensibly made for them as individuals, in reality they had to serve their communities who had been left out of ownership lists. They initially appeared optimistic that if Ballance and the Governor were to realise the full truth of their situation, then they could negotiate a more just and fair solution to their difficulties. However, as the years passed and all their efforts were rebuffed, they became increasingly disillusioned and bitter about the good faith of the government.

As the Court awards for the Crown and for non-sellers became known, the Tuhua chiefs began to protest further about the inclusion of the Tuhua lands and the impact of the purchasing process on them. Many of the written protests still survive in the official record. It also seems there were numbers of meetings over the issue with officials and possibly Ministers at this time is time, although these are much less well recorded.

On 10 May 1887, the chief Paiaka wrote to Ballance and Lewis complaining again about the inclusion of the Tuhua area within the Waimarino block. He asked how many acres did they think could be purchased with £35, the amount Butler had given him not only for his interests in Waimarino, but in all parts of Tuhua. He claimed he was the only member of Ngati Tukaiaora and Ngati Hinekura who had the largest interests in the whole block and those who had the largest interests were ‘grieved’ by Butler’s actions in giving more land to those who only had small interests and in paying large sums to them. He also complained of the way Butler had created reserves in the block and allocated interests in them. He told the Government that he would now keep Kakahi, Te Whataparapa, Matawhero, Tutumai, Paritea, Kouturoa and he wanted a proper Land Court sitting on these areas to ‘carefully deal with them’ as this was the best way to avoid trouble. He claimed that those with the largest interests in Tuhua were himself, Ngati Hinekura, Ngati Tohiora, Ngati Tamahiku, Ngati Tuiti and Ngati Kahukurapane. All the others living at Tuhua only had interests along the banks of the Whanganui River.<sup>1568</sup>

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<sup>1568</sup> Paiaka letter to Ballance and Lewis, 10 May 1887, NLP 87/41, MA1, 1924/202 v 1, ANZ

Paiaka also complained of Butler's purchase tactics in Waimarino, including his purchasing from children under ten years old who were not able to object in future, and his payments to those who were not owners in the lists but recording those payments against the purchase amount for the block. He wanted the land dealt with fairly, with an opportunity to have a proper and correct subdivision of the land for everyone. He also referred to earlier expectations about the way Waimarino would be dealt with. He complained that Ballance had promised that Topia Turoa would be able to 'assist' in dealing with Waimarino, but instead Butler was doing it all. He asked for justice and what was right over this. He also asked Lewis further about the Kirikau block and his concerns over that.<sup>1569</sup> The file note by Lewis on this advised the Native Minister that he did not think the letter needed a reply. 'Paiaka has done very well out of Waimarino'. This was signed as seen by Ballance and the correspondence was filed without reply.<sup>1570</sup>

This was followed by a letter to the Governor of New Zealand from Ngatai te Mamaku and 107 others of 9 June 1887.<sup>1571</sup> This letter was written in the form of a petition, although it was not technically one. In translation, the writers asked the Governor to listen to their grievances as a result of the inclusion of their land in the Waimarino purchase. They explained that this Tuhua land had been included in the Aotea Rohe Potae and they wanted the 'unlawful and secret' purchase of land confined outside this 'entirely to Waimarino'. They wanted their lands left alone in the Aotea Rohe Potae, as they never wanted to sell them 'to the Native Land Court'. These lands contained their homes, cultivations, cattle and horses, as well as their dead and other properties. The only thing they ever approved of was the railway line going through their land in the Aotea Rohe Potae. They claimed that the hapu who had suffered from this were Ngati Hauaroa, Ngati Reremai, and Ngati Whera and they had never gained any of the money paid for Waimarino. They also explained that their grievance was caused by their ignorance of the proceedings, Courts and Acts of the Government, 'we do not know them'.<sup>1572</sup>

In response to this letter, Ballance wrote to the Governor, attaching a letter from Butler and a minute by Lewis. He claimed these showed that the writers of the letter were 'incorrect'. He claimed the Waimarino block passed through the Land Court 'after full notice had been given

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<sup>1569</sup> Paiaka letter to Ballance and Lewis, 10 May 1887, NLP 87/41, MA1, 1924/202 v 1, ANZ

<sup>1570</sup> File notes 7 and 9 June 1887, cover page of 87/141 MA1, 1924/202 v 1 ANZ

<sup>1571</sup> Letter 9 June 1887, NLP 87/198, MA1, 1924/202 v1 ANZ

<sup>1572</sup> Letter 9 June 1887 from Ngatai te Mamaku and 107 others, NLP 87/198, MA1, 1924/202 v1 ANZ

to the Natives interested' and 'upwards of one thousand' were then admitted as owners. Ballance also claimed that 'every Native who had any claim in the block had full opportunity of establishing it in Court' and that the purchase was 'openly conducted' by officers and ultimately the interests of non-sellers and the crown were defined by the Native Land Court 'at which Ngatai and all the leading Natives of the Upper Whanganui were present'. He suggested that the Governor reply that he was informed that the purchase of Waimarino was made by the Crown 'in accordance with law' and the boundaries of the block and the names of the owners were decided by the Land Court after 'due investigation'.<sup>1573</sup> A draft letter from the Governor to Ngatai followed this suggestion, noting in addition that 'it is not possible now to consider any fresh claims or to change what has been done'.<sup>1574</sup>

A petition from Ngatai te Mamaku and 19 others was also presented to Parliament on 10 July 1888.<sup>1575</sup> The petition was described as complaining that the Waimarino block was surreptitiously passed through the Land Court and they were thus robbed of their land. It seems that this petition was, therefore, similar to the petition to the Governor. In August 1888, the Native affairs Committee reported on this and a number of other petitions, referring them to the government for further inquiry.<sup>1576</sup>

The Government also received a letter from Tuao, Tanoa and Taitua of Taumarunui of 11 June 1887. In translation, they noted they were listed as owners in Waimarino but had never taken any money for it. 'Consequently' they now took Tuhua into their own hands claiming it still belonged to them, that is, the portion included in the Aotea block.<sup>1577</sup> Sheridan noted on it that it was actually in the handwriting of Ngatai who had recently petitioned the Governor.<sup>1578</sup> The implication was that the chiefs named had not actually written it although it was well known at this time that Maori often used one more literate person to write out letters for others. Butler noted on this that the persons named were excluded from the sale and an area of 1350 acres was awarded to them near Taumarunui as non-sellers. They now had no claim on any other part of the Waimarino block. He suggested that Ngatai be informed that with the exception of that reserve and the 950 acres awarded to the two owners Heremaia and Te

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<sup>1573</sup> Memo by Ballance, 29 June 1887, MA1, 1924/202 v1 ANZ

<sup>1574</sup> Letter from Governor 1 July 1887, NLP 87/198, MA1, 1924/202 v1 ANZ

<sup>1575</sup> *JHR* 1888 schedule of petitions, petition 88/383

<sup>1576</sup> *AJHR* 1888 I-3, pp 31-32, petition 87/383 Ngatai te Mamaku and 19 others, report 24 August 1888

<sup>1577</sup> Letter from Tuao, 11 June 1887, NLP 87/203, MA1, 1924/202 v1 ANZ

<sup>1578</sup> Sheridan file note, 24 June 1887, file cover NLP 87/203, MA1, 1924/202 v1 ANZ

Moana, the whole of the 'Tuhua portion' of the Waimarino block was now the property of the Crown.

This was followed by a letter of 2 August 1887, from the chief Tuao to Lewis and Butler concerning the purchases of the Waimarino and Papatupu blocks. In translation, he explained that his people lived at Taumarunui and all the kaingas around about Tuhua, numbering some 300 people. He had received the notice of his non-seller award and was informing the officials that he and his people refused to accept the 1000 acres that had been reserved for them. They considered this was not 'right or proper' seeing that they still held the land through their ancestors' 'Crown grant' and therefore officials had no right to 'become the awarder of land to us'. If the land belonged to the Government that would be well and good, but 'as it is mine, I have the entire right to do with my own'. Tuao also did not agree with the Waimarino purchase as it was conducted. The sale had been proposed not by his people but the people of Tieke, 'who are not living here to give evidence of their rights to make a sale'. He asked Butler and Lewis not to go ahead with the Crown grant as passed by the Whanganui Court as he and his people were not there. Tuao claimed he had other 'crown grants' as well, one from his tupuna and one from the Court at Otorohanga, which Court is to settle the Aotea question.<sup>1579</sup> Butler annotated this letter on 9 September 1887, noting the writer was a non seller and referring to the area of 1350 acres in Waimarino awarded by the Native Land Court to Taituha te Uhi, Tanoa Te Uhi and Tuao.<sup>1580</sup>

This was a clear statement of the understandings of chiefs such as Tuao at this time and why they feared the operation of the Native Land Court so much. As far as they were concerned they had done nothing to replace their customary authority over their lands, with that of the Crown. They had tried to protect their Tuhua lands and they believed they had an agreement with the Government over this (through the Rohe Potae compact). They did not accept that dealings in Waimarino, which they had not participated in, could affect their Tuhua lands when they had taken no part in the Court process or the purchase. They therefore rejected the non-seller grant as having no authority and as being unjust.

The impact of the Native Land Court process and the way it could be manipulated to suit government ends is highlighted in this case. Some of the Tuhua chiefs, although clearly not all their communities, were included in the Waimarino lists, presumably to lend credibility to

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<sup>1579</sup> Letter Tuao to Lewis and Butler, 2 August 1887, NLP 87/300, MA1, 1924/200 v 1 ANZ

<sup>1580</sup> File note Butler 9 September 1887 on NLP 87/300 MA1, 1924/202 v1 ANZ

the claimed boundaries of the block. Even though those chiefs might refuse to recognise the process, they found themselves involved in it regardless. Officials like Butler could also manipulate the process to leave those chiefs with awards of just small areas of land, based on evidence he had arranged. The chiefs never felt they had been given the opportunity to properly discuss their claims or their concerns on their own ground but ‘due investigation’ had left them included in a block they rejected, and their communities with an award that was barely enough for them to live on, while excluding much of their ancestral lands.

Tuao then appears to have decided to write direct to Ballance with his concerns, apparently in the hope that if he knew of the problems, Ballance would take steps to rectify them. This was written on 9 August 1887. In translation, this letter referred to their talk at Otorohanga regarding the Aotearoa block ‘which has since been broken into by the sale of Waimarino’. Tuao reminded Ballance that when they talked, Ballance had referred to Waimarino being outside the Aotearoa block, whereas Tuao had been concerned it might be included. It now appeared that Tuao had been right as he had now received a note telling him the acres awarded to him. Tuao told Ballance he did not agree with this reserve that Butler had made ‘for it is not his, but mine’ and, besides, Tuao had accepted no money for it and told him he was acting wrongly. Tuao told Ballance that ‘all this trouble emanates from the Commissioner’. He asked Ballance to deal ‘easily and fairly with us all’. ‘The trouble comes from you and not from the owners of this land’. He complained that ‘deposits have been paid in all directions’ and consequently Butler believed false claims to the land and ‘of course’ has given money to other people, while ‘the real owners of the land refused to accept that money’ as ‘I preferred the land to his money’.<sup>1581</sup>

This was a careful criticism of Ballance’s policies and the purchase tactics used in Waimarino. Unfortunately, it has not been possible to find evidence of the Otorohanga meeting referred to between Ballance and the chiefs in the time available for this report. At this point Tuao still seemed willing to believe that Ballance would be willing to deal fairly if he knew the real truth of the matter. He also seemed willing to believe that Butler’s tactics had led him into error, rather than the alternative, that Butler had deliberately manipulated the purchase and subsequent Court hearing to ensure that those who were willing to sell were treated as the largest owners in the area. Butler’s only comments were to annotate the letter

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<sup>1581</sup> Letter Tuao to Ballance, 9 August 1887, NLP 87/239, MA1, 1924/202 v1 ANZ

that he had offered what he considered was a fair price for Tuao's interest in Waimarino, but he had refused.<sup>1582</sup>

In early 1888, Paiaka te Paponga also wrote to the new Native Minister Mitchelson, informing the government of further disillusionment with the promised new system of dealing in land. He informed Mitchelson that a large meeting was planned to be held at Putiki on 25 April, for the purpose of forming a 'good and a clear law and of abolishing the grievous laws of the Government which are causing so much injury to both land and man'. When this was done, it was intended to withdraw Waimarino 'from under your control'.<sup>1583</sup>

The Tuhua people soon found that the Government would not recognise that the Rohe Potae negotiations and understandings had any force, in spite of the fact that those involved had been obliged to pay for the external survey and that the understandings had provided considerable benefit for the Government, especially in smoothing the way for the construction of the railway. In 1890, the Tuhua people tried a slightly different approach, having their case raised in Parliament by a sympathetic Pakeha member for the Whanganui area. In June 1890, this Member of Parliament, Mr Bruce, asked the Minister of Native Affairs, Mitchelson, about the alleged injustice done to Maori of Taumarunui with regard to the purchase of the Waimarino block. He asked if the Minister was aware that the Rohe Potae block had previously been surveyed by Maori under the understanding with the Government that no portion of it should be sold until all titles in it were decided. This had been infringed by the Waimarino purchase, prior to the determination of title in the Rohe Potae. Bruce claimed that during a recent trip to the area, the Native Minister had found the Maori people distrustful and suspicious of government dealings over Maori land and ready to believe the government was willing to acquire their land 'by hook or by crook'. The Maori who had paid a large sum for the Rohe Potae boundary survey and believed their land was protected by it were also situated over one hundred and thirty miles from where the Court investigating the title to Waimarino was held at Wanganui. They were ignorant of the law and did not attend the Court to protect their interests. The Waimarino block included a portion of the Rohe Potae and he had heard from reliable sources that the Maori people of the area were so concerned about the Court

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<sup>1582</sup> Butler file note 9 September 1887, NLP 87/239 MA1, 1924/202 v1 ANZ

<sup>1583</sup> Letter Paiakate Paponga to Mitchelson, from Koiro, Tuhua, 24 March 1888, NLP 88/85, MA1, 1924/202 v 1 ANZ

proceeding [presumably the awards] they had not felt able to plant their crops or use their land as they normally would.<sup>1584</sup>

Ballance, the previous Native Minister, then asked in response to this, whether the Native Minister knew of an 1887 petition on this matter, after which on taking evidence, the Native Affairs Committee had no recommendation to make. By this he seemed to be indicating that it had been found there was no substance in these claims. The Native Minister Mitchelson replied that he had found the Waimarino block did contain part of the Rohe Potae, but Maori throughout the district had a sufficient amount of notice that the block was to be dealt with at the Court and a number were present at the title investigation and included in the grant. Those who now objected had had the ordinary course open to them of petitioning or asking the judge for a rehearing. He admitted that the purchase of the block had begun before the end of the six months allowed by law (to apply for a rehearing) but claimed there was only one application for rehearing received by the Chief Judge and that was withdrawn prior to the expiry of the time. Therefore, as far as the government was concerned, ‘every opportunity was given to enable them to not only appear at the first hearing but also to make application for rehearing, the Native Agent having kept them informed and advised as to what was being done’. He also affirmed the statement Ballance had made about the 1887 petition.<sup>1585</sup> The ‘Native Agent’ he was referring to was, presumably, Butler.

The comments about the applications for rehearing were demonstrably incorrect, as has been shown in earlier chapters. There were a number of applications for rehearing but they were all dismissed by the Chief Judge of the Land Court. There were some applications withdrawn, but these had been for partitions, not for rehearing. As shown, the partition applications had been withdrawn in an effort to prevent the Crown application for an award going ahead and to negotiate direct with Ballance a fairer settlement of the claims in Waimarino. This was because the Waimarino purchase was believed to have been undertaken unfairly and unjustly and in a manner that cut across Balance’s assurances of a new system of fairer, more open and just dealing in land.

Mr Bruce restated his question for the Minister as to whether or not an agreement had been made about the Rohe Potae, whereby no portion of that block was to be purchased by the government until after title had been determined. Mitchelson replied that although he had

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<sup>1584</sup> *NZPD* 1890 vol 67 p 157

<sup>1585</sup> *NZPD* 1890 vol 67 p 157

‘taken great pains’ to ascertain whether such an agreement had been made ‘there was no record in the office to prove it was so’. He had also asked the Native Minister of the time, now the member for Waipa, [Bryce] who had assured him that ‘as far as he could remember, no such promise was made’. In reply to further questioning Mitchelson said he would be happy to inquire further, if this was required.<sup>1586</sup> This was the beginning of a long history of successive government refusals to acknowledge the importance or even the existence of the earlier Rohe Potae negotiations, even though governments had clearly benefited from and at the time fully understood Maori expectations and understandings of them.

Tuao and other Tuhua chiefs wrote to the Government again when surveyors began finally cutting out the seller and non-seller reserves in the northern part of Waimarino in 1895. In March 1895, Tuao wrote to the Native Minister informing him that a surveyor had come to survey the Aotearoa block, which was included in the Waimarino sale.<sup>1587</sup> He still seemed to believe at this time that, as he had not participated in the land dealing and he had taken no part in the sale, the matter of Tuhua land could be settled fairly by negotiation. He reminded the Native Minister that he and his people had not accepted any money for the block and were now willing to settle matters by dividing the land with 20,000 acres for the people and 20,000 acres for the government money. They agreed to the Government having land from Kopua-a-Hinetonga to the Ruhatuha then to Te Rerenga o Toakohuru and then to Hauhungatahi, where they asked that the land for government money received by others should stop. They reminded the Government they had not taken the money. They wanted the portion for themselves to begin at Ohinetonga and then go to Tapurirangi.<sup>1588</sup>

Sheridan noted to Butler that this matter could come before Carroll at Taumarunui. He asked Butler what the writers wanted and thought it must be the ‘extension’ of one of the awards for non-sellers and asked what reply Carroll might give.<sup>1589</sup> Butler (who was a Native Land Court judge by this time) replied that the writers wanted an extension in favour of the non-sellers. He explained that Carroll had told them at Taumarunui that this could not be done, ‘and they understand this now’. Tuao was also asking the government to set aside 20,000 acres for people he alleged had rights in Waimarino and were omitted from title. Carroll had told them that with regard to this they had themselves to blame, as they had ‘ample opportunity’ of

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<sup>1586</sup> *NZPD* 1890 vol 67 p 157

<sup>1587</sup> Letter Tuao to Native Minister 17 March 1895, NLP 95/201 MA1, 1924/202 v2 ANZ

<sup>1588</sup> Letter Tuao to Native Minister 17 March 1895, NLP 95/201 MA1, 1924/202 v2 ANZ

<sup>1589</sup> File note, Sheridan, 8 April 1895, on MLP 95/201, MA1, 1924/202 v2 ANZ

asserting their rights. Butler also noted that they intended to send representatives to Wellington to see the Native Minister further about the matter.<sup>1590</sup>

This was followed by a letter to McKenzie, the Minister of Lands of 2 July 1895, from Paraone Ropiha and Huiaki Ropiha, on behalf of the whole tribe.<sup>1591</sup> This letter explained that when Carroll had visited Taumarunui, he had said the survey must go on, but he had advised them to send someone to Parliament and now they had come. They were also petitioning and explained that their list of names had not been handed in for Waimarino ‘inadvertently’ because of their ignorance of Pakeha law. They were asking for a reserve at Taumarunui starting at Matawhero to Matahana to Kakahi stream then to the hill Tuturewarewa, then over the hill Tahuhuroa to Matawhero. They noted their settlements and kaingas were on that land. Matawhero was a settlement, Totaratiatia was a settlement with an urupa, Parara and Matahanea were settlements and Whakaari was a kainga. Rurumaiakatea was also a kainga with an urupa. Their sheep, cattle, horses and pigs were also on the land and they lived there. They explained that when the surveyor Dalziell had arrived at Taumarunui they had stopped him. They had sent a letter to the Native Minister to ask for some of the land and then they had let the survey go ahead, but their letter was not answered. When Carroll had visited he had said the survey must go on and they had consented to it. This letter was signed by Paraone and Hinaki Ropiha for the hapu of Ngati Haua. A file note indicated that they had also petitioned Parliament.<sup>1592</sup> Presumably the letter that had not been answered was the one suggesting the government and people split the land between them.

Their petition to Parliament of 2 July 1895 (petition 80/1895) contained much the same information, claiming their lists were inadvertently omitted when lists were handed to the Court and they were ignorant of Pakeha law. They asked for land in Waimarino on the side towards Taumarunui at Matawhero then to Matahanea then to Kakahi then up that stream to Tuturewarewa, Tahuhuroa and then to Matawhero again. Carroll had advised them to send this petition in when they had met with him at Taumarunui.<sup>1593</sup> It is difficult to find all these place names on maps of the time but it seems as though the petitioners were seeking land around the reserve made for them and extending north to the Whanganui River.

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<sup>1590</sup> Butler, file note, 10 April 1895 on NLP 95/201 MA1, 1924/202 v2 ANZ

<sup>1591</sup> Letter 2 July 1895, P and H Ropiha to Minister of Lands, MA1, 1924/202 v2 ANZ

<sup>1592</sup> Letter 2 July 1895 to McKenzie MA1, 1924/202 v2 ANZ

<sup>1593</sup> Copy of petition on MA1, 1924/202 v2 ANZ

This petition also makes no mention of the Rohe Potae agreement and the wrongful inclusion of Tuhua within that boundary. By this time it seems that these people had been convinced that they were wasting their time complaining about this as the government would never accept it. It is possible that Carroll had further urged them to abandon this claim and instead focus on an issue that might be accepted, their own errors and ignorance in submitting lists to the Court. It seems by now that they had been convinced that their only hope of gaining any official recognition of their loss of lands was to plead ignorance of the law and a mistake over the lists. However, in contrast to their earlier complaints, this effectively meant they were obliged to admit Land Court authority over the whole Waimarino block, at least in their petitioning.

When Butler was asked to comment on this petition, unusually, he did not make his normal claim that they were given ‘full opportunity’ of being included in the ownership of the block and only had themselves to blame. Instead, he admitted that it was true that a list with the names of petitioners and others of the Taumarunui area was withheld when other lists for Waimarino were handed to the Court. The list had been in the charge of the chief Rangipuhia and was withdrawn by him at a meeting of people outside the Court because some persons in it were objected to as having no right. Butler now admitted, ‘I do not think he realised what the effect of his action would be’. He also noted that the boundaries of the land requested in the petition compromised a considerable area of land.<sup>1594</sup>

As noted in earlier chapters, Butler was admitting with these comments that he had been closely involved at the time the lists of owners were presented to the Court. Although he was the official who was meant to be guiding and advising Maori over this, as Mitchelson had claimed in 1890, he had in fact failed in this instance at least, to advise those withdrawing the list of the implications of their action. Presumably, the withdrawal of the list at this time suited Butler’s purchasing efforts and this was why he had made no effort to help at the time. It is interesting that Butler was now agreeing that this kind of misunderstanding had indeed occurred. Possibly, in this case, Butler was willing to make this admission, because it at least encouraged the Tuhua people to abandon their argument over the wrongful inclusion of Tuhua within the Waimarino boundary, in favour of a claim over errors in lists.

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<sup>1594</sup> Butler file note 17 July 1895, 95/2168, MA1, 1924/202 v2 ANZ

If the petitioners had hoped their reliance on claiming a mistake before the Court might produce a more conciliatory response from the government, they were disappointed. The official departmental report on the petition noted the title to Waimarino had been investigated in March 1886. It went on to claim that ‘every effort’ had been made to bring the ownership before the Court ‘in the most complete manner possible’. Ballance, the Native Minister of the time, had also ‘personally interested himself in the matter to that end’. However, through a ‘spirit of obstruction to the Court’ some of the leading men refused or failed to appear in support of the claims of themselves and their people. Nevertheless, it claimed a ‘searching inquiry’ was made by Judges O’Brien and Puckey ‘into the rights of all parties’ and the names of 1014 Maori ‘were selected as owners’. The bulk of those had then sold their interests to the Crown. It explained that the interests of the non-sellers were later cut out and reserves of mainly 50 acres each had been returned to the sellers. It described the petitioners as only two of a very large number of similar claims, and it warned that it was impossible to say where the matter would end, or what the consequences would be, of recognising their claims ‘in any way’. The report explained that Mr Butler, now Judge Butler, was the officer ‘entrusted with the conduct of the proceedings before the Native land Court and the subsequent purchase of the land on behalf of the Government’ and could give evidence if required. It was also understood that, anyway, the petitioners were still large landowners.<sup>1595</sup>

This report was a classic justification of the Land Court process and all the assumptions of impartiality and objective decision making behind it. It failed to note that the ‘searching inquiry’ had taken just a few days for such a large block, and that those who had refused to take part had been promised by Ballance that the Court would not be forced on them. They had also had every reason to believe that their Tuhua land was already protected by negotiation with the government over the Rohe Potae boundary. As always, officials also noted that some 1014 Maori had originally been found to be owners, as though that showed a full representation of ownership. However, they failed to note what was also well known by now, that Butler had managed to reduce the larger number to around 920 accepted owners, many of whom were children. Officials also claimed reserves were made of mainly 50 acres each, when in fact many sellers received interests of much less than this and rather than receiving awards ‘each’ they were lumped in with many other owners as tenants in common in large reserves. Interestingly, the choice of words, ‘selected as owners’ seemed to finally be

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<sup>1595</sup> Report on petition, P Sheridan, 24 July 1895, MA1, 1924/202 v2 ANZ

an admission that the lists had never been anything like a full record of all interests in the block.

The official report into this petition of 7 August 1895, nevertheless recommended that the government should make inquiry into the case of the petitioners, and, by way of a compassionate allowance, grant such relief as may be considered just to those owners in the Waimarino block whose names were, through ignorance on the part of the head of their hapu, withheld from the Court at the time of hearing.<sup>1596</sup> This seemed to offer some hope to the petitioners and they appeared to believe that this recommendation would bring them some relief. For example, in early 1896, Paraone Ropiha wrote to the government asking when Carroll was going to visit Taumarunui to lay down the boundaries as requested in the petition.<sup>1597</sup>

These expectations were misplaced, however, and the government appears to have decided, as in other similar cases, not to heed the Committee recommendation. In July 1899, Te Hika Poihipi, Katarina Waiharea and Waikura Pirihira, all of Ngati Hauaroa wrote to the Native Minister asking what was happening about the petition. They noted that Ngati Hauaroa had suffered through the Waimarino block and they had their petition before Parliament for a long time and had still received no reply. When Carroll and the Native Minister had visited Taumarunui they had promised to consider their grievance when they returned to Wellington. They had advised the young people of Ngati Hauaroa to go to Wellington and arrange matters concerning Waimarino. They had sent Paraone Ropiha and Hinaki Ropiha and they understood the grievance was settled. They were expecting a letter to explain. It had now been three years and they had still received no word. They were still living around Taumarunui and they were waiting for the government to act as arranged and explain matters. They asked whether the petition had been lost. They also noted that the hapu Te Kere Ngataierua had sent on the land were also in occupation.<sup>1598</sup>

A further letter from Ngatai te Mamaku to the Native Minister of 1899 asked what had happened to the Waimarino petitions about those people who had suffered from the Waimarino sale and asking why matters had taken so long to resolve.<sup>1599</sup> In fact it seems that the government felt no obligation to act on the petition report. The government was

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<sup>1596</sup> Report of Native Affairs Committee, *AJHR* 1895 I-3 p 8

<sup>1597</sup> Letter 26 March 1896, MA1, 96/148, 1924/202 v2 ANZ

<sup>1598</sup> Letter 24 July 1899, 99/140, MA1, 1924/202 v2 ANZ

<sup>1599</sup> Letter Ngatai te Mamaku to Native Minister 30 July 1899, MA1, 1924/202 v2 ANZ

determined to exploit the great totara forest in the northern Waimarino in particular and by now rejected any suggestion that the block boundaries were incorrect or that the original Rohe Potae external boundary survey indicated any agreements over protection. The government was also concerned that any agreement with the northern people might well encourage others who had also missed out from inclusion in the block.

The mention of Te Kere by the Tuhua people confirms that, by this time, Te Kere and his followers were active in the area. Although Te Kere attracted followers from many parts of the North Island, it seems that his Tuhua followers also increased at this time, attracted by his assurances that the Government would eventually return their land. Many Tuhua people appear to have seen his policies of active occupation and use of the land as an alternative to the fruitless requests and petitioning tried previously and an affirmation of their continued use of their land. Te Kere therefore appears to have found ready support in the area. At the same time, some Tuhua people also remained careful to maintain a distinction between themselves as ancestral owners of the land and other followers of Te Kere who came from other parts of the country and whom Te Kere had placed on the land. This distinction was not always apparent to government officials who tended to see all occupation of the area as being the work of Te Kere.

From the later 1890s, as surveys made the reserve and Crown land areas of the northern Tuhua area more apparent, officials began to regard continued occupation and use of what was now technically Crown land as deliberate ‘trespass’. As noted, officials first began indicating concern about this when investigations were made of what was now the government totara forest. The ranger Murray reported in 1898, for example, that Maori were felling trees in the totara forest, apparently to signify their claim to land they expected to be returned to them.<sup>1600</sup> These were presumably Tuhua people who did not accept they were limited to the relatively small reserve 6 that Butler had allocated to them. Officials decided Maori should be told they were trespassing and warned off the area.<sup>1601</sup>

Marchant decided to visit the area himself in 1900, and to his concern found extensive Maori occupation of Crown lands in the Kaitieke and Retaruke valleys and the clearing in the totara forest known as Otapouri on the Ohakune to Taumarunui Road. He reported that when he reminded Maori they were trespassing, they admitted it and some stated they were acting on

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<sup>1600</sup> S Murray to Surveyor General 23 December 1898, LS1, 40348, ANZ

<sup>1601</sup> S Percy Smith, 6 January 1899, LS1, 40348, ANZ

the instructions of 'Te Kiri' of Tawhata and that the Native Minister knew about their actions. They claimed they were occupying because of their dissatisfaction with the Waimarino purchase, in which they alleged their interests were ignored or inadequately considered. Marchant advised that this matter required an urgent investigation and report.<sup>1602</sup> This indicates by this stage there was considerable joint action involving Te Kere's followers and the Tuhua people.

Sheridan, however, was most reluctant to undertake any kind of inquiry that might re-open the whole issue of the Waimarino purchase. He advised that if the Government were to adopt Mr Marchant's suggestion and re-open old purchases like Waimarino it would land the colony in a 'nice hole'. He claimed that 'Waimarino is about as good and complete a Native land purchase transaction as any other'. He advised that it would be necessary to provide a small area for the use and occupation of Te Kere the prophet and his immediate followers, some place near where they were living, but beyond that nothing was necessary, and until the other places Maori were occupying without authority were urgently required for settlement, it would be better not to interfere. Sheridan believed that when the people found their prophet was a fraud they would 'strike their tents' and 'gradually disappear'. Sheridan asked for a map of the unsold and undisposed of parts of Waimarino, for the use of the Minister as he was intending to shortly visit upriver and arrange with Te Kere and his people as to where they would be located.<sup>1603</sup> Clearly, at this point Sheridan felt that Te Kere could not be ignored and had to be given some land, but at this stage he was totally opposed to reopening the whole issue of the landlessness of the Tuhua (and any other) people as the result of the Waimarino purchase.

Whatever the arrangements at this stage, they did not stop the continued use and occupation by the Tuhua people of what had now become Crown land in the northern part of Waimarino. In 1901, Marchant reported again on the illegal occupation of Crown land by Maori. He reported that a Maori had erected a sawpit on Crown forest land and cut about 2000 feet of timber to build a whare for himself. He warned that this persistent and permanent occupation was going to lead to serious difficulties.<sup>1604</sup> However, he was again advised that it had been decided some time ago that the occupiers should not be interfered with for the present.<sup>1605</sup>

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<sup>1602</sup> Marchant to Surveyor General 28 March 1900, LS1, 40348, ANZ

<sup>1603</sup> Sheridan, note on letter of 28 March 1900, dated 20 April 1900, LS1, 40348, ANZ

<sup>1604</sup> Marchant 30 April 1901, LS1, 40348, ANZ

<sup>1605</sup> File note 25 April 1901, LS1, 40348, ANZ

A month later, Marchant reported 'further aggression' on the part of some Maori at Pukerimu on the Waimarino track near the junction with the Kaitieke Road. He explained that on 29 April, a number of Maori, apparently under instructions from Te Kere the prophet at Tawhata, had camped at Pukerimu on Crown land near the government horse paddock. They intended cutting timber to build a meeting house and to clear bush to plant potatoes. Marchant complained that they had 30 or more horses and were causing great inconvenience to government packers on the narrow tracks, as well as adding to the scarcity of horse feed in the area. He reported that it was also rumoured that a number of Maori from Otapouri were intending to join them and help them. Marchant understood that this was part of a 'long and continued effort' to establish or maintain claims over parts of the Waimarino land, especially at Otapouri, Pukerimu, Retaruke, Kaitieke, Tawhata and Crown lands between reserves 6 and 7, on the grounds those people did not agree with the sale of the land to the Crown. He reported that this involved in the latest action included Marama Turehu, Rawiri and Tautahanga.<sup>1606</sup> Marchant was advised again that the Native Minister was not at present willing to interfere with or eject these people. He intended to visit again in summer and arrange a place for them to live. In the meantime it would be as well not to take any action.<sup>1607</sup>

It seems that Maori continued using land and resources in the area, until as Sheridan had hoped, local communities found it impossible to subsist without legal title and gradually disbanded and moved away. In 1904, a district surveyor reported, for example, that Maori were removing totara bark from trees in the government forest for their own purposes. They were also chopping ornamental native trees on Crown land for firewood.<sup>1608</sup> By this time, however, Carroll had undertaken talks with Te Kere and it seemed some lands were finally to be returned. As will be explained in the next section this optimism proved unfounded for the Tuhua people generally. After the death of Te Kere, it took some considerable time for the arrangements to be implemented and officials ensured that the land offered was as limited as possible and restricted to immediate followers and family of Te Kere. The wider issue of Tuhua lands was again overlooked and the dismayed Tuhua people were again obliged to petition Parliament over their lands. In 1923, having been shut out of the reserves for Te Kere, Paraone Ropiha and nine others petitioned Parliament for relief from the injustice inflicted on them when the Waimarino block was sold and 'all our houses and homes were taken'. The

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<sup>1606</sup> Marchant report 9 May 1901, LS1, 40348, ANZ

<sup>1607</sup> A Barron to Marchant 5 July 1901m LS1, 40348, ANZ

<sup>1608</sup> Report by district surveyor 30 June 1904, LS1, 40348, ANZ

petitioners noted that they had also petitioned in 1888, pointing out the hardship they had sustained, but nothing was done to give them relief.<sup>1609</sup>

In reporting on this petition, the Under Secretary of the Native Department, Jones, informed the Chairman of the Native Affairs Committee that the Waimarino block passed through the Native Land Court after ‘full notice’ with ‘upwards of a thousand Maoris’ admitted as owners. He explained that the Crown had purchased in the block, and in 1887, the bulk was awarded to the Crown, the balance being allotted to 100 owners who had not sold and about 33,000 acres were set aside for sellers. He noted that the petition might be referring ‘to a complaint that was made by the Natives that a portion of land called Tuhua was included within the Waimarino block claimed that it was ‘too late to raise that question now’.<sup>1610</sup> The Native Affairs Committee reported on 20 August 1924, that it had no recommendation to make on the petition.<sup>1611</sup> No further evidence has been found of government efforts to provide relief to the landless people of the northern Tuhua area.

### **9.5 The Tawhata (Tawata) and Kaitieke reserves for landless followers of Te Kere**

As mentioned earlier in this report, Te Kere was a prophet and tohunga of considerable influence in the late nineteenth century. He was known as a peacemaker and had strong links to the Kingitanga and Te Whiti’s movement at Parihaka. He attempted to collect together and provide a new sense of purpose to the many people who were displaced and marginalised by the warfare of the 1860s and 1870s and the later extensive purchasing following this. He gained large numbers of followers from the Whanganui, King Country, Taupo, East Coast and Wairarapa districts.<sup>1612</sup> Many of these people were itinerant, following Te Kere on his numerous travels around the lower North Island.

Te Kere had relationship connections in the upper Whanganui area and ancestral interests in what became the Waimarino block. He also had much in common with those communities who had rejected the Land Court and sought to retain management of land themselves. As described earlier, his movement, Pae Tiuihou, translated as ‘sanctuary of new demands’ supported many Kingitanga objectives, including rejecting the Land Court, land sales and the

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<sup>1609</sup> Petition (translation) to Sir Maui Pomare from Paraone Ropiha and 9 others, 6 July 1923, attached to petition documents, Le1/1923/22, petition 1923/93, ANZ

<sup>1610</sup> Report on petition by Under Secretary of Native Department 17 July 1924, Le 1/1923/22 ANZ

<sup>1611</sup> Report recommendation on Le1/1923/22, petition no 1923/93, ANZ; printed report *AJHR* 1924 I-3 p 14

<sup>1612</sup> Young, p 139

extension of Crown authority in Maori districts. As noted, in the 1880s, the government had made a determined effort to win over Te Kere and his senior spokesperson, Hori Ropiha. By the time of the Aramoho hui of March 1886, the government appears to have achieved some success with this and Ropiha, along with a number of other Whanganui chiefs appeared willing to cooperate with the government over a fairer system of dealing and decision making over land.

However, the government dealing over Waimarino and its support of the tactics used by Butler had caused considerable disillusionment and rejection of government policies. Te Kere is likely to have had ancestral connections into Waimarino, but like Ngatai te Mamaku, he was not recognised as an owner and was technically sidelined from legal developments over the block. It seems likely that at the time Waimarino was investigated, Te Kere would have opposed his followers engaging in the Court process and the later purchase as it was conducted, although he did not oppose negotiations in good faith over peaceful and mutually beneficial development. Shortly after the investigation, Te Kere began placing some of his followers in areas of what had become Crown land in Waimarino, in defiance of the unjust way the government had acted and in anticipation of a more just resolution of the dealing. As noted, he appears to have found a ready welcome among the people of upper Whanganui and Tuhua who also opposed the purchase and he placed settlements of his followers at Tawhata (Tawata) on the Whanganui River and further inland at Kaitieke on the Retaruke River (see map 1 of this report and map 7 of the Clayworth report). As noted in the previous section, although the Tuhua people had their own issues with the Waimarino purchase, they also had many concerns and objectives in common with Te Kere and his policies of active use and occupation of the land and his prophecies that land would be returned, affirmed much of what they were already doing.

By the early 1890s, Te Kere had settled with what was estimated at upwards of one thousand of his followers at Tawata, just below Maraekowhai but on the Waimarino side of the Whanganui River.<sup>1613</sup> According to Young, Tawata was already an old settlement site. However, a lack of food obliged some of the people to move on to Kaitieke about 24 miles (15 kilometres) inland beside the Retaruke River.<sup>1614</sup> (see map 1).

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<sup>1613</sup> Downes, *History of and Guide to the Wanganui River*, p 24

<sup>1614</sup> Young p 151, 153

Shortly after the Land Court award for the Crown and non-sellers, on 4 May 1887, Te Kere and Te Huiatahi wrote to the Native Minister on behalf of themselves and 560 others.<sup>1615</sup> In translation, Te Kere told the Native Minister that he was upset that his and his people's land had been sold without their knowledge. This was also true of Te Huiatahi and his people. He claimed that he did not attend the Court because he did not get the *Kahiti* notice of it. His main concern was about the lands included in the Waimarino sale. These included Mangatiti, Patuarua, Matahiwi, Ruatiti, Riariaki, Ngapuarakau, Te Kapango, Makaretu, Te Aroorahanga, Paritea, Apokowero-o-huia, Tutaepatua, Oio, Kawakitatu, Otautawa and Maunganui-Taurewa and all its parts. He claimed the lands lost to them by sales by Topine and Paiaka were also Kirikau and Opatu. He claimed to have ancestral interests in these lands. He believed that with regard to the earlier sales of Kirikau and Opatu, he had defeated Topine and Paiaka and the lands were decided in his favour. Then there was peace until the Commissioner purchased Waimarino and their lands became involved in the 'general ruin'. Te Kere wrote that he wanted to work with the government to achieve a satisfactory arrangement of this in accordance with the law. He wanted improvements to the Native Land Administration Act and he wanted his lands excluded from the Waimarino block and administered peacefully without restrictions. Te Kere referred to his past actions with regard to the wars and his role as a peacemaker and negotiator in working for peace. He also wanted to work with the government to help provide better laws.<sup>1616</sup>

This letter set out Te Kere's wish to work peacefully and to ensure just laws for Maori, much as the Ballance government had claimed it supported when Te Kere's senior spokesperson, Ropiha, had met with and been apparently won over by Ballance in 1886. It was highly possible, that due to Te Kere's mobile lifestyle, he was unaware of any Land Court notices for Waimarino or that Waimarino included the upper Whanganui area. It is known that he was opposed to the operation of the Land Court as he had seen it working at the time. He had opposed the earlier sales of Kirikau and Retaruke and the Land Court investigations of them as part of the sale process. It has not been possible in the time available for researching this report, to investigate the circumstances of the Kirikau and Retaruke purchases and investigations in detail. However, it is known, as described earlier, that Booth had begun purchasing these blocks in the 1870s, having Retaruke passed through the Land Court in

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<sup>1615</sup> Letter Te Kere Ngataierua and Te Huitahi and 560 others to Native Minister, 4 May 1887, NLP 87/1358, MA1, 1924/202 v1 ANZ

<sup>1616</sup> Letter Te Kere Ngataierua and Te Huitahi and 560 others to Native Minister, 4 May 1887, NLP 87/1358, MA1, 1924/202 v1 ANZ

1876.<sup>1617</sup> In 1881 the land Court had also made an award to the Crown for claimed purchasing in Retaruke.<sup>1618</sup> However, little further progress was made on this for some years.

It is not clear what Te Kere meant by his claimed defeat of Paiaka and Topine Te Mamaku in these blocks. Possibly he was referring to the failure of Booth to conclude his purchase by 1881, although possibly unknown to Te Kere he had succeeded in having an award made to the Crown. He may also have been referring to the temporary abandonment of the government Wanganui land purchase office by the early 1880s. However, when the government began purchasing in the upper Whanganui again, further efforts were made to conclude the purchasing of the blocks. In June 1884, R I Gill for the government, applied for a further Crown award in Retaruke, for example, with a number of agreed reserves for sellers and non-sellers.<sup>1619</sup> It seems that by 1886, when as noted Hori Ropiha had been persuaded that the government was genuine about introducing a fairer system of managing and dealing in land for Maori, Te Kere may have been expecting a more cooperative system of discussions about land. He may also have felt he could ignore the rapid old style purchase of Waimarino as the type of purchase rejected and discredited under Ballance's government. Even after the Court hearing for the crown and non-seller wards in 1887, he still seemed to believe that he could have this set aside and negotiate a much fairer arrangement with the government for his now technically landless people.

At first, as with other claims of landlessness in Waimarino, the Government was not sympathetic to Te Kere's requests. Lewis noted on the file in May 1887, that Te Kere was seeking an interview with the Native Minister on these matters. However, as to the Waimarino block, he had the 'full opportunity of attending the Court' when the government interest was determined. He had always opposed the purchase and his people were among the non sellers awarded reserves of 41,000 acres. Whatever (if any) interest he had he still has. With the other blocks, he should have proved his interests in Court. Lewis felt no good would come of any further investigation, but if the Native Minister could spare time for an interview, it would have a good effect and please them.<sup>1620</sup> Ballance instructed that an interview be

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<sup>1617</sup> Evidence regarding 1876 hearing in 1881 hearing, MLC Whanganui MB 3 pp 188-189

<sup>1618</sup> MLC Whanganui MB 3 pp 188-189

<sup>1619</sup> MLC Whanganui MB 8 pp 218-9

<sup>1620</sup> Lewis file note, 10 May 1887, MA1, 1924/202 v1 ANZ

arranged at a convenient time. Lewis later noted, on 16 May 1887, that Ballance had seen Te Kere and his people and he had answered their letter verbally.<sup>1621</sup>

It is not known what took place at the meeting between Ballance and Te Kere, but Te Kere appears to have felt he still needed to petition Parliament over the matter and a number of other upper Whanganui blocks in which he claimed interests. A petition on the Waimarino block from Te Kere and two others was presented to Parliament on 25 May 1887. It was described as complaining of the award made in the Waimarino block.<sup>1622</sup> In the printed report on this petition, it was further described as complaining that their interest in the Waimarino block had been sold without their knowledge or consent. They asked for a government inquiry and relief.<sup>1623</sup> In June 1887, Lewis noted to Sheridan that Te Kere's petition was as vague as his earlier letter, and had come on the Native Affairs Committee unexpectedly. He expected it would come up again next session and they would need to be prepared.<sup>1624</sup> In June 1887, Butler also noted to Lewis that Te Kere had refused to allow his followers to attend Court and he had intended to upset proceedings.<sup>1625</sup> The Native Affairs Committee did not report on this petition until over a year later, on 21 August 1888.<sup>1626</sup> The Committee reported at this time that, after reading the memorandum of the land purchase officer, it had no recommendation to make.<sup>1627</sup>

Although the petition failed, by the late nineteenth century, a combination of the desperate circumstances of Te Kere's communities, the continuing influence of Te Kere in the district and possibly also the more sympathetic influence of now Native Minister Carroll appears to have led to a change of attitude by government officials, although they were careful that this should not be taken as a precedent for other cases of landlessness in Waimarino, or even in Tuhua. As the Taumarunui people had noted, by the 1890s, Te Kere and significant numbers of his followers were now living at Tawata and Kaitieke on the Waimarino block. Like many of the northern Tuhua people, following the Crown purchase, they were now technically landless. Te Kere, however, was a very influential leader and by the 1890s, had attracted more than a thousand followers.<sup>1628</sup>

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<sup>1621</sup> Lewis file note 16 May 1887, NLP 87/1358, MA1, 1924/202 v1 ANZ

<sup>1622</sup> *JHR* 1887, p xvi petition 87/127, presented 25 May 1887

<sup>1623</sup> *AJHR* 1888, I-3 p 30

<sup>1624</sup> File note, Lewis to Sheridan, 8 June 1887, NLP 87/141, MA1, 1924/202 v2 ANZ

<sup>1625</sup> Butler to Lewis 8 June 1887, NLP 87/115, MA-MLP 1, 1892/203, ANZ

<sup>1626</sup> *AJHR* 1888 I-3 p 30

<sup>1627</sup> *AJHR* 1888 I-3, p 30

<sup>1628</sup> Young p 139

Some of these followers were Tuhua people, but although it still refused to recognise the Tuhua claim, the Government does appear to have felt obliged to act in the case of Te Kere. It might be that by this time, officials saw little difference between the Tuhua people and Te Kere's followers. Many Tuhua people did support Te Kere and they were following the same policies of occupying and using what had become Crown land. Carroll's attempts to provide some land may therefore have originally been intended to include the Tuhua landless as well as Te Kere's followers. However, as noted, officials wanted to make a distinction between what were regarded as landless, itinerant followers of Te Kere, who could be quietened with the grant of some Crown land for occupation, and those Tuhua people who claimed landlessness as a result of the Waimarino purchase, whose claims might lead to an unwanted re-opening of the whole purchase.

The level of active Maori support for Te Kere was also an embarrassment for the Government, particularly as Te Kere had become an important focus of continued resistance to government policies in the area. By the 1890s, for example, Te Kere was also a staunch opponent of the gifting of the peaks of Tongariro to the Government for a national park.<sup>1629</sup> The Government may also have been concerned about his influence in opposing efforts to establish what were to become Native townships at Pipiriki on the Whanganui River and at Taumarunui. Te Kere was also seen as a staunch opponent of government attempts to improve river boat navigation and through this settler access to the upper Whanganui River area. Young notes that by 1901, after much work de-snagging the river, the first riverboat, the Wairere, made it as far as Tawata, within striking distance of Taumarunui.<sup>1630</sup> However, Te Kere opposed the extension of river boat traffic and Pakeha into the upper Whanganui area and remained insistent that land should be returned to him and his people.<sup>1631</sup> It seems that these considerations may well have caused the Government to make some offers of conciliation towards Te Kere, including an offer of land in the Waimarino block, additional to the reserves already created for sellers and non-sellers in the block.

In May 1901, Sheridan appears to have visited Te Kere at Tawata to inquire into the situation and endeavour to come to some understanding for the 'unfortunate people'.<sup>1632</sup> According to Sheridan, at the time Te Kere asked the Government to restore the Waikato confiscated land

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<sup>1629</sup> Young p 140

<sup>1630</sup> Young pp 147-8

<sup>1631</sup> Young, pp 134, 144-147

<sup>1632</sup> Letter Sheridan to Native Minister, 21 August 1902, MA-MLP 1, 1921/48 ANZ

and the land on both sides of the Whanganui River from Taumarunui to Pipiriki. Sheridan, in return, offered 1500 acres of the Waimarino block in the locality where the people were 'squatting'. Sheridan reported that Te Kere asked for some time to consult and come to a decision. However, he died a few weeks later before he could respond.<sup>1633</sup>

In 1902, Sheridan wrote to the Native Minister [Carroll] with an overview of the situation.<sup>1634</sup> He noted that the Waimarino customary lands had been put through the Native Land Court in 1886 as 'the great concern of the Government of the day was to put them under title as a preliminary step towards the operation of the Land Purchase Officer'. In the case of Waimarino, some two or three of the 'old impossible chiefs' opposed the Land Court proceedings and declined to hand in lists of their people claiming or entitled to interests in the land. Sheridan claimed they were told of the probable consequences but 'they remained obstinate' and the Crown agent had to obtain 'from other sources' the information necessary to enable him to protect the interests of those the chiefs declined to represent. He explained the Court awarded land to about 1000 owners and there is 'therefore very little reason for supposing that any considerable number of persons were omitted from the title through the action of their chiefs.'<sup>1635</sup>

Sheridan further explained that immediately after the investigation of title the Government purchased 411,000 acres out of which 33,140 acres were set aside for sellers. The balance, 41,000 acres was awarded to the non-sellers. He explained that anyone left out through the actions of their chiefs now appeared to be largely without legal remedy for the area awarded to non-sellers. As a general policy, he also advised that any attempt to grant relief would be 'a very dangerous step', unless it was in isolated cases and where there was a paucity of ownership of other lands.<sup>1636</sup>

In the case of Te Kere and his followers, Sheridan explained that they had wandered over the North Island before settling down near Tawata for the last ten years. The implication was that, in contrast to those who had deliberately refused to engage in the Land Court process, these people, being itinerant, had not had a chance to become engaged in the Waimarino Court case and were therefore genuinely landless through no 'fault' of their own. This was clearly to a large extent a false distinction as Te Kere had been as opposed to the Court as any of the other

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<sup>1633</sup> Letter Sheridan to Native Minister, 21 August 1902, MA-MLP 1, 1921/48 ANZ

<sup>1634</sup> Letter Sheridan to Native Minister, 21 August 1902, MA-MLP 1, 1921/48 ANZ

<sup>1635</sup> Letter Sheridan to Native Minister, 21 August 1902, MA-MLP 1, 1921/48 ANZ

<sup>1636</sup> Letter Sheridan to Native Minister, 21 August 1902, MA-MLP 1, 1921/48 ANZ

old 'impossible' chiefs. This was also a major change of official view from the 1880s, when Te Kere was considered to have had 'full opportunity' to take part in the Court hearing. In reality, Te Kere's attitude to the Land Court had been very similar to other northern Tuhua chiefs who did not accept the authority of the Court. They had also believed their district was protected from the Court by the Rohe Potae agreement, but their claims had been dismissed. However, now the making of such distinctions suited officials. They could use this to allow some return of land to placate Te Kere, while still avoiding any fundamental criticism of the Court or the Waimarino purchase.

Sheridan explained that he had offered Te Kere 1500 acres where his people were 'squatting' but Te Kere had died before replying. He reminded Carroll that he had visited the people in February 1902, and discussed the issue with them. Carroll had also found the previous offer of 1500 acres was 'reasonable' and had decided to recommend the government give effect to it. A deputation from the people was now in Wellington, waiting for a reply on the matter. Sheridan therefore recommended again that 1500 acres be reserved under the provision of section 235 of the Native Land Act 1892 for the use and support of Maori and that the Survey Department be asked to survey the reserve as soon as possible. Later, it would be necessary to visit Tawata again to decide which individuals should be included in title to the reserve.<sup>1637</sup>

This special treatment for the landless followers of Te Kere was in marked contrast to the government treatment of the Tuhua people who had also refused to engage with the title hearing for Waimarino. Not surprisingly, some of these people protested about the decision to give Tawata to Te Kere and his followers, while their complaints had been ignored. In 1902, Wharawhara Topine wrote to Carroll complaining about this. He said his people wanted Tawata, which they claimed was their papakainga, returned to them and other land given to Te Kere and his people.<sup>1638</sup> However, officials would not recognise any customary claims to what was now considered Crown land. Sheridan noted to the Native Minister that the land at Tawata was the property of the Government and neither the writer nor any other person had any 'lawful' claims on it.<sup>1639</sup>

By this time Tawata had been included in Crown lands made public domain under the Wanganui River Trust Act in 1892, and special legislation was required before the

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<sup>1637</sup> Letter Sheridan to Native Minister, 21 August 1902, MA-MLP 1, 1921/48 ANZ

<sup>1638</sup> Letter Wharawhara Topine to Native Minister, 2 August 1902, MA1, 1924/202 v 2, ANZ

<sup>1639</sup> Sheridan file note 23 September 1902, on letter 2 August 1902, MA1, 1924/202 v 2, ANZ

recommended land could be set aside. This was provided by section 8 of the Maori Land Claims Adjustment and Laws Amendment Act 1904. This section provided that a part of the Waimarino block obtained by the Crown and known as Tawata, containing about 1500 acres was reserved for the use and occupation ‘of such of the Natives as the Minister may after due inquiry decide’ and who were or had been living there for several years past and who were more or less landless. The reserve was to exclude ‘all sites and easements’ which the Minister might decide were necessary for the navigation of the Wanganui River and the accommodation of the travelling public. The reserve would also cease to be affected by the provisions of the Wanganui River Trust Act 1891 and any proclamation issued under it.<sup>1640</sup>

Although this provision was made in 1904, it does not appear that officials visited to make the inquiries and recommendations Sheridan had anticipated. Sheridan later noted in 1912, that some parts of Waimarino had been set aside from sale by direction of the late Mr Seddon pending an inquiry which had never taken place, as to whether Maori still occupying areas of what were now Crown land, should be allowed to continue to occupy them. The persons to whom Tawata was to be given were to be determined at the same time.<sup>1641</sup> Sheridan did notify the Native Minister in August 1904, that Te Kere’s followers were also living on sections 39 and 41 of the Kaitieke survey district. He recommended that as these people were also practically landless, these sections should be set aside for them. This recommendation was approved by Cabinet.<sup>1642</sup> In November 1908, the Crown set aside 800 acres consisting of the sections 39 and 41 under section 321 of the Land Act 1908. This section allowed the Crown to temporarily reserve from sale any Crown land required for purposes in the section, including ‘for the use of Aboriginal Natives’. As with Tawata, no further effort was made to determine title to this Kaitieke land for some years.

According to Young, the village of Tawata went into steep decline following Te Kere’s death.<sup>1643</sup> Te Kere’s daughter Karanga kept her family there, maintaining old traditions and persevering with efforts to have the title to the reserve made safe. From this time, several waves of measles epidemics swept along the river. Young notes a tourist party finding the rear of the Maraekowhai flats littered with the bones of men, women and children, in 1913, after one such epidemic.<sup>1644</sup> The river people were then decimated again by the great influenza

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<sup>1640</sup> Maori Land Claims Adjustment and Laws Amendment Act, 1904, section 8

<sup>1641</sup> File note, Sheridan, 15 February 1912, on letter of 6 February 1912, MA1, 1914/2284, ANZ

<sup>1642</sup> MLC Tokaanu MB 16 p 145

<sup>1643</sup> Young p 153

<sup>1644</sup> Young, p 154

epidemic of 1918.<sup>1645</sup> By the 1920s, approximately 100 people were believed to be living at Tawata.<sup>1646</sup>

It was not until 1918, that legal provision was made under section 9 of the Native Land Adjustment and Native Land Claims Amendment Act, for the Native Land Court to determine what individuals might be entitled to be included in title to the Tawata reserve. Section 9 provided that whereas Tawata was reserved under 1904 legislation for Maori whom the Native Minister might decide after due inquiry were living on the reserve and were more or less landless, this due inquiry had not been made and therefore the Native land Court was authorised and directed to determine which Maori were to be beneficially entitled in the reserve. It is not clear why it took this long to require the Court to determine interests and issue freehold orders, but moves to provide legal determination of title may have been encouraged by a renewed government interest in purchasing in the area. Through the 1920s, for example, the Crown issued notices preventing any alienation of land in the reserve to anyone but the Crown.<sup>1647</sup> In 1924, the Native Department also authorised government purchasing in Tawata, although this does not appear to have been successful at this time.<sup>1648</sup> Young notes that Karanga Te Kere insisted the family hold on to the land as Te Kere had asked.<sup>1649</sup>

In May 1921, the Native Land Court met at Kakahi for several days to hear evidence concerning the Tawata reserve. Further evidence was received at Tawata on 12 and 13 January 1922, when members of the Court also inspected the land, along with a representative from the Lands Department. Many claims for Tawata were received, the majority of which were dismissed for not meeting the Land Court requirements. The Court set these after considering the wording of section 9 of the 1918 Act and concluding 'it was the intention of the legislature to carry out the spirit of the offer made to Te Kere by Mr Sheridan on behalf of the Government in 1901'.<sup>1650</sup> Although the legislation made no reference to near relatives of Te Kere being given priority, the Court also decided that a file note by Sheridan of February 1908, well after the original agreement was made, that the persons the reserve was intended for were Te Kere's son and daughter and such other Maori as were left out of Waimarino

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<sup>1645</sup> Young p 154

<sup>1646</sup> Young, p 154

<sup>1647</sup> *NZ Gazette*, 1 September 1921, no 80, p 2241; *NZ Gazette* 3 August 1922, no 58, p 1932; *NZ Gazette* 19 April 1923, no 34, p 1053; *NZ Gazette* 27 March 1924, no 17 p 738

<sup>1648</sup> Memo Jones to Thomson, 29 April 1924, MA-MLP 1, 1921/48, ANZ

<sup>1649</sup> Young p 154

<sup>1650</sup> MLC Tokaanu MB 15 judgment, p 379

through Te Kere's action and were resident on the reserve at the time of his death, should also be considered.<sup>1651</sup>

This meant that the Court was not considering ancestral connections to the land, or previous customary occupation. It found these rights were extinguished by the Crown purchase of Waimarino.<sup>1652</sup> The Court would only accept those claimants who fulfilled all the criteria of having been followers of Te Kere up to the time of his death, of having been left out of the Waimarino title and of being more or less landless.<sup>1653</sup> The application for title determination appears to have been made by Karanga Te Kere, the daughter of Te Kere, who insisted that only close family relatives of Te Kere should be admitted into the tile. A number of other lists were submitted for inclusion, including from numbers of people who claimed relationship to Te Kere, and supported him or his objectives. This included Paraone Ropiha and some of the Tuhua people, who noted they were also landless, they were related to Te Kere they had suffered from the Waimarino investigation and purchase and they had also been petitioning about landlessness.<sup>1654</sup> Ropiha also noted that his father had father had supported Te Kere and was buried at Tawata and his own child was named after Te Kere at Te Kere's request. He himself had never lived at Tawata but had lived on other Crown land in Waimarino as directed by Te Kere. His people were landless in Waimarino although they had large ancestral interests there. If his claim at Tawata was rejected, he wanted 500 acres for his landless people.<sup>1655</sup>

Other lists were submitted from others who were related to Te Kere or had supported him. Some admitted to moving away before Te Kere's death although only to support themselves. Others claimed they had not followed Te Kere but were left landless and ended up living at Tawata for periods because they had nowhere else. Others claimed through interests through Te Kere's sister. Still others claimed to have ancestral rights at Tawata, to have been excluded from Waimarino ownership and to have offered hospitality to Te Kere when he arrived.<sup>1656</sup>

A representative of the Chief Surveyor Wellington also appeared before the Court to note that a road had since been put through the reserve, and asking for it to be legally laid off. There

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<sup>1651</sup> MLC Tokaanu MB 15, judgment, p 379

<sup>1652</sup> MLC Tokaanu MB 15 judgment p 378

<sup>1653</sup> MLC Tokaanu MB 15 judgment pp 378-9

<sup>1654</sup> MLC Tokaanu MB 14 pp 207-8

<sup>1655</sup> MLC Tokaanu MB 14 pp 207-8

<sup>1656</sup> MLC Tokaanu MB 14 pp 207-216

were no objections to this.<sup>1657</sup> The road was proclaimed in 1922.<sup>1658</sup> One of the notable features that also came through in this evidence was how many families had been split in the ownership lists in Waimarino, with some members having been included while other members of the same family, including siblings, had not. In reserving its decision, the Court noted that it was clear that the near relatives of Te Kere would be the principal persons included in the title and in the meantime a personal inspection of the land was required.<sup>1659</sup>

In March 1922, the Court delivered its judgment for the Tawata reserve.<sup>1660</sup> It found that most of the submitted lists, including that of Paraone Ropiha, did not meet the criteria it had set out and therefore dismissed them. This may have led to the 1923 petition of Ropiha regarding Tuhua lands, mentioned earlier under the Tuhua section. The Court did accept the Ngati Tuwharetoa case which it found was ably handled by Mr Grace. It determined that the interests should be divided between three different groups, the immediate Te Kere family, Kingi Poni and Kii Keepa.<sup>1661</sup> As the construction of the road now left 1492 acres in the block, it was decided to issue 1492 shares. The Court found that Kii Keepa and his brother had a relatively weak claim and therefore awarded them 10 shares each. Kingi Poni and his Ngati Tuwharetoa list were awarded 145 shares, which were divided unequally between seven of them. The Court awarded the remaining 1327 shares to Te Kere's family to be divided between them. Te Kere's daughter was singled out for a special award due to her persistent efforts to have the Tawata title determined. The freehold orders for the awards in Tawata were dated 10 March 1922.<sup>1662</sup> The families divided the shares further between them.<sup>1663</sup>

A hearing for the Kaitieke sections was held shortly after this, at Kakahi in January 1922. As Clayworth has noted, a large number of claims were also lodged for these sections, although many were withdrawn following the Court decision in the Tawata case. There were also arrangements between claimants following the findings in Tawata.<sup>1664</sup> The Court eventually considered two claims, one from Te Kere's daughter, Karanga Te Kere and the other from a group of Ngati Tuwharetoa claimants who were followers of Te Kere. They reached an agreement among themselves that the Ngati Tuwharetoa claimants would be awarded section

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<sup>1657</sup> MLC Tokaanu MB 14 pp 229-30

<sup>1658</sup> *NZ Gazette*, 16 November 1922, p 1981

<sup>1659</sup> MLC Tokaanu MB 14 p 230

<sup>1660</sup> MLC Tokaanu MB 15 pp 378-383

<sup>1661</sup> MLC Tokaanu MB 15 judgment, pp 196, 304, 378-383

<sup>1662</sup> MLC Tokaanu MB 15 pp 378-383

<sup>1663</sup> MLC Tokaanu MB 15 judgment, pp 378-383

<sup>1664</sup> Clay worth, p 187

39 and those of the Te Kere family, section 41, both sections being about 400 acres. This was agreed to by the Court, which made awards accordingly.<sup>1665</sup> The subsequent history of the Kaitieke reserve for Te Kere's followers has been described by Clayworth.<sup>1666</sup>

It has only been possible to briefly outline the subsequent history of Tawata in the research time available for this report. As noted earlier, it seems that through the 1920s, the Crown made some efforts to purchase in Tawata, even though it had been created especially for otherwise landless Maori. This occurred through the 1920s and then again in 1955 when the Lands and Survey Department considered that 1414 acres would be 'a desirable addition to the scenic reserves already in existence along the Whanganui River'.<sup>1667</sup> The owners appear to have resisted these efforts to purchase. However, the block was subject to public works takings, as will be described.

In 1926, Tawata reserve in blocks VI and VII of the Retaruke survey district was partitioned into three subdivisions.<sup>1668</sup> Tawata 1, consisted of 2 roods and 15 perches (2403 square metres) and was allocated to 31 owners.<sup>1669</sup> This section contained an urupa named Poumaanu, where Te Kere was also buried. In 1977, Tawata 1, as created by partition order of the Maori Land Court of 25 February 1926, was formally set aside as a Maori reservation for the purpose of an urupa site known as Poumaanu for the common use and benefit of the Ngati Haua tribe.<sup>1670</sup> It remains a reserve today.

Tawata 2, consisting of 104 acres, 1 rood and 15 perches was allocated to 6 owners on partition.<sup>1671</sup> No sales were made from the block, but two further subdivisions were made as a result of public works takings for a school site. In 1941, six acres, 1 rood and 31 perches was taken from Tawata 2 for the purposes of a public school.<sup>1672</sup> A further 2 roods and 12.8 perches of land was taken from Tawata 2 in 1960, for an extension to the school site.<sup>1673</sup> This left just over 97 acres (39.6187 hectares) as Maori land in Tawata 2. Compensation appears to have been paid for both these takings. Land Court memorial schedules for Tawata 2 show

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<sup>1665</sup> Cited in Clay worth p 187-8

<sup>1666</sup> Clay worth, pp 189-190

<sup>1667</sup> Correspondence MA-MLP 1, 1921/48 ANZ

<sup>1668</sup> MLC partition order Tawata, 25 February 1926; MLC Tokaanu MB 21, pp 136-8; Linz plan ML 4050 plan of Tawata Native reserve, nos 1-3 blocks

<sup>1669</sup> MLC partition order Tawata, 25 February 1926, MLC Tokaanu MB 21, pp 136-8

<sup>1670</sup> *NZ Gazette*, 27 October 1977, no 109, p 2820

<sup>1671</sup> MLC partition order, Tawata, 25 February 1926, MLC Tokaanu MB 21, pp 136-8

<sup>1672</sup> *NZ Gazette*, 23 April 1941, no 34, p996

<sup>1673</sup> *NZ Gazette* 12 May 1960, no 30, p 609

compensation orders made in April 1941 and August 1944, and in October 1960.<sup>1674</sup> In 1984, 2347 square metres of the school site was revested in the trustees for the owners of Tawata 2, under section 438 of the Maori Affairs Act 1953.<sup>1675</sup> This is less than the total amount taken from the school. In 1998, this revested land (2347 square metres) was set apart as a Maori reservation for the purposes of a marae site for the common use and benefit of Ngati Tuwharetoa, Ngati Haua and the Whanganui River iwi under section 338 of Te Ture Whenua Maori Act 1993.<sup>1676</sup>

Tawata 3 of 1387 acres, (561.2989 hectares) was originally allocated to 25 owners on partition.<sup>1677</sup> This land remains Maori freehold land.<sup>1678</sup>

## **9.6 Protests about the lack of protection for important sites in Waimarino**

Continuing complaints about Waimarino also revealed more concerns about the reserves created in Waimarino and whether they adequately provided for the protection of important sites as had been expected, especially with regard to the seller reserves. It will be remembered that Ballance had assured Whanganui Maori that if they cooperated with his government they could expect not only to share in the benefits of economic development through settlement, but that they would be protected in enough land to keep them ‘comfortable’. This is also likely to be the impression created, as noted earlier, with the purchase deed and its provision for seller reserves and by the assurances and promises of Butler, such as were revealed in the written agreements he made as already described. Owners may not have understood exactly what the promised acreage for reserves meant, but they were assured it was large and they appeared to believe that the system of reserves would provide for their desire to allow some land to be sold to enable development while other lands would be protected to them, including lands for economic use, land for their comfort and continued living, such as settlements and cultivations and lands of cultural importance, such as urupa.

The reserves were not only much less adequate than expected for even continued economic use, as noted earlier, but as the implications of the sale became clear, and especially when the seller and non-seller reserves were finally surveyed off, for the most part in the mid-1890s, a

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<sup>1674</sup> MLC memorial schedule Tawata 2, MLC- MLIS database

<sup>1675</sup> MLC Tokaanu MB 67 pp 303-5

<sup>1676</sup> *NZ Gazette*, 18 June 1998, no 83 p 1884

<sup>1677</sup> MLC partition order, Tawata, 25 February 1926, MLC Tokaanu MB 21 pp 136-8.

<sup>1678</sup> MLC – MLIS database, memorial schedule Tawata 3.

number of communities also began to express concern about the loss of cultivations, settlements, waahi tapu and other sites, that Butler had left out of the reserves he had created and which therefore had technically become Crown land for the Government to deal with as it saw fit.

Even within the reserves, the arbitrary nature of Butler's allocations soon became apparent. Seller reserves C and D were eventually combined.<sup>1679</sup> However, in 1910, Kahu Karewao and 12 others of Ngati Hinewai and Ngati Whati who had been awarded interests in block C complained that their kainga had been included in the block D by mistake.<sup>1680</sup> Kahu Karewao, it will be remembered, was one of the more cooperative chiefs Butler dealt with over the Waimarino purchase. Butler had supplied Karewao with money to pay the Court fee for holding the Waimarino investigation. Karewao had also assisted with the purchase and had acted as trustee for some of the minor interests Butler purchased.

The 1910 petition noted the understanding of Kahu Karewao and his people about the purchase they had engaged in. It noted that with the seller reserves, it was intended that each hapu should have and receive an area of land within the Waimarino block 'proportioned to its needs and as a home for the members of such hapu'. The reserves were also to include the kaingas and cultivations 'of the various hapu living on the block' and each would receive land upon which its own kainga were situated. However, the petition complained that when the reserve boundaries were surveyed, Ngati Whati had found that a kainga they had always possessed and occupied known as Te Maire was in fact included in Waimarino D, allocated to Ngati Tukaiaora.<sup>1681</sup> They had attempted to have the Land Court alter the boundaries so that Te Maire did fall into block C but the Court had dismissed their application on the grounds of lack of jurisdiction, the Court not having set the boundaries in the first place. The petitioners were now asking for help to ensure full justice could be done to return their kainga to them.<sup>1682</sup>

The petitioners clearly believed the seller reserves were supposed to be made in areas that contained their most important sites and properties and that they would be large enough for their continued needs or 'comfort' as Ballance had promised. In reporting on their petition, however, the Under Secretary of the Native Department, T Fisher, clearly explained the

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<sup>1679</sup> Clayworth, chapter 4.8

<sup>1680</sup> Petition of Kahn Korowai and others 1910/732, Le1/1910/21

<sup>1681</sup> Petition of Kahn Korowai and others 1910/732, Le1/1910/21 ANZ

<sup>1682</sup> Petition of Kahn Korowai and others 1910/732, Le1/1910/21 ANZ

official government view. He explained that the [seller] reserves in Waimarino had been selected by the late Judge Butler and Mr John Stevens of Bulls. They were still Crown lands and ‘gifts from the Crown to the former Native owners who were in the first instance paid in full for them’. There was ‘no condition at all as to reservation of kaingas or cultivations’ if such reservation ‘would interfere with the settlement of the block in any way’. He advised the Native Affairs Committee not to take separate evidence on the petition but to leave the matter to departmental inquiry. If it was shown that a fair case was made ‘the boundaries can be shifted’.<sup>1683</sup> As far as the Government was now concerned the Waimarino block had actually been purchased by the payments for the shares. The reserves were considered no more than a ‘gift’ from the Government to be made entirely by government decision and they need not contain kainga or cultivations if this might be considered to ‘interfere’ with settlement. This was a long way from the kind of cooperation and future protection Kahu Karewao was presumably expecting, when he agreed to cooperate with Butler over the purchase.

At a later Native Land Court inquiry into the petition, Sheridan produced Butler’s original report on the reserves of 1887, and noted that under the arrangements over the purchase and because some owners had not sold, it was not possible to return to each hapu all of its kainga. He explained that those who sold their interests were paid in full and there was no deduction made in the amount paid for such reserves. A large number of owners had not joined in the sale and separate reserves were made for them. Their awards included some kainga that then could not be included in seller reserves. Therefore it was necessary to give kainga in certain reserves ‘to others than the former owners in some instances’.<sup>1684</sup> As Clayworth has noted, this inquiry led to a later amalgamation of the blocks C and D and a partitioning of interests, although the hapu affiliations of owners in the new partitions was not clearly recorded.<sup>1685</sup> For the purposes of this chapter, the important points are that the Government must have known that this kind of difficulty would arise as a result of its purchase policy, but this never seems to have been made clear to sellers. The system of technically considering all interests to be purchased and then granting back some land to sellers, was of considerable advantage to the Crown, but clearly it would need to be carefully considered and negotiated over, if it was to match seller expectations that they were selling some land and withholding other areas for future protection. As described, at the time of the purchase proposal there appears to have

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<sup>1683</sup> Memo T W Fisher to Chairman Native Affairs Committee 17 November 1910, Le1/1910/21 ANZ

<sup>1684</sup> *AJHR* 1911 G-14A

<sup>1685</sup> Clayworth, pp 117-8

been no serious consideration of the implications of the proposed average 50 acre reserves for areas of customary importance. Nevertheless, the promises and expectations Butler appears to have created for sellers, of substantial and comfortable reserves and joint management decisions over land to be protected were an important means of gaining the cooperation of chiefs such as Kahu Karewao. It is doubtful whether they would have been anywhere near as cooperative if they had fully understood the implications and limitations of the Butler's interpretation of the purchase arrangements with regard to the future protection and occupation of their important sites.

There were not only concerns about the allocation of sites within reserves. There was also a great deal of dismay among Whanganui Maori, when it was discovered that with the making of reserves, many important sites were not included and were now considered to be Crown land as part of Waimarino 1 block. Furthermore, although the seller reserves were substantially less than the 50,000 maximum the Government had allowed, they now found the Government was most reluctant to consider the return of such sites, or the granting of land that would provide for important areas that had been excluded from the main reserves.

Shortly after the Court awards to the Crown and non-sellers, on 6 July 1887, Wiari Turoa write to Ballance asking for 3000 acres in the Waimarino block in addition to the Court award in consideration of the grave of his father, Peehi Turoa. Officials advised the government to refuse this and this advice was approved by Ballance in July 1887.<sup>1686</sup>

In 1895, Winiata te Kakaha of Raetihi wrote a letter of concern to the government about a number of burial places now in Crown land, including Tama te Aroha, Te Akatahi, Pakarukaru and Koaikou.<sup>1687</sup> This followed an earlier letter asking for burial places to be vested in him. The Surveyor General's view, however, was that if any genuine burial grounds were found, they could be made a general burial ground, in other words under Crown control. In 1896, Harata te Kiore also wrote about burial grounds near Mangatiti named Pukearuhe and also at Te Kaurau and Tirinaki.<sup>1688</sup> Officials continued to consider these requests as mainly attempts to gain more land. They were more sympathetic in cases they considered to be 'genuine' burial grounds, although they insisted it was entirely over to the Crown what it would recognise as such, and how they would be controlled. This was even though the

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<sup>1686</sup> Letter Wiari Topia to Ballance 6 July 1887, NLP 87/234, MA1 1924/202 v 1 ANZ

<sup>1687</sup> Letter 95/399, MA1, 1924/202 v2 ANZ

<sup>1688</sup> Letter 96/166, 12 March 1896, MA1, 1924/202 v 2 ANZ

eventual lands set aside for seller reserves was well short of the 50,000 maximum originally proposed in the purchase deed. For example, in response to Harata's letter, Sheridan noted that it appeared to be an application for more land, but asked for an inquiry into the existence of the burial grounds with a view to 'consideration' of the writer's request. The survey office was most reluctant to even send an officer to inquire into what was regarded as a 'wild goose chase'. The letter was noted that if the urupa could be more definitely located 'something might be done. In the meantime nothing'.<sup>1689</sup> No evidence has been found of any further efforts to identify these urupa sites at the time.

In 1994, Sally Maclean prepared a brief research report on a number of waahi tapu sites in the Waimarino block.<sup>1690</sup> These included Tahereaka, Otaahua, Kaiwhakauka, Pariatua and Owairua. Maclean noted that some of these places may have been claimed by non-sellers during the 1887 Court hearing for the Crown and non-seller awards, although the Court either did not accept their claims or refused an adjournment for more evidence.<sup>1691</sup> Some owners also believed that some of the waahi tapu were to be included in their reserves. For example, owners in seller reserve Waimarino B appear to have believed that an urupa named Tahereaka was included in this reserve. However, when the reserves was surveyed in 1895, both a kainga and an urupa named Tahereaka were excluded from this reserve and left as part of Crown land in Waimarino 1.<sup>1692</sup> These sites were later included as public domain under the Whanganui River Trust Act 1891 and were included within Whanganui National Park in 1986.<sup>1693</sup> Robin Hodge has also described in more detail some of the protests over sites along the Whanganui River regarded as Crown land and then later acquired for scenic purposes.<sup>1694</sup>

It will be remembered that an application for land at Tahereaka was originally made at the time of the original Waimarino application, recorded as survey application 724, dated 5 January 1886 and signed by Patu Wairua, Te Rangi Tawana and Kuramate of Tieke.<sup>1695</sup> This application had been described as including land beginning at Tahereaka then east to Te Pukauae, along the Mangaturturu stream to Parihakoakoa then west to Takahirangi and the Kaiwaka stream, and following the stream to its confluence with the Whanganui River and

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<sup>1689</sup> Sheridan memo 13 August and reply by Survey Department 14 August 1896, MA1, 1924/202 v2 ANZ

<sup>1690</sup> MacLean Sally, 'Waimarino Waahi Tapu Historical Report' Treaty of Waitangi Policy Unit (OTS) 1994, (Wai 167 C15)

<sup>1691</sup> Maclean, p 3

<sup>1692</sup> Maclean, p 7

<sup>1693</sup> Maclean, p 7

<sup>1694</sup> Hodge, R 'The Scenic reserves of the Whanganui River, 1891-1986' 2002

<sup>1695</sup> LS-W application 724, ANZ

back to Tahereaka again.<sup>1696</sup> Thorpe had later made arrangements to survey the boundaries but had reported that at the last moment, Patuwairua had decided to postpone pointing out the boundaries until the Waimarino claim was heard. As a result Thorpe had only been able to approximately indicate the boundaries on his plan.<sup>1697</sup> This claim is shown approximately on ML 772. However, as described, it seems that Butler may well have persuaded the applicants for Tahereaka to subsume their claim within the general Waimarino claim on the understanding this would protect them and then they could later partition their interests. This may be why Patuwairua wanted to wait to point out the boundaries. The Tahereaka claim also does not appear to have been pressed at the time of the Waimarino title investigation, presumably because the chiefs thought it was protected by agreement with Butler. Butler's way of protecting land was, however, through his system of reserves and he appears to have failed to ensure this land was properly protected in this way. He did allocate reserve B close to the area described, but not entirely including it. This may have been made more difficult by the relatively rough sketch plans he was working with. However, it is doubtful whether the chiefs would have agreed to cooperate with Butler, if they understood their land might not be protected after all.

With regard to sites believed to have been acquired as a result of the Waimarino purchase, it seems there was considerable confusion among Maori as to whether some river sites were included within the purchase at all and even whether they were included within the Waimarino or other river blocks. Maclean found that overall, while there was no evidence of any documented agreement excluding many of these sites from sale to the Crown as part of the Waimarino purchase, there are issues of how thorough the government was in ensuring people fully understood the boundaries of the purchase and the allocated reserves, what kind of consultation there was over the reserves, and the process by which Whanganui Maori views as to what reserves should contain were implemented.<sup>1698</sup>

## 9.7 Kirikiriroa

Kirikiriroa is an old settlement on the true left bank of the Whanganui River, below the Retaruke River and the settlements of Maraekowhai and Tawata and above Puketapu and the Tarepokiore rapid. It is located on one of the more sinuous bends of the Whanganui River,

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<sup>1696</sup> Copy of application and translation, LS-W 1, 2351 ANZ

<sup>1697</sup> Thorpe report on sketch surveys, 1886, LS-W 1, 2351, ANZ

<sup>1698</sup> Maclean, p 17

where the river loops back on itself, forming a kind of peninsula (see map 1). Downes describes it as a peninsula of about 300 acres, connected with the ‘mainland’ by a narrow ridge.<sup>1699</sup> Young mentions Kirikiriroa in connection with the bitter battles between Te Kere and Topine te Mamaku in 1857-58. Their dispute concerned land at Maraekowhai, Kirikau and Retaruke with Te Kere’s people being driven downstream to Kirikiriroa in one engagement.<sup>1700</sup>

Kirikiriroa is located within what was to become the Waimarino block being on the Waimarino side of the Whanganui River. At the same time, many of the river communities did not see the river as a separating boundary, but a connecting force for both sides of the river. For example, during the title investigation for Waimarino in 1886, Ngati Kaponga claimants described their cultivations as extending on both sides of the river. They also claimed eel weirs in the river.<sup>1701</sup> The very brief investigation of the large Waimarino block, the confusion over boundaries and the rapid sale meant that Kirikiriroa was one of a number of settlements, dismayed Whanganui communities found was considered purchased by the Crown, while being barely mentioned in many proceedings and before many realised what was happening.

Early official plans such as ML 776, the survey plan for Waimarino, (see map 7) the early sketch plan SO 2351/66 (map 6) and the Waimarino purchase deed plan, show Kirikiriroa as being considered within the Waimarino block.<sup>1702</sup> Nevertheless, during the original title hearing for Waimarino, Kirikiriroa was barely mentioned, and only in passing rather than in detail. The only mention was in the Ngati Kaponga case over lists, where a witness claimed land within the Waimarino block, describing it as south of, but not extending as far as Kirikiriroa, as marked on the map.<sup>1703</sup> The hearing was so brief that very few places in the large block were mentioned in detail.

The 1887 Court hearing for the Crown and non-seller awards, was also very brief and Te Rangihuatau’s separate declaration does not appear to have survived. The remaining record of evidence does not mention Kirikiriroa, nor was it included in the non-seller or seller awards as recommended by Butler. Kirikiriroa was therefore considered part of Waimarino 1 and Crown

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<sup>1699</sup> Downes, *History of and Guide to the Wanganui River*, pp 31-32

<sup>1700</sup> Young, p 130

<sup>1701</sup> MLC – Whanganui MB 9, pp 284-285

<sup>1702</sup> Linz – ML 776, SO 2351/66, purchase deed plan ABWN 8102 w5279 box 105, folder 121/7 deed 659 ANZ

<sup>1703</sup> MLC Whanganui MB 9 p 287

land as the result of the Waimarino purchase. It is described as being in block IX of the Retaruke survey district.<sup>1704</sup>

Once Whanganui communities realised that Kirikiriroa was now considered Crown land, there were a number of attempts to have it returned or included in reserves, without success. Instead, the Crown was keen to have the land transferred to the Wanganui River Trust as domain land for public use and recreation and to protect scenic values along the Whanganui River. There was also some confusion among Whanganui River people about what Land Court block actually included Kirikiriroa. For example, during a title investigation rehearing for the Whitianga block on the other side of the river in 1895, Kaparere Te Patuwairua identified Kirikiriroa as an occupied settlement of Whitianga, where potatoes and corn were once cultivated and ‘it is now used as a fig farm.’<sup>1705</sup>

By 1892, Kirikiriroa had become included within Crown land along the west bank of the Whanganui River proclaimed as public domain under the Wanganui River Trust Act 1891.<sup>1706</sup> In 1904, the Chairman of the Wanganui River Trust asked to be allowed to use land at Kirikiriroa for revenue purposes, claiming this use would not conflict with the special scenic or climatic purposes for which it was reserved. Apparently there had been some inquiries about leasing the land and the Board wanted to do this.<sup>1707</sup> This was allowed as so long as nothing was done that could be detrimental to these values. Nothing seems to have been done with regard to leasing and by 1911, it seems that the Trust had decided that Kirikiriroa was scenically interesting and would not be leased.<sup>1708</sup>

In February 1912, Ngarimu Te Roringa wrote to the Native Minister seeking the return of Kirikiriroa to the descendants of Te Rangitawhana. He claimed that Judge Butler had returned the land to Te Rangitawhana when he was land purchase commissioner of Waimarino.<sup>1709</sup> Sheridan noted on this that there were no authorised or recognised reserves in Waimarino other than those set out in the 1895 gazette notice and the Tawhata reserve under 1904 legislation. He also noted that some parts of Waimarino had been withheld from sale by direction of the late Mr Seddon pending an inquiry, which had never taken place, as to

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<sup>1704</sup> Linz plan 15281 - trig plan of Retaruke survey district

<sup>1705</sup> MLC Whanganui Appellate Court MB 4, pp 83.74

<sup>1706</sup> *NZ Gazette* 29 December 1892, no 101, p 1724

<sup>1707</sup> Letter Wanganui River Trust to Surveyor General 19 April 1904, LS1, 44124 1902-08, ANZ

<sup>1708</sup> Letter T Cummins Chairman Wanganui River Trust Board to Under Secretary Maori Affairs 31 July 1911, MA1, 1914/2284 ANZ

<sup>1709</sup> Letter, Ngarimu Te Roringa to J Carroll, 6 February 1912, MA1, 1914/2284 ANZ

whether those Maori occupying Crown areas should be able to continue to occupy them.<sup>1710</sup> This presumably referred to the years 1902-2, when Carroll (and presumably Seddon) were considering requests about land at Tawata.

Sheridan was technically correct, but this relied entirely on the official interpretation of the deed. What Te Roringa appeared to be referring to was chiefly understandings of what the reserves and cooperation with Butler meant. This land appears to have been included in yet another of those applications made at the same time as Waimarino and where Butler appears to have convinced chiefs to come under the larger Waimarino case instead, on the understanding they would be recognised as owners and their lands protected. Chiefs appear to have been persuaded that this meant these lands would be withheld from purchase or 'returned to them'. However, as seen, Butler's way of implementing this was through his system of reserves.

This land may well have been included in an application already described as dated 4 January 1886, and recorded as survey application 723, for people of Ngati Rangi living at Kirikiriroa. The applicants were Te Rangi Kawana, Wihi Te Whata and Iwi Te Whatupunga.<sup>1711</sup> Possibly Te Rangi Kawana and Te Rangitawhana were the same. There is also a Te Rangitawhana included as an owner in the lists for Waimarino (owner 21) and he was allocated seller interests in seller reserve B on the Whanganui River, but not including Kirikiriroa. As with the Tahereaka claim, Butler appears to have persuaded the applicants to allow their application to be subsumed within the overall application for Waimarino. This benefited Butler, and the chiefs may have felt their interests were protected. However, Butler again appears to have failed to include this land in the reserves he created.

In 1914, Rangi Whakahotu and eight others of Ngati Parekitai petitioned Parliament, that Kirikiriroa had been wrongly included in the Waimarino block. They claimed to be the descendants of Te Rangitawhana and Te Ikawairangi and that they had lived at Kirikiriroa, Tahereaka and Ohauroa. They asked for the land to be returned to them.<sup>1712</sup> Once again Sheridan insisted that he knew of no obligation or promise to return Kirikiriroa.<sup>1713</sup> This was faithfully repeated in the official Native department report on the petition. It was explained that the land was now vested in the Wanganui River Trust Domain Board and there was no

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<sup>1710</sup> File note, Sheridan, 15 February 1912, MA1, 1914/2284, ANZ

<sup>1711</sup> LS-W 46/1 application 723, ANZ

<sup>1712</sup> Petition 14/225, Le1/1914/9 ANZ

<sup>1713</sup> Sheridan file note, 24 August 1914, MA1, 1914/2284, ANZ

record of ‘any obligation or promise’ to return Kirikiriroa to Maori.<sup>1714</sup> On 16 September 1914, the Native Affairs Committee referred the petition to the Government for further inquiry.<sup>1715</sup> The petitioners may have expected further progress from this, but when they wrote in 1917 asking what was being done about the recommendation, they were told that in view of the Native department report, the Government was taking no further action.<sup>1716</sup>

The land at Kirikiriroa remained public land under legislation providing for public recreation and scenic purposes.<sup>1717</sup> In 1986, the Crown declared Kirikiriroa among land included in Whanganui National Park.<sup>1718</sup> Today, Kirikiriroa remains in Crown ownership as Whanganui National Park land, administered by the Department of Conservation.

## **9.8 Lake Pohoare/Kawau tahi/Hawkes**

In 1937 Karanga Te Kere Ngataierua and three others petitioned the Government about Lake Pohoare or Lake Hawkes as it had been renamed on survey.<sup>1719</sup> According to Young, this lake is also known as Kawau Tahi and was well known as the source of succulent tuna or eels. It was also considered to be a place of great tapu.<sup>1720</sup>

In 1937, there was some confusion among petitioners and officials about whether the lake lay within the Retaruke or Waimarino blocks. This was perhaps unsurprising given the rudimentary nature of much of the surveying in this district before the early twentieth century. The petitioners explained that the Retaruke block, where they thought the lake was located, had been purchased by the Crown, confirmed in 1887. The purchase had provided for a number of reserves for owners but when subdivisions were made, the lake was found to be not included among them, although it had been intended to retain it as it was an important source of food.<sup>1721</sup>

On investigation, officials found that reserves were provided in Retaruke which was ‘finally disposed of’ in 1884 when the Crown was awarded the majority of the block and four reserves were awarded for sellers and non-sellers. However, there was no mention of a lake in any

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<sup>1714</sup> Report 27 August 1914, Le1/1914/9 ANZ

<sup>1715</sup> *AJHR* 1914 I-3 p 8

<sup>1716</sup> Letter 31 October 1917 on behalf of petitioners and reply 15 November 1917, MA1, 1914/2284, ANZ

<sup>1717</sup> *NZ Gazette*, 1960 pp 17 and 18

<sup>1718</sup> *NZ Gazette*, 27 November 1986, no 189, p 5064

<sup>1719</sup> MA1, 5/13/107 box 129 ANZ

<sup>1720</sup> Young p 181

<sup>1721</sup> Petition, 59/1937, MA1, 5/13/107, ANZ

documentation of the awards. It was believed that the lake being petitioned for was actually within the Waimarino block. This area had not been surveyed in detail until 1911, when it was first shown on a survey plan, and named Lake Hawkes. It had been included within the Crown award of Waimarino 1 and was located in what was now section 9, block XIII, of the Kaitieke survey district. The whole of this area of 312 acres was gazetted a scenic reserve in 1913.<sup>1722</sup> This area included the lake, although the lake itself was not specifically mentioned in either of the gazette notices. The Chief Surveyor also noted that a lithograph of the Retaruke survey district was also in error, showing section 9 without the lake.<sup>1723</sup> Nevertheless, officials found no evidence of the lake in any purchase reserves and as it was included within the Waimarino 1 award as Crown land, the petitioners had 'no ground whatsoever' for their claim.<sup>1724</sup> As a result, the Native Affairs Committee reported in 1937, that it had no recommendation to make.<sup>1725</sup>

Although officials would not recognise any claim for the return of the lake itself, the Minister of Lands called for a report on the use of the lake. As a result, it was acknowledged that, particularly in a time of economic depression, the lake fishery was an important source of food for local Maori. The local people had apparently continued to take eels from the lake even after it technically became Crown land and were concerned to gain official recognition of their continuing right to the fishery. Lands and Survey officials noted in 1937, that fish from the lake were an important source of food for local Maori, they apparently fished the lake regularly, and they were concerned that without ownership of the lake they might be deprived of their right to fish at any time, or the lake might be drained.<sup>1726</sup>

Although the lake was in a scenic reserve, the Under Secretary of Maori Affairs noted there was nothing in the Scenery Preservation Act and amendments that would prohibit Maori from entering the reserve to take eels.<sup>1727</sup> This was apparently agreed to by Lands officials and in January 1938, the Minister of Lands, Langstone, wrote to Wharawhara Topine noting the lake was in Waimarino and had been declared a scenic reserve since 1913. However, he also wrote that he was agreeable to allowing Maori to continue to take eels from the lake, as long as they understood it was under his permission, they did not have an exclusive right to do so, and they

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<sup>1722</sup> *NZ Gazette*, 1913 pp 1659-1660

<sup>1723</sup> Report of Chief Surveyor, 5 November 1937, MA1, 5/13/107 box 129 ANZ

<sup>1724</sup> Memo to Native Affairs Committee, 1 December 1937, MA1, 5/13/107, box 129 ANZ

<sup>1725</sup> Report of Native Affairs Committee, 6 December 1937, MA1, 5/13/107, box 129, ANZ

<sup>1726</sup> Lands and Survey to Native Department, 9 December 1937, MA1, 5/13/107 box 129 ANZ

<sup>1727</sup> Letter 13 December 1937 Under secretary Maori Affairs to Under Secretary Lands, MA1, 5/13/107, box 129, ANZ

had no distinct right of management of the fishery. In the Minister's words, 'I am agreeable, however, to permit the Natives to take eels from such lake at any time they desire to do so, on the distinct understanding that the right to take eels from such lake is not confined to the Natives alone, but may be exercised by the public generally at any time'.<sup>1728</sup>

## 9.9 Tieke

Tieke is located on the true left bank of the Whanganui River, above the confluence with the Manganui a te Ao River and just south of the Puwawa Stream (see map 1 of this report). According to Young, in the nineteenth century, Tieke was considered to be within a half day's paddle from Pipiriki.<sup>1729</sup> It was a long established site on the Whanganui River. In the nineteenth century it had a flour mill, while wheat was grown over the river at Parinui.<sup>1730</sup> Downes describes E J Wakefield as visiting Tieke in 1841.<sup>1731</sup> It was also a site of considerable traditional significance, containing a number of important urupa and settlement sites.

Tieke was included within the Waimarino block and during the years 1885 to 1887 and for some years afterwards was a settlement of some of the people who were most cooperative with Butler, including the chief Te Rangihuatau. Te Rangihuatau was the chief who had made the original application for a Native Land Court investigation of Waimarino. He had also assisted Butler with the purchase, and according to Butler, his agreement to eventually cooperate over giving evidence in the hearing for the Court award in 1887, was critical to the success of the Crown case, without which 'it is difficult to estimate the loss that might have been sustained by the Crown'.<sup>1732</sup>

When Butler made his allocation of reserves in Waimarino, he surrounded Tieke by a number of adjoining seller and non-seller reserves, that he was making along the Whanganui River. These were reserves B, 5 and 2. Tieke itself immediately adjoined what was to become non-seller reserve 5 (see map 8 of this report). As previously indicated, the boundaries of these surrounding reserves were all surveyed off in the years 1894 to 1895, although their titles were backdated to 1887. However, in 1892, an area of approximately 300 acres immediately

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<sup>1728</sup> Letter 29 January 1938, Minister of Lands to Wharawhara Topine, MA1, 5/13/107 box 129 ANZ

<sup>1729</sup> Young p 146

<sup>1730</sup> Young p 146

<sup>1731</sup> Downes, *History of and Guide to the Wanganui River*, p 41

<sup>1732</sup> Butler report on purchase and allocation of reserves in Waimarino, 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ

surrounding Tieke and regarded by then as Crown land, was transferred to the control of the Whanganui River Trust as domain land.<sup>1733</sup> This action resulted in a long running series of complaints from Whanganui Maori. These began in 1895, with complaints from Te Rangihuatau about the impact of surveys on his community still living then at Tieke. Protests continued through a number of investigations through the twentieth century, and were sparked again by Department of Conservation actions in the area in the early 1990s, including an occupation of the site by a group known as Te Whanau o Tieke in 1993.<sup>1734</sup>

The late twentieth century protests resulted in the preparation of a number of brief research reports on the issue of Tieke written by Paul Hamer and Ashley Gould.<sup>1735</sup> These raised a series of issues, including whether Tieke was really included within Crown land in Waimarino by 1892, or whether it should have been included in the surrounding reserves. The issue was also raised of when the Crown was free to deal with what was considered Crown land in Waimarino, including the transferring it to the control of the River Trust Board in 1892.

In brief, both Hamer and Gould acknowledge that by 1892 a survey line is apparent on maps of the area, containing about 300 acres around Tieke. Gould has argued further that, the title plans for the surrounding seller and non-seller reserves show Tieke as being excluded, and that as the Land Court awards to the Crown and non-sellers was made in April 1887, and all the titles of the awards and reserves in Waimarino were also backdated to the same time, then from 1887 the Crown was free to deal in what was considered Crown land, including Tieke, and including the transfer to the Trust Board in 1892. Gould also acknowledges that there may well have been some special arrangement with Te Rangihuatau, although this was not legally provided for.<sup>1736</sup> Hamer acknowledges that the 300 acres around Tieke was probably being shown as cut off by survey by 1892, but raises the issue of confusion in various title maps, which show Tieke differently, although he acknowledges the 1895 survey plans do appear to have legal authority. He raises further issues of whether the 300 acres was meant to

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<sup>1733</sup> *NZ Gazette* 29 December 1892, p 1724

<sup>1734</sup> Young, p 146

<sup>1735</sup> Hamer, Paul, 'The Crown's Purchase of the Waimarino Block and related issues, 1992 and Supplementary Report, report for Treaty of Waitangi Policy Unit, October 1992; Gould Ashley 'Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Wanganui River and Associated with Tieke Hut' 1994, for Crown Law Office; Hamer Paul, 'Commentary on Ashley Gould's report 2 March 1994, regarding the Crown's acquisition of Tieke' report, 1994

<sup>1736</sup> Gould Ashley 'Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Wanganui River and Associated with Tieke Hut', 1994, Crown Law Office

be Crown land and whether the Crown was able to deal with it as early as 1892. He also acknowledges that there may have been some kind of special arrangement with Te Rangihuatau.<sup>1737</sup>

Hamer and Gould acknowledge that some of the official plans show contradictory information about the legal status of Tieke. The sketch plan for the Court order for Waimarino 1, for example, shows Tieke as part of non-seller reserve 5, while the reserve plan for Waimarino 5 shows Tieke as Crown land outside the reserve.<sup>1738</sup> Hamer has conceded that the official survey plan for the Waimarino 5 reserve, being the ‘proper survey’ probably has the primary legal status. However, he is also correct in noting that it is not at all clear that the boundary lines showing the Tieke area as Crown land had any legal status when the area was proclaimed River Trust land in 1892. Further, it seems that the subsequent 1894-95 reserve surveys, made allowance for the Crown land already proclaimed under River Trust control at Tieke, on the assumption that this was correct, thereby simply compounding any error or premature dealing made in 1892.

In seeking to place these issues within the context of the overall Waimarino purchase, it seems necessary to try and determine what the circumstances of the transfer of Tieke were in 1892, and what Butler’s intentions may have been for Tieke. As noted, Te Rangihuatau and many of his community seemed to be very cooperative towards Butler on the understanding that this would enable them to transfer some lands over for settlement purposes, while retaining others they wished protected. Butler’s method of translating this wish to transfer some land and retain other areas, was to treat every owner in Waimarino as either sellers or non-sellers. The non-sellers had their land cut out as the result of a Court finding and award. Those who cooperated with Butler and were considered sellers were to be given land back, as decided by Butler, as seller reserves. Te Rangihuatau was clearly considered a seller. The way Butler made seller reserves was to consider the land Crown land first, because it had been purchased and then to ‘return’ some of this Crown land to the sellers for their reserves.

At the time of the Court award for the Crown and non-sellers, in April 1887, Butler had clearly already come to some idea of the acreages he would claim for non-seller awards. He may also already have had some idea of where these could be located. However, this would

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<sup>1737</sup> Hamer, Paul, ‘The Crown’s Purchase of the Waimarino Block and related issues, 1992 and Supplementary Report, report for Treaty of Waitangi Policy Unit, October 1992; Hamer Paul, ‘Commentary on Ashley Gould’s report 2 March 1994, regarding the Crown’s acquisition of Tieke’ report, 1994

<sup>1738</sup> For example, Hamer, ‘Commentary’ pp 2-3

have to be preliminary because he could not yet be certain what award the Court would make to non-sellers. There is no evidence that the reserve details later shown on his working plan (plan SO 10161) were accepted by the Court in 1887 as legal evidence, or even that the Court considered where the non-seller reserves it was granting would actually be located. The plan ML 776, which does seem to be the authorised Court plan at this time, does not show the proposed location of all non-seller reserves. The only lines that might possibly be relevant are a few faint red lines drawn between trig points that might show some non-seller reserves in the Whanganui River area. However, these also appear to indicate some seller reserves, which were not considered by the Court in 1887, and it seems more likely that these lines are some of the later annotations added to this plan at a later date. The Court minutes of the time do not indicate any consideration of any mapped locations of the non-seller reserves in 1887.

It would make sense for these reserves not to be clearly mapped before the Court at this time, not only because it would be pre-judging a Court award, but Butler still had to obtain approval for his seller reserve locations, which in a number of cases adjoined the non-seller reserves. The Court awards and the need to obtain authority for his seller recommendations might mean these could require some adjusting, so Butler could not have been certain of mapping them at this time. In addition, it has been shown that even the ‘proper’ survey plan for Waimarino (which became ML 776) was based on relatively little detailed field work and to a large extent on information compiled for other purposes. It was also based on a good deal of compass work and calculations from a relatively small number of fixed trig points. Butler seems to have used these trig points to roughly draw out his proposed reserves on his working plan, but they were very rough estimates of the actual areas involved and locations. However, because the seller and non-seller reserve boundaries were not certain at the date of the Court awards in April 1887, then neither was the ‘remaining’ boundary of the Crown award.

The Land Court itself appears to have effectively recognised this when it required proper surveys of each of the seller and non-seller reserves before title could issue. Only after these ‘proper’ surveys would the exact area of ‘remaining’ Crown land or Waimarino 1 be known. As shown, in chapter 8, in the case of the reserves surrounding Tieke, these proper surveys were not completed until 1894-1895. Therefore, any adjoining Crown land was not adequately known before then and the question arises of whether in that case the Crown could have deal with what it considered to be Crown land at Tieke in 1892, before the nearby reserve surveys were completed.

Although the relevant surveys were not completed until 1894 to 1895, as Gould has noted, the title orders for the Waimarino reserves were all dated 5 April 1887, the time the Court technically made the award and the same date as was inserted in the purchase deed. This backdating of title orders was common practice at the time. The effect of this backdating probably requires legal argument. However, it seems clear that as general policy at this time, the Government acknowledged that it was at least preferable to have the surveys made before dealing in nearby lands, even if they were anticipated to be Crown land. It has already been described that in other cases in Waimarino, Crown officials had been most reluctant to deal in land they anticipated would become Waimarino 1, until the obligations to Maori in the form of the reserves were cut out and clearly known, especially where this anticipated Crown land was in close proximity to reserves. For example, this seems to have been why reserve A was surveyed earlier than the others, so that land Crown land for settlement could be opened in the same vicinity. It was also one reason why land purchase officials kept constantly complaining about delays in surveying off the reserves. This acknowledged some kind of obligation to first complete the ‘proper survey’ of the reserves on the ground as indicated by the Court.

As noted, the delays in making these reserves were the fault of the Crown and officials such as Sheridan admitted at the time such delays were likely to cause significant confusion. In the case of Tieke, it seems that officials concerned with the River Trust lands, simply saw the Tieke land as cut off from the reserves and assumed it was Crown land they were free to transfer, without necessarily being aware of the obligations still required. It may also have been anticipated that the nearby reserves would be surveyed in 1891 to 1892, as correspondence described in chapter 7 anticipated. The 300 acres may have been proclaimed as a result of this anticipation. However, survey delays meant that the reserves near to Tieke were not actually surveyed until 1894 to 1895 and therefore the inclusion of the 300 acres in Wanganui River Trust lands in 1892 seems to have been premature.

The simple fact of backdated titles therefore needs to be treated with care. Even if the backdating gave some technical legality to Crown dealing in 1892, the circumstances of the surveys raise issues of Crown care and good faith. In the main Waimarino purchase, it has been shown that Maori were unable to gain full title and the protection of the restriction on alienation until the ‘proper’ survey had been done. In this case, the Crown was acting as though it had full title when the ‘proper’ surveys were still not complete. In addition, as noted, the Tieke transfer also seems to have cut across general policies of prudence followed by government officials in other parts of Waimarino at this time.

Another issue is whether the 300 acres of land at Tieke was ever intended to be Crown land, and if it was, whether it was also intended to be Crown land in order to meet obligations to Maori over the purchase. As described, Butler had decided to locate a number of reserves, for sellers and non-sellers along the Whanganui River and including the Tieke area. Although they were divided internally into technical seller and non-seller blocks, it seems as though Butler may well have placed them together to not only free up other land for the Crown but to give the impression to those allocated in the blocks that they all had access to important areas such as Tieke. As noted, although Butler's system of purchase required clear distinctions between sellers and non-sellers, in reality the people were often closely related and placing their reserves together acknowledged and to an extent may have glossed over this for the people involved.

As it happened, the reserve Butler made immediately adjoining Tieke was reserve 5 for non-sellers. This was between seller reserve B to the north and non-seller reserve 2 to the south, although it seems likely people awarded interests in these reserves would also have connections into the Tieke area. Butler may have felt this was the best way of making reserves in this area that would cause least trouble and appear to at least to some extent follow evidence provided in Court.

Butler's working plan (SO 10161) shows a number of amendments to boundary lines for the reserves between 1887 and 1895, when most were made final. Even after the Court awards and the approval for his recommendations over seller reserves in 1887, Butler was still anticipating negotiations over some of these reserves, including additional purchasing and amendments were made to these reserves for some time before they were finally surveyed, in most cases by 1894 to 1895. His working plan shows numerous amendments and alterations over the period from 1887 to the 1890s. Even after this, there seems to have been some willingness to alter boundaries as long as this did not interfere with Crown interests and or the requirements of settlement. For example, after complaints over the boundaries between reserves C and D, Native Department officials noted that, if necessary, 'the boundaries can be shifted'.<sup>1739</sup>

This makes it very difficult to be certain when any particular pencil lines were made on Butler's working plans indicating the location of reserves or amendments to them. Butler had

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<sup>1739</sup> Memo T W Fisher to Chairman Native Affairs Committee 17 November 1910, Le1/1910/21 ANZ

roughly decided on the location of the various seller and non-seller reserves near Tieke by August 1887, but the descriptions of this time are not detailed enough to be sure of exactly when he decided that an area surrounding Tieke should be Crown land or when the line showing the boundary of this area was made. It does seem clear, as shown by Gould that the decision to create an area of some 300 acres of land around Tieke was made sometime before 1892, when it was included within Crown lands transferred to the administration of the Wanganui River Trust.<sup>1740</sup> This effectively cut this land out of the adjoining non-seller reserve 5 making it Crown land considered part of the Waimarino purchase. It is by no means clear that this decision to cut off around 300 acres was already made in 1887, when the reserves recommendations were authorised, although this is possible.

It could be argued that Butler decided to do this because he believed the area was of particular importance for settlement, particularly for the river boat traffic of the time and possibly Tieke was required for such purposes. However, if Tieke was required by the Crown, it seems strange that no effort was made to remove Te Rangihuatau and his people for this. In addition, they were known to be very supportive of the Government and settlement needs so it would have seemed to be one of the last places along the river the Government would need to ensure settlement could be assisted. Butler may well have intended that Tieke eventually become Crown land, but at this time there was no reason why he could not have left it as reserve and simply continued purchasing there as he clearly intended in other reserves.

Another possibility was that Butler may have intended to separate off the Tieke area as Crown land so he could fulfil an understanding with Te Rangihuatau that the area would be protected to him and so he could continue to live at Tieke. To do this, Butler would also have had to cut it out from the non-seller reserve as Crown land, before having it granted to the seller Te Rangihuatau. As seen with his other activities in Waimarino, Butler had two ways of achieving this. The official, recognised way was to include the Tieke land within the seller reserves recommended by him and approved by the Government, some months after the Court awards, by August 1887. These seller reserves were technically Crown land granted back to sellers in return for their cooperation over the purchase. The other way was to consider the land as part of a 'special agreement', additional to the seller reserves, as Butler had already done for others in Waimarino in order to pursue the purchase.

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<sup>1740</sup> *NZ Gazette* 29 December 1892, p 1724

It does not seem that Butler intended Tieke to be part of an official seller reserve. He allocated Te Rangihuatau his full seller interest of 50 acres in seller reserve E, well away from Tieke.<sup>1741</sup> Butler still may have intended to allocate Crown land at Tieke to Te Rangihuatau, however, but by one of his special agreements. No direct evidence has been found in the course of research for this report of any written agreement for additional land for Te Rangihuatau at Tieke. Yet, the circumstantial evidence available does indicate that this was very likely, even if Butler intended to purchase it for other uses within a short time. To do this Butler would technically need to have the land considered ‘sold’ and therefore briefly Crown land, before having it granted back to Te Rangihuatau.

It has already been shown that Butler made a number of ‘special arrangements’ outside of the normal purchase process with Waimarino chiefs, to assist with the purchase. These special arrangements included not only additional money for ‘services’, but in some cases promises of land. Butler was generally most reluctant to admit to these special arrangements and some seem to have only come to light because the owners involved had been advised to require written documentation. It seems likely that Butler may well have made other special arrangements that were not recorded in writing and that Butler did not wish to be included in the official record. If this was so, then Te Rangihuatau was one chief Butler was very likely to have come to some arrangement with, as he was very important in the investigation, purchase and later Crown case for Waimarino.

There is strong circumstantial evidence for some kind of ‘special agreement’ or understanding between Butler and Te Rangihuatau over Waimarino. As noted in earlier chapters, Te Rangihuatau appears to have been a chief who had just begun to achieve some prominence in the upper Whanganui area by the mid-1880s. He was not recognised by the Government as one of the most established, influential chiefs of the district at this time, as were, for example, Ngatai te Mamaku and Topia Turoa. He also does not seem to have been regarded as prominent in discussions about the railway in the early 1880s. However, Te Rangihuatau appears to have begun to achieve some prominence by the mid-1880s. In this, he appeared to be receptive to the government campaign to persuade Whanganui Maori to trust it over land development policies.

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<sup>1741</sup> MA-MLP 7/10 owner 104 ANZ

It is likely, for example, that Te Rangihuatau was the chief described as ‘Rangihuatau’ in official reports of meetings Ballance held with Whanganui Maori in early 1885.<sup>1742</sup> These meetings were generally attended by chiefs who were most sympathetic to calls to cooperate with the government for mutual progress and prosperity and also those who appeared most concerned about the possible implications of pan tribal movements such as the Kingitanga for their continued independent authority. The chief ‘Rangihuatau’ was recorded at this meeting with Ballance at Ranana, as asking for a mail service from Manganui a te Ao to Taupo, which Ballance was reported as agreeing was important.<sup>1743</sup>

As also noted, Te Rangihuatau became active in the mid-1880s in working with government officials to make applications for Native Land Court investigations of title. This included not only Waimarino, but other large upper Whanganui blocks, such as Taumatamahoe.<sup>1744</sup> Butler may well have recognised him therefore, as a potentially very useful ally in his plan to purchase extensively in upper Whanganui, including Waimarino. This does not mean that Te Rangihuatau necessarily understood or supported the full extent of what Butler was planning. Rather, as with many of the cooperative chiefs of this time, he was inclined to trust the Government, and he saw some degree of alliance with the Government as an opportunity to better pursue some of his own objectives of asserting his status in competition with other chiefs of the district and of ensuring his people gained best opportunities to benefit from anticipated prosperity government policies would bring to the district. His willingness to ‘sell’ or cooperate with Butler must therefore be seen in the context of his trust in government assurances that he and his people would be far more likely to prosper if they chose to engage in the new improved and fairer systems of land investigation and management the Government was promising.

As part of this, Te Rangihuatau and two other chiefs made the original application for the large Waimarino block in December 1885, upon which the title investigation was then based. Tieke was not mentioned specifically in the application, although as Thorpe noted in early 1886, when he went to Tieke to seek Te Rangihuatau’s help for the sketch survey plan boundaries, Te Rangihuatau appeared to be living at Tieke at this time.<sup>1745</sup> Te Rangihuatau also gave Tieke (‘Te Iki’) as his place of residence when he gave evidence on the application

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<sup>1742</sup> *AJHR* 1885 G-1 reports of meetings with Ballance 1885

<sup>1743</sup> *AJHR* 1885 G-1 p 9

<sup>1744</sup> Oliver, ‘Taumatamahoe Block Report’ 2003

<sup>1745</sup> Thorpe report on surveys March 1886, LS-W 2351, ANZ

case to the Land Court on 1 March 1886, as conductor of the case for the applicants.<sup>1746</sup> At this time, as described, there were also other applicants who came from or included Tieke in their claims. Te Rangihuatau also agreed to evidence made by another objector, Taiwiri at this time, regarding another ancestor, Tukoia, in the block. Te Rangihuatau agreed Tukoia had a claim in a small portion of Waimarino, ‘in my place Teike’.<sup>1747</sup>

As described, this case was carefully managed and in many cases, butler seemed to have convinced others who may have also claimed at Tieke to allow their cases to go ahead under the overall Waimarino claim. For example, the Ngati Wai applicants in survey application 724 for Tahereaka, were described as living at Tieke.<sup>1748</sup> This meant however, that there was very little detail provided to the Court in 1886 about interests in various localities within the block, including Tieke. Most of the 1886 Waimarino hearing was instead taken up with consideration of lists of owners. This was also not recorded in detail by the Court and did not include specific mention of Tieke.

The Crown application for a purchase award before the land Court in early 1887 produced some additional evidence about traditional land holding in Waimarino, although as noted, many sellers and non-sellers refused to attend and the evidence that was submitted was carefully managed by Butler to support the Crown case. Much of this evidence was supplied by Te Rangihuatau, some in a statutory declaration that, unfortunately, does not appear to have survived.

Te Rangihuatau was recorded in the 1887 Court minutes, as giving evidence that he was a member of Ngati Maringi hapu, with a large claim in the block.<sup>1749</sup> This was even though he had claimed under the hapu Tamakana in the original 1886 title investigation hearing.<sup>1750</sup> Although he was living at Tieke at this time, Te Rangihuatau did not mention Tieke as a specifically Ngati Maringi claim in his 1887 evidence. Instead, he seemed more concerned with describing Ngati Maringi as having interests at ‘Waimarino proper’ and from Ohongo to Otapouri.<sup>1751</sup> These areas were in the northeast of the block as shown on plan ML 776. Later still, he said Ngati Maringi interests also extended to the Manganui a te Ao.<sup>1752</sup> This was

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<sup>1746</sup> MLC Whanganui MB 9 p 199

<sup>1747</sup> MLC Whanganui MB 9 p 200

<sup>1748</sup> LS-W 46/6 application 724, ANZ

<sup>1749</sup> MLC Whanganui MB 13, p 134

<sup>1750</sup> MLC Whanganui MB 9 p 199

<sup>1751</sup> MLC Whanganui MB 13 p 139

<sup>1752</sup> MLC Whanganui MB 13 p 145

important evidence for Butler as it helped him claim parts of the northern part of the block for the Crown. Te Rangihuatau may not have regarded his evidence as contradictory in 1887, as he was reflecting traditional views of customary interests that could derive from more than one ancestor and be traced through different relationship connections to a variety of places in the block. Te Rangihuatau also mentioned in his evidence in 1887, that he had an ancestral right through Tamakana, for example, also in ‘Waimarino proper’.<sup>1753</sup> Butler later allocated Ngati Maringi people in non-seller reserves 3 and 4 as well as in seller reserves A and E, again indicating how many hapu had been divided by his purchasing.<sup>1754</sup>

Te Rangihuatau also went on to give evidence on other groups in the Waimarino block. He stated, for example, that Ngati Kahukurapango had interests in the same lands as Ngati Maringi, and their interests were of equal rank with Ngati Maringi.<sup>1755</sup> With regard to Ngati Hinekura, he described their claim boundary as beginning at Te Arawhata near Popotea, then to Puketiotio, Whareriki, Ngapukewhakatarā and west to the stream called Puatawha. It followed on to Ngapuketurua, to the Whanganui River at Te Miro and then followed the river to Tieke and then to the beginning. He described Tieke as a burying place.<sup>1756</sup> This description clearly includes lands surrounding and including Tieke. Some of these place names are shown on Map ML 776 produced before the Court at this hearing. Ngati Hinekura people were later included in Waimarino 2 non-seller reserve, which adjoined Waimarino 5 to the south along the Whanganui River, and was also south of Tieke.<sup>1757</sup> Some Ngati Hinekura people were also later included in seller reserve B by Butler, which was located along the Whanganui River, but north of Tieke.<sup>1758</sup> Waimarino non-seller reserve 5, which did adjoin Tieke was awarded by the Land Court to Ngati Matakaha, Ngati Poumua and Ngati Tauengaarero people, presumably on the recommendation of Butler.<sup>1759</sup> Although the blocks were technically separated by boundaries, by locating them adjoining each other, as noted, Butler may well have given the impression to the people living there that their various interests remained protected.

In his evidence on the hapu whose reserve did surround Tieke, Te Rangihuatau described Ngati Matakaha as having lands at Mangatiti in the west of the Waimarino block. He first

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<sup>1753</sup> MLC Whanganui MB 13 p 135

<sup>1754</sup> MLC Whanganui MB 13 pp 155-157, *Kahiti* 1895, no 20, 15 May 1895, pp 181-186

<sup>1755</sup> MLC Whanganui MB 13 p 136

<sup>1756</sup> MLC Whanganui MB 13 p 136

<sup>1757</sup> MLC Whanganui MB 13 p 151, map 8 of this report

<sup>1758</sup> *Kahiti* 1895, no 20 15 May 1895, p 184.

<sup>1759</sup> MLC Whanganui MB 13 p 157

claimed Ngati Poumua lands were outside the block although they had some interests in lands at Otapouri in the northeast of the block.<sup>1760</sup> He later altered this to saying Ngati Poumua had partial interests in lands at Huikumu, Manganui a te Ao and Tuhua.<sup>1761</sup> He also claimed Ngati Tauengaarero had lands at Mangatiti.<sup>1762</sup> Mangatiti Stream is included within the Waimarino 5 reserve and it seems that Ngati Matakaha and Ngati Tauengaarero, at least according to Te Rangihuatau's evidence, did have ancestral connections to this area. While Te Rangihuatau described their lands as 'at Mangatiti', he did not mention Tieke in connection with them and he seemed to be indicating their interests lay south of this area. However, the final reserve 5 adjoined and effectively enclosed Tieke. It also seems likely that people who lived in such close proximity to Tieke, a well known landing place on the river, would have had some ancestral connections to it.

Te Rangihuatau may have given additional evidence in his statutory declaration, but this does not appear to have survived. It seems clear that, in any case, Te Rangihuatau was agreeing to stress evidence that supported Butler, while the absence of many witnesses meant that his claims were not fully tested in Court. Butler's later allocation of reserves according to this evidence is another indication of how approximate the reserves made actually were with regard to the evidence available on customary interests.

An interesting feature of the evidence is that although Te Rangihuatau was living at Tieke at this time and would continue living there until his death in 1908, he made no effort to prove his own interests there in the Court hearing. This was, presumably, because he was confident that even though he was a seller, his continued presence at Tieke was protected. Butler's records confirm that Te Rangihuatau (owner 104) was regarded as a seller in Waimarino. Butler lists him as a member of Ngati Maringi hapu and that he sold all his interests in Waimarino on 8 and 24 April 1886, for a total of £63 10 shillings.<sup>1763</sup> As previously noted, the first payment made to him of £11 10 shillings was made before Butler had obtained official authority to begin purchasing and was regarded as an 'advance' by Butler.<sup>1764</sup> The second payment of £52 was made on 24 April, early in the purchase and was regarded as paying off Te Rangihuatau for his interests in the block.<sup>1765</sup> This total was not a substantial amount,

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<sup>1760</sup> MLC Whanganui MB 13 p 137

<sup>1761</sup> MLC Whanganui MB 13 p 143

<sup>1762</sup> MLC Whanganui MB 13 p 137

<sup>1763</sup> MA-MLP 7/6 ANZ

<sup>1764</sup> MA-MLP 7/10 p 31 ANZ

<sup>1765</sup> MA-MLP 7/10 p 31 ANZ

given the fact that Te Rangihuatau had played such an important role in the application and the title investigation case and relative to other payments Butler made in the block.

As noted, Butler also allocated all Te Rangihuatau's seller interests of 50 acres in seller reserve E.<sup>1766</sup> This reserve was in the Ohango area where Te Rangihuatau had claimed Ngati Maringi had interests in 1887, in support of Butler's case.<sup>1767</sup> Interestingly, although he had also claimed elsewhere, such as at 'Waimarino proper' Butler did not allocate him interests there. This also indicates how essentially artificial the reserve allocation process was. Ohango was in the northeast of the block and well away from Tieke. It also seemed to be a place where Te Rangihuatau was willing to continue to sell his interests, as he would indicate in 1895. In contrast, Te Rangihuatau was living at Tieke and appeared confident he could remain there. He also seemed to feel no concern at the 1887 hearing that he had to somehow prove his interests at Tieke, even though technically as a seller, he was regarded as having sold all his interests in Waimarino (including Tieke) and all his seller interests had been awarded in reserve E, which did not include Tieke.

Given the acknowledged importance of Te Rangihuatau to the investigation and purchase of Waimarino, it seems likely that Butler would have been obliged to acknowledge this in some way. Te Rangihuatau was also living at Tieke at this time and seemed to show no desire to move. Presumably, in order to keep his cooperation Butler would also have had to acknowledge this. Although Butler did not pay Te Rangihuatau a very large amount for his interests in Waimarino, he does seem to have acknowledged his importance in payments for various services. For example, Butler's expenses records show payments to Te Rangihuatau of £100 for 'services' in the purchase of Waimarino, in the period from 20 April to 31 October 1886.<sup>1768</sup> This was after he had already been paid for his interests in the block.

Butler also paid Te Rangihuatau for expenses and 'services' in connection with the 1887 hearing. On 24 March 1887, just before hearing began, Butler paid Te Rangihuatau £5 for expenses in attending the Court and regarding the Waimarino purchase.<sup>1769</sup> This was presumably in anticipation of Te Rangihuatau being an important Crown witness for this case. On 4 April, just after Te Rangihuatau had submitted his statutory declaration, Butler recorded

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<sup>1766</sup> MA-MLP 7/10 owner 104 ANZ

<sup>1767</sup> MLC Whanganui MB 13 pp 134-5

<sup>1768</sup> MA-MLP 7/10 p 87 ANZ

<sup>1769</sup> MA-MLP 7/10 p 110 voucher 2753 ANZ

paying him another £5.<sup>1770</sup> This was presumably to encourage him to provide important evidence for the Crown when it seemed he might have been ‘led away’ by Topia Turoa. It may also have been a promised down payment should he provide the evidence required. On 19 April 1887, soon after this hearing finished, Butler paid Te Rangihuatau another £20 for services regarding the Waimarino purchase and attending the Native Land Court.<sup>1771</sup> Possibly this later payment was the final instalment dependent on his continuing support for the Crown case. This was a total payment of £30 for his assistance and expenses at the hearing.

Nevertheless, while acknowledgements, these payments for services were also not that large compared to some other payments Butler made. The £100 he was paid for ‘services’ compares with the £100 Butler also paid the chief Te Heuheu Tukino on 18 September 1886, for example, also for assistance in acquiring Waimarino.<sup>1772</sup> Te Heuheu was an influential chief, but he was not even a recognised owner in Waimarino and did not provide Butler with anything like the assistance provided by Te Rangihuatau. The £30 Te Rangihuatau received for the 1887 hearing, while also a significant sum for the time, does not seem overly generous when it is considered how critical his cooperation was at this time. Te Rangihuatau does not appear to have regarded it as overly generous either, as shortly after this, on 20 April 1887, he wrote to Ballance and Lewis asking for £100 for food, because of the losses he had suffered while engaged with the Waimarino. He explained that Butler had given him £20 but this had not been enough. He reminded them that he had always strenuously supported the ‘Governor’s strong arm’. However, now that the hearing was over, Lewis recommended to the Native Minister that this request be refused and Ballance agreed.<sup>1773</sup>

The amounts paid to Te Rangihuatau for the Court award hearing in 1887 also do not seem large when it is considered that at the very beginning of the hearing it seemed that Butler may have lost some of his support. It was only part way through the hearing and after some considerable effort by Butler that Te Rangihuatau went ahead with the necessary evidence and agreed to submitting the separate statutory declaration. After the 1887 hearing, Butler reported that at first Te Rangihuatau had been ‘led away’ by Topia Turoa. In his initial evidence for the hearing, Te Rangihuatau also described being ‘disgusted’ with the purchase

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<sup>1770</sup> MA-MLP 7/10 p 116 voucher 116 ANZ

<sup>1771</sup> MA-MLP 7/10 p 118 voucher 146

<sup>1772</sup> MA-MLP 7/10 p 73, voucher 1541 ANZ

<sup>1773</sup> Letter Te Rangihuatau to Ballance and Lewis 20 April 1887 and file notes 7 June 1887, NLP 87/135 MA1, 1924/202 v1 ANZ

tactics used by Butler and Stevens.<sup>1774</sup> Nevertheless, Butler still managed to persuade him to change his mind and to continue to cooperate to support the Crown case.

The monetary payments may have helped to convince him, but on their own they are unlikely to have been enough. It seems highly possible that Te Rangihuatau also chose to support Butler because he wanted to ensure that Butler would stick to their additional agreements including presumably over land at Tieke. It is possible Te Rangihuatau may also have made some reference to this in his statutory declaration, but unfortunately, the Court does not seem to have considered it necessary to ensure this evidence was included in the Court minutes. There is other evidence from this time that suggests that at times, Te Rangihuatau became disillusioned, but then was persuaded to cooperate again. For example, he was one of those who applied for a rehearing of the title case, even though his was the successful case. His application for this (like all the others) was dismissed.<sup>1775</sup> There is also evidence that Butler made proposals to him over the purchase and presumably to retain his cooperation, although details are not known. In June 1886, when questions were first being asked about his agreements, Butler acknowledged that he had made ‘certain proposals’ to Te Rangihuatau and Topia Turoa, while claiming that unless they agreed to render the services required, the proposals would be withdrawn.<sup>1776</sup> In the case of Topia Turoa, Butler later refused to honour any agreement, claiming he had failed to render the services required. Te Rangihuatau clearly did continue to cooperate although no further detail has been found in the official record of the Butler’s ‘proposal’ to him.

It seems therefore that Butler had at least an understanding with Te Rangihuatau over the purchase and Tieke was part of this. This special arrangement would require him to make a special grant to Te Rangihuatau such as at Tieke and this could well have been why the 300 acres was set aside. Because no official written record of any such agreement has been found, it is not possible to know exactly what was agreed over the land believed to be involved or what the terms of any special agreement might have been. Given, what is known about Butler’s interpretation of other special agreements, it is likely that Te Rangihuatau would have believed considerably more land was involved than Butler would have been willing to allow. However, an area of about 300 acres seems to be well within the kinds of agreement

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<sup>1774</sup> MLC Whanganui MB 13 p 135 ANZ

<sup>1775</sup> *NZ Gazette* 1887 vol 1 no 9, p 227

<sup>1776</sup> Butler to Lewis 26 June 1886, MA1, 1924/202 v1 ANZ

Butler was making with Waimarino. For example, as described, another of his special arrangements, that was documented, involved 500 acres for each of two chiefs.

If Butler was intending to make around 300 acres at Tieke Crown land, even for Te Rangihuatau, he was effectively cutting the surrounding non-seller reserve 5 off from this area, even though it seems highly likely that these people would have had connections to the urupa there and rights in the landing areas. They were non-sellers and Te Rangihuatau's evidence about their ancestral lands had been very vague, no more than 'at Mangatiti'. A Crown grant to Te Rangihuatau at Tieke would give him sole authority, to their detriment. The grant would also exclude those Ngati Hinekura people who had been admitted to have rights in Tieke, but whose interests Butler had actually located in nearby reserves. However, Butler may have relied on the close proximity of the reserves with the Tieke area to create the impression that those involved would still have access to Tieke, while Te Rangihuatau's authority over it was no more than the traditional authority he may have assumed anyway. At the same time, a grant to Te Rangihuatau alone would be that much easier to purchase at a later time. Presumably, however, if Butler did intend the Tieke land to be granted to Te Rangihuatau he was under some obligation to ensure this happened. His decisions to make 'special arrangements' without properly documenting them and the apparent failure of the Land Purchase department to prevent this or to seek to properly uphold such arrangements, meant the Crown could benefit from such arrangements, while failing to ensure proper documentation of them and, as a result, remain largely unaccountable for honouring them.

It seems possible, that the 1892 proclamation may have been made in error, by officials who were not aware of the circumstances of the purchase and awards. It seems that the Tieke land was included under the River Trust because it was understood Butler intended to allocate it as Crown lands, part of Waimarino 1. However, the officials concerned with allocating land to the Wanganui River Trust may not have been fully aware of the circumstances of the purchase and awards, and may not have known that Waimarino 1 had not yet been confirmed by accurate survey of the nearby reserves at this time. They could also not have been expected to be aware that Butler may have had some other intention for the Crown land he was planning to set aside at Tieke, such as to honour an agreement with Te Rangihuatau, especially when Butler and the Land Purchase Department were following a policy of declining to officially record such arrangements unless they had no alternative. Gould has described the process of River Trust application for Crown land and has also noted that it was at times subject to confusion and error. For example, the 1892 proclamation was later found to have

inadvertently included Ahuahu in the Trust domain, requiring it to be later removed by proclamation.<sup>1777</sup>

If Butler did decide that he would honour understandings with Te Rangihuatau by setting aside Crown land for him at Tieke, and he was possibly taken by surprise by the 1892 proclamation transferring this land to the River Trust Board, the question is raised as to why he did not try and rectify the situation and have the land removed from proclamation and granted to Te Rangihuatau as intended. The answer seems to lie in government policy and in Butler's own interpretation of the purchase deed at the time. It was clearly government policy (and that of Butler) not to make public special agreements, he had made in order to achieve the purchase, although it was clear there was considerable benefit from these. This was particularly the case with additional grants of land as there was concern this might be regarded as a precedent by the many others who also believed their understandings of the investigation and purchase were being unfulfilled. As far as they could, officials insisted that only what became the reserves gazetted in 1895 were 'legal'. Butler also attempted to buy up the land in other special agreements as soon as he could and he may also have intended this with Tieke. He also believed that seller reserves were anyway only 'concessions' from the Crown and he could use this to amend them or limit them as he pleased. Once the Tieke land was included in the River domain, Butler seems to have felt no obligation to insist that it was removed, as he would have regarded this as 'backward' and placing Maori interests over those of settlement. Instead, and very cynically, he and government officials appear to have attempted to come to some arrangement where Te Rangihuatau and his people could use the land, but ownership would stay with the Crown.

It should be noted at this point, that the whole process of seller and non-seller reserves, and seller reserves or special grants being created out of Crown land, stemmed from the purchase process that Butler had set up to facilitate Crown purchasing. It was not necessarily the way those chiefs who cooperated understood their land would be protected, and it was no fault of theirs that Butler also felt obliged to engage in a series of often undocumented 'special agreements' to make his system work. In the system Butler had set up, Te Rangihuatau could not be regarded as both a seller and non-seller. This was highly artificial (and illogical) for such a large block, where it was perfectly possible and indeed likely for those who agreed to sell, to wish to sell just some areas, while retaining others, that is to be both seller and non-

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<sup>1777</sup> Gould p 26

seller. The process of seller reserves also hardly provided the kinds of protections sellers expected, as they had very little say over which seller reserve they would be allocated to and Butler seemed reluctant to award them interests in a variety of localities. To do so he would also have had to split their 50 acre (or lesser) interests over a variety of areas, making the system much more complicated and their award seem even less adequate. Butler presumably could have chosen to allocate Te Rangihuatau 25 acres each, in a reserve including Tieke and in seller reserve E. However, this would have meant he would have had to make the Tieke reserve a seller rather than a non-seller reserve and this would have upset his other allocations. For whatever reason, he seems to have decided to allocate Te Rangihuatau his full 50 acres in reserve E, making any other understanding about Tieke very difficult to officially implement.

As previously noted, these difficulties over ‘special arrangements’ were not necessarily understood by Waimarino Maori, including those who agreed to cooperate with Butler. As shown in other cases, these special agreements were often just ways of trying to confirm, within the system created, the kind of understanding chiefs had. Te Rangihuatau and other chiefs may not necessarily have understood the full details of Butler’s system. They just had to be persuaded that his system would provide the results they wanted, which was to allow some land to be sold for settlement and development purposes and other land to be protected for their continued living and ‘comfort’, including their settlements, urupa, cultivations and other lands they wanted to retain. Te Rangihuatau, like other cooperative chiefs, appears to have believed this was the kind of understanding he had with Butler, including over Tieke.

This is evident when Te Rangihuatau first raised concerns about Tieke in 1895, as a result of the survey work finally being conducted in reserves at this time.<sup>1778</sup> It seems that Tieke Maori were unaware of the 1892 proclamation, or at least the implications of it for their land. However, when the surveyor Otway finally did get around to surveying reserves in the vicinity of Tieke in 1894 to 1895, Te Rangihuatau did express some concern about the surveys. At the same time, he explained his understanding of his agreement with Butler over Tieke. Te Rangihuatau wrote to the Native Minister on 27 January 1895, while Otway was conducting survey work in the area.<sup>1779</sup> This letter (in translation) asked why surveyors had been sent to the area to survey the burial places of ancestors. It claimed that Tieke had been

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<sup>1778</sup> Letter to the Minister of Native Affairs from Te Rangihuatau and others, 27 January 1895, LS 26062 ANZ

<sup>1779</sup> Letter 27 January 1895, LS1, 26062 box 160 ANZ

‘withdrawn’ in proper form in the Court and before Butler when he was purchasing. It asked why the satisfactory arrangement reached had now been interfered with. The letter claimed that, as well as Tieke, Te Rangihuatau had also withdrawn Ohango from the Waimarino purchase, keeping it for himself and his hapu, Ngati Maringi. The letter complained about a ‘low European’ who was seeking to use the burial place at Tieke in a manner Te Rangihuatau did not approve of. There was also some concern about the way the surveyor was cutting boundaries. Te Rangihuatau reminded the Government that the boundaries of Tieke began at Te Arawhata, included a number of named burial places and also Tieke, which was also described as having an urupa. The area also included the hill Nga Puku Whakatara and Te Wharariki, much the same boundaries as given in evidence in 1887. This appears to have been considerably larger than the 300 acres, now proclaimed for the use of the River Trust.

The letter also claimed that at the second Court hearing, the agreed Tieke land had been set aside by Major Kemp, in the presence of Mr Ballance, who had also agreed. Those hapu interested in it included Ngati Tuahuiti, Ngati Hiramai and Ngati Whakarua. It was set aside because it was a principal burying place of many chiefs including Te Kurukanga who had first introduced Europeans to Whanganui. The letter referred to a previous visit to the area by government ministers who had seen the community at Tieke and their large buildings, including meeting houses and churches and a new building to protect the dead.<sup>1780</sup>

This letter seemed most concerned about perceived interference with urupa by surveyors in 1894 to 1895. In the process, however, it claimed that Tieke (and Ohongo) had been ‘withdrawn’ from the Waimarino purchase and this had been agreed to by Butler when he was conducting the purchase and taking around the purchase deed. This reflected a common understanding among Waimarino Maori over the reserves. Technically, as far as Butler was concerned, they were either for non-sellers or sellers, and in the case of seller reserves they were first considered Crown land and then ‘granted’ back as Butler finally decided. For the majority of Maori however, including those most cooperative to Butler, reserves were simply a means of enabling them to retain land as they always had done, basically unaffected by the purchase, even if they agreed to sell in other areas. This seems to be why so many previously cooperative chiefs, such as Kahu Karewao, displayed so much concern when the reserves

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<sup>1780</sup> Letter 27 January 1895, LS1, 26062 box 160 ANZ

were actually made and they found the areas they believed would be left secure or ‘reserved’ to them, were in fact considerably smaller or in different locations to their expectations.

It is highly possible that in order to pursue the purchase, land purchase officials such as Butler failed to make the implication of seller reserves clear to chiefs. They may simply have assured such chiefs that the process of purchase would make land they wanted ‘reserved’ even more secure to them. This was a common claim by officials as an individual Crown grant was considered more secure than customary land, and land held by individuals was considered more secure than land held in multiple ownership. In the case of the urupa, for example, Te Rangihuatau seemed to believe that the reserve had confirmed his sole authority over the area so he could decide who would or would not be buried in the urupa and a Crown grant to him alone could technically provide this advantage over communal ownership. However, Crown granted reserves, especially as Butler interpreted he could make them, were not the same as ‘withdrawing’ land from the purchase, and only selling off certain other areas as many chiefs may have expected.

The treatment of Te Rangihuatau’s expectations under Butler’s purchase system, highlight the essentially arbitrary nature of his process. Te Rangihuatau seemed to believe that he had withdrawn both Ohongo (Owhango) and Tieke from the Waimarino purchase, both in a similar manner, while he had been willing to sell in other areas of the block. He may have assumed that under Butler’s system he would receive title to both these areas. However, under Butler’s purchase system, he could not be both a seller and non-seller and, as a seller, Butler was able to decide where his seller interests might be located. Butler decided the size and location of reserves and all owners were simply allocated interests in reserves as he decided. As noted, Te Rangihuatau was eventually awarded 50 acres in a seller reserve in the general area of Ohongo, (Owhango) in the northeast of the block. However, it was simply an individual interest like every other allocation and it recognised no collective or chiefly authority. It also seems unlikely that seller reserve E, as it was eventually defined, matched traditional views of what the Ohongo district might contain. This highlights how government officials such as Butler were able to manipulate and interpret the understandings of even cooperative chiefs, in the interests of purchases designed to promote Crown interests. Butler may have felt that any agreement over Tieke required a special arrangement, to meet the requirements of his purchase process. However, Te Rangihuatau clearly felt that he had simply ‘withdrawn’ Tieke and Owhango from the purchase.

The letter also seemed to claim that the agreement to set aside Tieke had been further confirmed at a meeting brokered by Kemp and attended by Ballance, held at the same time as the 1887 Court hearing. It was claimed that at this meeting, Ballance had also agreed that Tieke could be set aside, because of the number of urupa it held. This possibly refers to the meeting a number of chiefs asked Ballance to attend as the Court was about to begin hearing the Waimarino case in 1887, to negotiate a fairer arrangement over Waimarino, as mentioned in chapter 8. This request was made by a letter dated 12 February 1887. In translation, this letter explained that the writers had withdrawn their partition applications, leaving Waimarino ‘to be now dealt with in a clear manner’ because ‘the whole of the people feel convinced that this is the proper course’. The letter asked Ballance to come and see the people who were all gathered in town for the hearing, so that both races, Maori and Pakeha might thoroughly understand ‘for although there are crooked parts in the affair we still look to you to straighten them’. The letter was signed by Paiaka Te Pamonga, Matiaha Hurutara, Te Pikikotuku, Ngatai Te Mamaku and others.<sup>1781</sup> A file note by Sheridan indicates that a reply, sent on 21 February, indicated that Ballance was very busy but would come to Wanganui, as requested, as soon as possible.<sup>1782</sup> Unfortunately, although it does seem Ballance visited Wanganui in early April 1887, no record of any meeting over this has been found in research for this report.

The letter also referred to a recent visit by government ministers to Tieke where they had seen the meeting houses, churches and buildings of the Tieke people. The implication was that this community had no thought of leaving and that the Government ministers in visiting them officially had tacitly acknowledged their occupation of Tieke. As Gould has noted, this most probably referred to a visit by Seddon and Carroll to Tieke in 1894. There was also nothing in this letter to indicate there was any intention of abandoning Tieke. The intent to remain was clearly indicated by the construction of a new building to protect their dead.<sup>1783</sup>

The survey activities that seem to have caused concern at this time were not only the reserve boundary surveys, but also possibly the extra survey activities Otway reported he was engaged in. Otway reported in late 1894, that while conducting reserve surveys for 5, 2 and B, he also carried out a traverse of the Whanganui River, where he reported Maori pulling down his survey stations. He also reported surveying a road route up the Mangatiti Valley (presumably through what would be non-seller reserve 5) to give access to the Crown land

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<sup>1781</sup> Letter 12 February 1887 to Ballance and Vogel, NLP 87/60 MA1, 1924/202 v 1 ANZ

<sup>1782</sup> File note, NLP 87/60 MA1, 1924/202 v 1 ANZ

<sup>1783</sup> Gould, p 23

beyond and exploring the country behind the reserves he was cutting.<sup>1784</sup> It seems possible that the traverse work of the Whanganui River in particular and possibly also the road survey had raised concerns about interference with burial places. This may have also led to the 1896 request from Harata te Kiore mentioned earlier for protection of burial grounds near Mangatiti, named Pukearuhe and also at Te Kaurau and Tirinaki.<sup>1785</sup> Certainly Otway's work had resulted in some physical obstruction, as Otway reported. Although he did not report it at this time, Otway also surveyed off a landing place at Tieke during this survey work and this may also have caused some concern about interference with urupa.

At this time, while Te Rangihuatau mentioned his understanding that Tieke had been set aside, he does not seem to feel there was any threat to his continued presence there. However, the letter does appear to raise some concerns about the agreed boundaries of the Tieke lands. He gave the boundaries as he understood them in the letter, indicating that he thought Otway was taking a wrong line with his survey. As noted by Hamer, he seemed to be indicating that he not only wished to keep the Tieke area of around 300 acres that had since been proclaimed for the River Trust, but also a much larger area, including in what was to become non-seller block 2.<sup>1786</sup>

When Otway was conducting his survey for reserve 5, he seems to have taken the 1892 proclamation boundary line as a legal given, and he surveyed reserve 5 adjoining but not including the set aside Tieke area. This is not surprising, as with the official proclamation and Butler's lack of official acknowledgement of any agreement over future use of such land, he had no reason to believe it was other than Crown land that needed to be allowed for when making a survey. However, by taking the 1892 proclamation area into account when surveying Waimarino 5, Otway was effectively undertaking the survey the wrong way round, taking account of premature assumptions about what would be Crown land when making the reserve, instead of surveying off the reserve first and leaving the remainder as Crown land.

The letter from Te Rangihuatau was annotated by government officials, indicating that Judge Butler had discussed the matter further with Te Rangihuatau, and also with the survey office. He had also promised to see the Tieke people if possible and 'explain and arrange matters with them' on a visit he was shortly expected to make up the river. Te Rangihuatau was also

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<sup>1784</sup> LS-W 40/5 monthly survey reports 1894-95, ANZ

<sup>1785</sup> Letter 96/166, 12 March 1896, MA1, 1924/202 v 2 ANZ

<sup>1786</sup> Hamer, 'Commentary' p 7

advised by letter that Butler would visit and discuss the issue with them. Sheridan also seems to have visited the up river area around the end of March 1895, as indicated by Gould.<sup>1787</sup> The file annotations in this case are not instantly dismissive as with other claims to land areas in Waimarino. Instead, the official record is silent, at this time, on the Government view of the claims made. Rather, the matter was to be handled directly by ‘explanation’ and ‘arrangement’ without any formal written record of what these explanations and arrangements were. The reluctance of government officials to formally record the types of arrangements they were making at this time, again raises issues of good faith and fair dealing over Tieke.

Even if the proclamation of Tieke reserve as part of River Trust land had been accidental, government officials by this time seemed most reluctant to make any special grant to Te Rangihuatau of the Tieke land. At the same time, Te Rangihuatau seemed more determined to remain at Tieke than they had perhaps anticipated and they seemed reluctant to try and force him and his people off, as they appeared quite willing to do in other areas, if such ‘squattening’ interfered with settlement. It seems that, instead, as with some of the other more contentious areas of the purchase, they appeared willing to wait ‘for the present’ until they could more easily impose their view of the purchase and a lack of secure title forced communities to leave. This rather cynically allowed Te Rangihuatau to believe his view had been accepted, while failing to provide the Tieke people with any formal legal means of protecting what they believed was their land.

Hamer has noted an annotation by Sheridan on the Native Land Court copy of a plan for the Waimarino reserve 5 of February 1898, to the effect that the 267 acre Tieke reserve was considered ‘Crown lands which the Natives are allowed to use and occupy without a title’.<sup>1788</sup> This was apparently, the ‘arrangement’ Butler and Sheridan were promoting over Tieke, although it is most unlikely Te Rangihuatau would have understood it this way. It may have suited Butler as a means of evading any understandings he had with Te Rangihuatau. However, as Hamer has noted, Te Rangihuatau would hardly have envisaged an interpretation of his agreement over Tieke as one under which he was effectively squatting on Crown land at Crown forbearance.<sup>1789</sup> It is not clear how Butler and Sheridan ‘explained’ their arrangement to Te Rangihuatau. Possibly, as with Tongariro National Park and later Te Urewera, they claimed that making the land a Crown domain would be the best means of

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<sup>1787</sup> Gould p 19, citing correspondence on MA1, 1924/202 v2 ANZ

<sup>1788</sup> Hamer, ‘Commentary’ p 9

<sup>1789</sup> Hamer, ‘Commentary’ pp 8-9

‘protecting’ such a culturally important site from future sales and partitions, while allowing Maori continued access and use. This was, however, misleading as Maori came to realise, as it effectively retained all management rights with the Crown while leaving them without any legal rights.

Te Rangihuatau remained living at Tieke. He died on a visit to Wellington in 1908, by then an old man of over eighty years of age.<sup>1790</sup> He was taken back to Tieke and buried there.<sup>1791</sup> By the turn of the century, the lack of secure title and the uncertainty over Maori continued secure use of many riverside settlements had caused significant depopulation of these areas and at the same time, regular expressions of concern and protests as indicated earlier with other areas such as Tawata and Kirikiriroa. It appears that by the early years of the twentieth century a more sympathetic Carroll and Seddon were endeavouring to find some kinds of compromise over these concerns although within very limited parameters. Hamer cites Sheridan as noting in 1912, that around 1904 Seddon had been intending to hold an inquiry into a number of areas of the Waimarino block where Maori were continuing to live on what had become Crown land. However, this inquiry had never taken place.<sup>1792</sup> Seddon died in 1906 and in the immediately preceding years had spent much of his time overseas and engaged on matters of imperial concern. With this, Carroll had lost his most important ally in government. Even though Carroll had become Native Minister from 1899, he found it increasingly difficult to resist a rising political tide demanding greater acquisition of Maori land and less tolerance of Maori protest. It seems as part of this, the government failed to hold the expected inquiry of 1904 which may well have included a more formal recognition of the community at Tieke.

As has been noted in other reports, the land along the Whanganui River was also the subject of acquisition for scenery purposes and some was also later designated public recreation land.<sup>1793</sup> Some land immediately adjacent to Tieke was also taken for scenic purposes in 1910 to 1912. A Commission of Inquiry was established to inquire into a number of objections to the actions of various agencies responsible for recommending the acquisition of land for scenic purposes along the Whanganui River. The Commission sat to hear evidence and make recommendations in 1916 to 1917. It was empowered to investigate whether any existing

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<sup>1790</sup> Gould, p 23 citing newspaper reports 22 and 24 August 1908.

<sup>1791</sup> Gould p 24 citing Downes

<sup>1792</sup> Hamer, ‘Supplementary report’ citing Sheridan 15 February 1912, on MA1, 1914/2284 ANZ

<sup>1793</sup> Hodge R, ‘The Scenic reserves of the Whanganui River, 1891-1986’, 2002

scenic reserves should be cancelled, what scenic reserves could be set aside and what kind of forest protection was required. Some people from Tieke gave evidence at this inquiry, asking for the old kainga and urupa to be returned to them. This included Piki Kotuku who was a brother in law of Te Rangihuatau, now deceased, and who had been present at the Waimarino purchase. He also asked for joint control of the landing place at Tieke. The Commission found that several prominent Maori had given evidence that the land had not been sold to the government and they wanted it returned. They also wanted joint control of the seven acre landing reserve. The Commission eventually recommended that the old kainga and urupa of about 25 acres should be restored to Maori, while the remaining area should be set apart for scenic purposes.<sup>1794</sup> Gould has argued that this meant that Maori were only interested in the 25 acres they asked for at this time, and by implication they accepted that the rest of the domain was Crown land. In fact, given the history of protests to this point, it seems much more likely that by 1916 and even earlier, Maori had realised that the only hope of having their protests officially recognised was to focus on land that was clearly a burial or kainga site. This did not necessarily imply any acknowledgement or acceptance of the Crown acquisition of other land, simply the reality of what officials would consider at the time. Even then, the Crown failed to implement even this limited recommendation and the impact of the purchase process on Tieke has continued to remain a source of concern.

More recently, and separately to the main Treaty claims about Waimarino and Tieke generally, the Department of Conservation and Whanganui Maori have made efforts to seek good faith agreements in dealing over important areas within the district under various Memorandum of Understandings. This has included an understanding of 2001 between the Tamahaki Incorporation and the Department of Conservation and good faith agreements as part of this between Te Whanau o Tieke and the department concerning Tieke.<sup>1795</sup>

The Tieke case highlights how differently the government and even the most cooperative Whanganui chiefs viewed the Waimarino purchase and the ‘reserves’ to be made from it. In spite of Ballance’s assurances that his government was in favour of land dealings that allowed for consultation, full participation and careful informed decision making, the Waimarino purchase breached all these undertakings. The way that Butler implemented the purchase effectively excluded chiefly views of what was being sold and marginalised them from

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<sup>1794</sup> Gould, pp 28-31

<sup>1795</sup> Information supplied by claimants

decision making and effective consultation over land to be protected from sale. The creation of seller and non-seller reserves was also only very loosely based on these understandings and was an essentially artificial construct of the purchase process, as later protests by Whanganui Maori shows. The confusion surrounding reserves, the arbitrary nature of the reserves created and the agreements Butler felt obliged to make, all contributed to confusion and loss of rights for those admitted to have interests at Tieke. Butler's attempts to engage in special agreements or understandings with certain chiefs in ways that fitted with the purchase process also caused confusion and ended in most cases with the government failing to honour such undertakings when they involved land.

In the case of Tieke, Te Rangihuatau appears to have believed it was protected from the purchase. He lived at Tieke when he made the application for investigation, assisted with the purchase and supported the Crown case for partition. He continued to live at Tieke with his community well after the Waimarino purchase was completed and while he disagreed over the boundaries of the land, he showed no concern that he had a complete right to remain there.

Even though the government, through Butler allocated Tieke as part of Crown land sometime between 1887 and 1891, it seems clear that, in contrast to other parts of Waimarino considered Crown land through purchase, officials acknowledged some kind of right for the community at Tieke to continue living there. It seems highly possible that Butler did agree that Te Rangihuatau could keep Tieke under his authority and that he felt obliged to provide for this as part of his purchase process. Although no written documentation has been found of such an agreement, there is evidence that Butler did make this type of agreement in Waimarino and that he was reluctant to officially acknowledge this. Evidence in other cases also suggests that once the purchase was complete, Butler attempted to interpret such agreements to suit his views and in cases where additional land was promised, he sought to avoid honouring this by buying out such agreements.

Circumstantial evidence indicates that Butler may have made a similar agreement with Te Rangihuatau over Tieke. In order to honour this agreement he seems to have manipulated reserves so others with admitted interests in Tieke had their interests allocated elsewhere. He may also have allocated the land as Crown land to grant it back to Te Rangihuatau if he had to, although he was most reluctant to do so. When the Crown land including Tieke was proclaimed part of the Crown land allocated for the River Trust in 1892, the adjoining reserves were still not properly surveyed, so this action seems to have been premature and to

have cut across policies about not dealing in nearby Waimarino 1 land before the surveys were properly made.

Butler and government officials seemed unwilling to upset the interests of the River Trust and the wider interests of settlement to meet their obligations to Te Rangihuatau. Instead, they seem to have come up with an arrangement for continued informal 'use' rights that enabled Te Rangihuatau to believe they were honouring the agreement, but which actually protected Crown interests at the expense of the future protection of the Tieke community. In later years, it seems that a more limited case for the return of at least important sites at Tieke was recognised. This was the case in 1916, when evidence was taken from Whanganui people who had been present at the purchase. The case may also have been the subject of a 1904 inquiry the government appeared to have promised but failed to implement. The 'use rights' accepted as early as the 1890s, also seem to indicate a recognition of some kind of obligation concerning Tieke, that was not fully provided for. This was a particularly cynical treatment of a chief who had provided such critical help to the purchase and Crown award in the Waimarino block.

## **9.8 Conclusion**

The continuing issues and protests with Waimarino raise a number of important issues about the investigation, purchase and creation of reserves in the block and the continuing implications of this for Whanganui Maori of the area. Many of the complaints concerned purchase tactics, errors and fraud resulting from a rapid investigation and purchase that was manipulated to further the objective of extensive land purchasing, rather than to enable Maori communities to make careful reasoned decisions about using their land. These were exactly the kinds of difficulties Whanganui Maori had complained about with regard to the earlier close linking of the purchase and Land Court process in the 1870s. By the mid 1880s, the government was not only well aware of these concerns, but had assured Whanganui Maori that it was committed to a new system and had instituted reforms that would largely avoid them. Instead, the very rapid investigation and purchase of Waimarino undercut these assurances and produced many of the same difficulties Whanganui leaders had feared.

Officials responded to these complaints by generally refusing to even consider them unless there was absolutely compelling evidence, while implying that most complaints were motivated by greed. They also required complainants to prove their cases before the Land Court or through petitioning. Both of these processes were expensive but the government was

not required to, and in many cases failed to act when positive recommendations were made. In cases that could not be dismissed and where compensation had to be paid, officials seemed to regard this as a necessary part of the purchase cost, rather than an indication of serious concerns about the purchase process.

The protests also highlight the widely different understandings of the purchase and land to be protected held by even the chiefs who cooperated with Butler and the interpretations Butler and the government placed on the purchase. The implementation of the purchase and the government refusal to recognise the understandings created by the Rohe Potae negotiations, left many communities, particularly in the northern part of the block, without large areas of their lands. In spite of Ballance's assurances that he would not force the Land Court on communities the Land Court process also heavily punished those who refused to take part in it or were excluded by error or misunderstandings. The case for the Crown award also rested heavily on proving non-sellers had relatively few valuable interests in the block and the interests they had retained were as small as possible. This undercut the possibility of fair and free consultation over how the block might be managed for economic benefit. The non-seller reserves were also based on theoretical calculations of interests that Butler knew did not meet the actual situation and which were manipulated to ensure the non-seller award was as small as possible. The protests following the creation of these reserves highlight how inadequate they were and how the purchase process had resulted in significant numbers of Waimarino people being left effectively landless.

The government response to these protests was to generally dismiss them as ill founded or motivated by greed. The standard response was that all those interested had been given 'full opportunity' to have their claims heard and that they only had themselves to blame if they had been left without sufficient land. However, this ignored the rapidity with which the investigation and purchase had been conducted and the manipulation of the process by officials in support of the Crown interest and to the detriment of any effective opportunity to allow for the informed and careful decision making Ballance had promised, free from pressure and interference. It also failed to recognise the expectations and understandings created by the Rohe Potae negotiations and marked the beginning of a long standing refusal by the government to recognise these negotiations, even though the government had benefited significantly from them.

In most cases, government officials were also most reluctant to grant extra land to overcome the apparent landlessness the purchase has caused in case this might open the 'floodgates' of

even more complaints and upset government plans for settlement of the block. The amount of landlessness in the district does appear to have caused the government some embarrassment, especially with regard to the followers of Te Kere. The government's initial reaction to his requests for land was as unsympathetic as for other groups who were considered to have failed to appear and protect their interests at Court. However, the significant influence of Te Kere and his acting as a focal point for opposition to the creation of Tongariro National Park and to the penetration of river boats into the upper river district, appears to have helped create an official change of mind. In sharp contrast to its treatment of other groups complaining of landlessness, the government granted some land to Te Kere's landless followers at Tawata and Kaitieke where they were living. This grant was implemented only tardily, however, and after many of the people had already suffered significantly from epidemics along the river. Officials were adamant that this was a special case, however, and could not be regarded as a precedent for other cases.

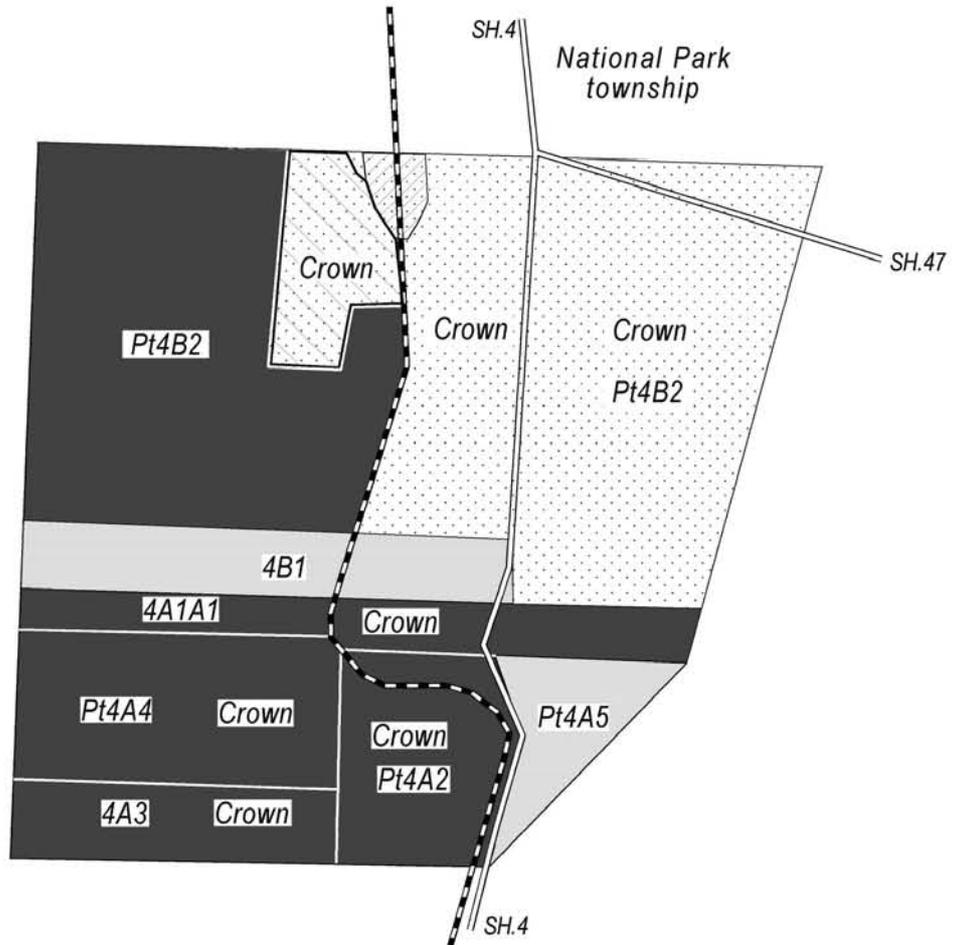
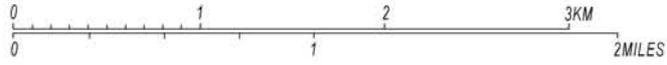
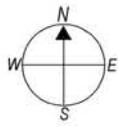
It seems that in many cases of landlessness or inadequate reserves, people continued living as they always had, especially in the period before the reserves were actually surveyed off. Even after this, in many cases such as Tawata and Kaitieke and the use of the lake fishery described above, people continued to live and use what was now technically Crown land. The attitude of government officials in many cases was to leave people where they were but to refuse to allow them legal title to the lands they continued to occupy. This enabled the purchase to go ahead without too much disruption but left communities vulnerable once the Crown land they were occupying was required for another settlement purpose. While they were technically 'squatting' on Crown land they were also unable to engage in economic pursuits such as leasing or sale of resources, without legally recognised title.

Ballance had also promised that if Whanganui chiefs cooperated with his government, it would ensure they were able to retain lands 'proportioned' to their needs and 'comfort'. However, the system of creating seller reserves as part of the purchase also appears to have been a very artificial and not particularly accurate means of protecting such lands. In addition, Butler insisted on interpreting the purchase deed in a manner which was designed to protect the Crown interest but seemed to cut across many of the assurances and understandings he had encouraged during the purchase. This interpretation meant that there was very little real consultation with chiefs over the seller reserves and their views on what could be included or excluded from the purchase were largely ignored, or translated into a system of interests in just a few seller reserves that bore little relationship to the expectations of the chiefs or their

communities. The seller reserves failed to meet expectations of ‘good and effectual grants’ as promised in the purchase. Sellers found that rather than having awards they could use immediately, they were simply lumped together in a relatively few larger reserves requiring them to pay the costs of surveys and Court hearings if they wanted further partitions. Butler also ensured that most of the valuable land and resources in the block (including the majority of the great totara forest) was included within the Crown award and officials insisted that reserves were not to ‘interfere’ with settlement. This also cut across Ballance’s assurances of opportunities to share in benefits, if chiefs cooperated over the purchase.

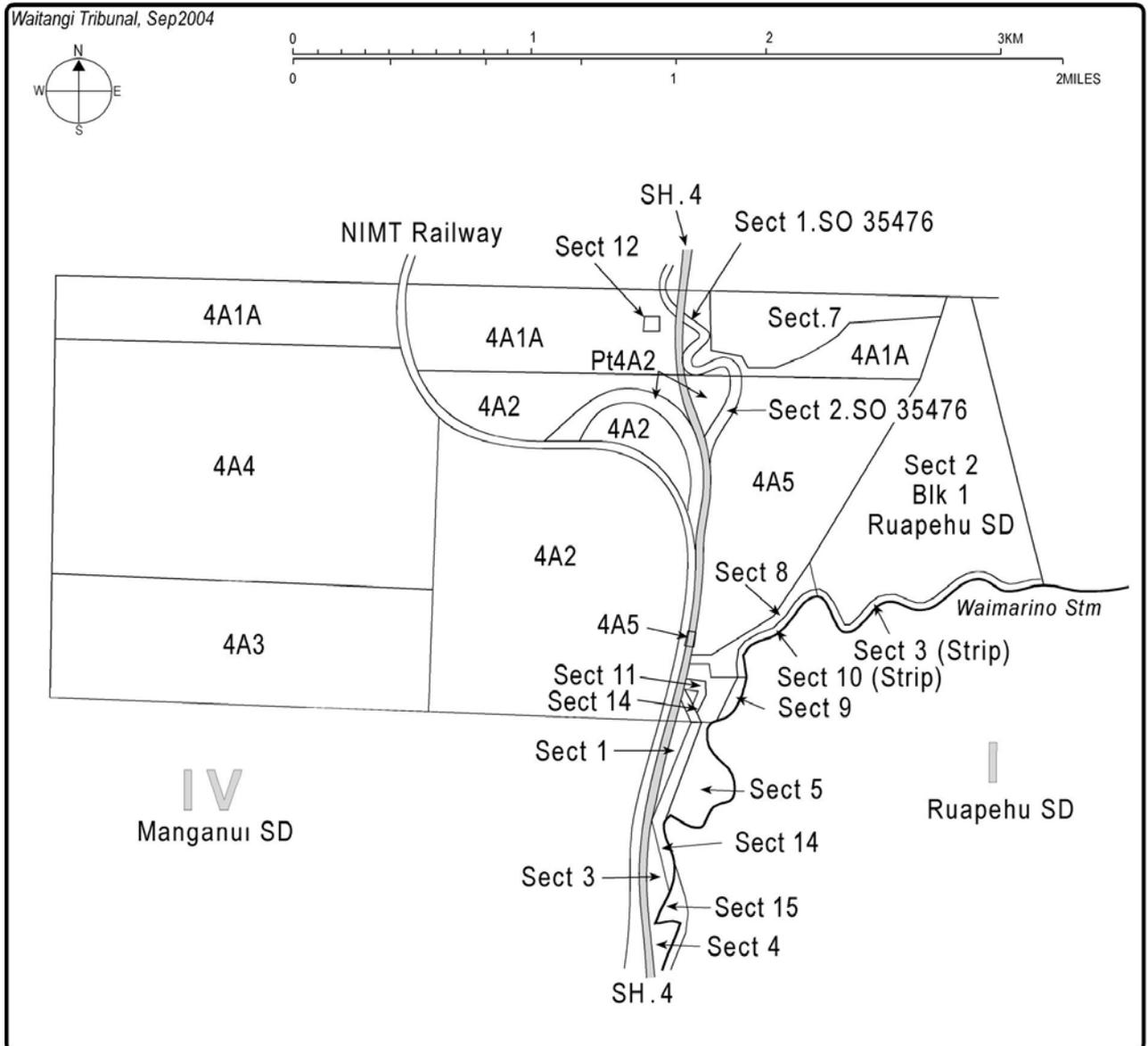
In addition, although the reserves were described by hapu lists in some cases, the concept of continuing hapu management was illusory. Owners were regarded as having the same individual title and rights to alienate their interests as had been the case in Waimarino. The government made no special attempts to protect the reserves and initially at least appears to have considered purchasing further in the reserves once they were established, making them even less adequate. The size of the seller reserves were clearly inadequate for future economic use based on information Butler had and they excluded many important sites sellers appeared to have had not intention of selling. The final surveying off the reserves was also subject to considerable delay resulting in further discontent and confusion. In response to protests, the government also made it clear that in spite of the understandings encouraged by the wording of the purchase deed, the government interpretation would be that the reserves were no more than ‘gifts’ from the Crown, that could be made or changed entirely by Crown decision.

Many sellers also found to their dismay that important sites such as waahi tapu were also not necessarily included in the reserves. The rapid investigation and purchase of the larger block, and the Court refusal to hear partition applications from local communities, meant that careful discussions and decision making on specific areas within the block were effectively sidelined and the implications of purchasing for these areas often only became clear after the land was sold and reserves made. This compares poorly with Ballance’s assurances that Whanganui Maori would be involved in careful decision making over their land and able to protect those lands they did not want alienated.

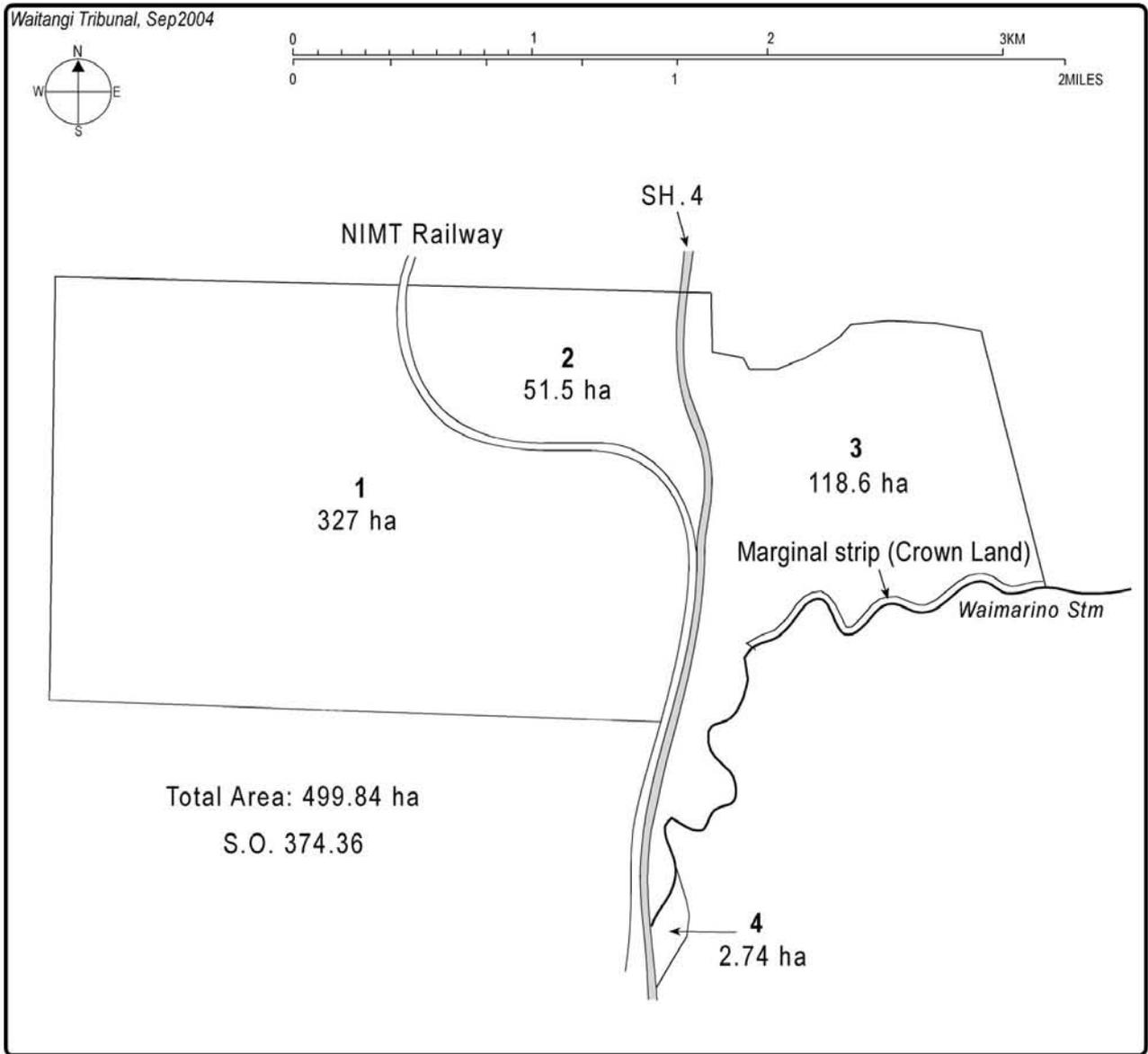


- Crown Defence purpose takings 1911
- Sold 1920 - 1930
- Sold 1960 - 74
- Scenic reserve - 1912
- Taken for railway station
- Railway

Figure 9: Waimarino 4 Reserve (Source: Clayworth, 'Located on the Precipices and Pinnacles', Wai 903 doc A55, 2004, map 7)



**Figure 10: Waikune Prison Lands (Source: compiled from sketch plans and file information, Justice and Lands Files on Waikune Prison, ANZ, Wellington)**



**Figure 11: Waikune Prison Site – New Title Plan, 1994 (Source: CT 46C/126, Wellington District)**

## **Chapter 10 Waikune Prison - disposal of surplus land**

### **10.1 Introduction**

The previous chapter is concerned with continuing protests about the investigation, purchase and creation of reserves in Waimarino and the issues these highlight. This chapter is an example of some of the major issues involved in having Waimarino some lands that were declared surplus to government requirements returned to Whanganui Maori, both as a result of legislative protections such as the offer back provisions for land held for public works and to protect surplus lands that might be required for the settlement of Whanganui Treaty claims, including over the Waimarino purchase.

Waikune Prison was established on Crown land in what had become the Waimarino 1 Crown award, and adjoining a reserve set aside for non-sellers as the result of the purchase, the Waimarino 4 non-seller award. This chapter briefly outlines the early history and development of the prison and its expansion into the Waimarino 4 reserve. This also highlights some of the later issues with Waimarino reserves, when compared with the promises and expectations promoted by Ballance when Whanganui Maori were making decisions about the railway and whether to cooperate with the Government over Waimarino. This included promises and assurances over the expected benefits of roads and the railway and agreements over them.

Waikune Prison was also established nearby the Waimarino 4 reserve at a time the reserve was under considerable pressure for alienation, including a number of public works takings, highlighting issues over the pressures placed on remaining Maori land in Waimarino, including for public purposes. Waikune Prison was established as a temporary institution and was almost closed a number of times before the eventual final closure in 1986. This was reflected in often informal developments that were to create difficulties for the later disposal of prison land.

Initial attempts to dispose of Waikune Prison highlight issues of government policies and actions concerning the disposal of surplus government land by the 1980s and to what extent these took account of Maori interests and concerns. The protracted disposal of the Waikune Prison complex reflects gradual developments in government policies and legislation to take account of these interests with regard to surplus land and also highlights current issues for

Whanganui Maori with public works disposals. More general public works issues concerned with Whanganui lands and illustrative case studies can be found in a separate report by Philip Cleaver on public works takings in the district.<sup>1796</sup>

## **10.2 Prison road camps in the central North Island**

In the early twentieth century, prison labour appears to have been used on roads of national importance in the central North Island area, including the Main Trunk highway between Ohakune and Waimarino (later known as National Park) township and the road between Waimarino township and Turangi. In 1917, the Inspector of Prisons, for example, reported to the Minister of Justice on the employment of prison labour in repairing and metalling the Waimarino end of the ‘through’ road in the area, considered to be a road of national importance.<sup>1797</sup> He was referring in that instance to prison labour working on the Waimarino to Turangi, or Rotoaira Road, as it was known. This work was conducted from the Rotoaira prison camp from 1914.<sup>1798</sup> The main camp for Rotoaira was situated near Waimarino township although most of the road work at this time was just outside what was originally the Waimarino block towards Rotoaira. Nevertheless, the Rotoaira camp set many of the patterns adopted by its successor, the Waikune Prison camp.

It is not known why it was considered necessary to use prison labour on these roads at this time. It may have been as a result of labour shortages, particularly during the war. The work also absorbed some of the military prisoners being held at this time. It also seems that surrounding local authorities found it difficult to pay for more than very limited local works themselves, while it was considered necessary in the interest of the national economy to encourage and provide for tourism and the rapidly developing interest in ‘popular motoring’. It is also not known what Maori labour was available for road work in the area at this time. However, the use of prison labour in the district does raise the issue of Ballance’s earlier promises (noted in earlier chapters) of the economic benefits Maori communities could expect, including through rail and road work, if they agreed to make land available for increased settlement and agreed to the main trunk road and rail lines.

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<sup>1796</sup> Cleaver, Philip, ‘The Taking of Maori land for Public Works in the Whanganui Inquiry District, 1850-2000’ report for Waitangi Tribunal, 2004

<sup>1797</sup> Memo Inspector of Prisons to Minister of Justice, 21 March 1917, J 40, 1919/16/1, ANZ

<sup>1798</sup> Correspondence, 1914, J 40, w1190, 1917/9/17, ANZ

It does seem that the prison camps involved in this road work operated in a similarly mobile manner to public works camps also active in the area. The prison road work was also undertaken under the direction of the Public Works Department. Like the public works camps, the prison camps had relocatable huts and equipment, such as mobile stone crushers, so they could move camp as they made progress along the roads they were working on. For example, in the years from 1917 to 1920, Rotoaira Prison seems to have been made up of a main prison camp and a number of sub-camps moving with the construction of the Waimarino-Turangi road.<sup>1799</sup> Sites mentioned in connection with this prison included a main camp near the Waimarino township end of the Rotoaira Road, and sub-camps at Whakapapanui and the head of Lake Rotoaira.<sup>1800</sup>

The normal procedure with these prison camps seems to have been to establish a main camp at a suitable site at one point along the road to be built or repaired. The main camp site was usually located on flat ground with a nearby stream for water and with a handy supply of suitable rock and timber for road work. Sub-camps might also be located some distance from the main camp along the road work to enable preparatory road work to be undertaken. They were also often located at suitable sites for milling and quarrying to supply materials required for the road work. These sub-camps might range quite widely in search of materials as long as they were within a reasonable carting distance of the main work. As work progressed, the sub-camps, and often the main camp as well, would be relocated at suitable sites to enable work to continue.

At each site where a main camp was established (and sometimes at the sub-camp sites as well) the camp itself would be proclaimed a site for prison purposes under the relevant prisons legislation. Under the Prisons Act 1908, prisons could be proclaimed by declaring any house, building, enclosure or 'place' to be a prison and, likewise, these could also be declared not to be a prison by further proclamation.<sup>1801</sup> This kind of proclamation, depending on the wording used, could declare land to be included in a prison, or alternatively just a building or enclosure to be used for prison purposes, and the legal detention of prisoners, without necessarily impacting on underlying land title. For example, an area of 50 acres of Maori land had been proclaimed a prison for Rotoaira in 1920. By 1927, the prison no longer required the use of

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<sup>1799</sup> Correspondence 1917-20 Roto-Aira prison camp and sub camps, J 40, 1920/16/9; J 40, 1920/16/1, ANZ

<sup>1800</sup> Correspondence 1914-20 Roto-Aira prison camp and sub camps, J 40, 1920/16/9; J 40, 1920/16/1; J 40, w1190, 1917/9/17, ANZ

<sup>1801</sup> Prisons Act 1908, section 4

the land and the Department of Lands and Survey requested an explanation as to the continuing status of the land. The Controller-General of Prisons explained that the proclamation had only made it legal to hold prisoners on the site and the land title itself was not affected.<sup>1802</sup> This was quite different from ordinary public works proclamations where land title was generally affected. These differing types of proclamations for prison purposes where land title might or might not be affected, continued to be a source of confusion to government departments responsible for land issues, including with Waikune Prison, as will be described in later sections.

When prison camps were initially established in this area, it seems that, like the public works camps, they were intended to be mobile and temporary, ending when the road work finished. They were also generally located on Crown land in the district. In these cases, it seems that full takings of land were generally considered unnecessary and proclamations were generally just made under the Prisons Act to ensure prisoners could legally be detained on site, rather than being concerned with actual land taking. As road work progressed, the prison camps were also intended to be relocated as necessary to new more convenient sites. It was usual for the prison proclamation on the earlier site to be revoked and a new proclamation made to cover the new site.<sup>1803</sup> It was common, therefore, to have a number of gazetted proclamations and revocations for prison sites for these types of camps, many of which might not involve actual land takings.

The prison camps also appear to have been established on the basis that they were on Crown 'waste' land, often with no rental payable and ready access to nearby materials such as timber and rock. In some cases, however, it seems that prison sites were also established on Maori land, although with surveys still being fairly primitive and often not clearly marked on the ground, the actual land ownership of particular areas was not always clear. Maori land, even when the ownership of the land was known to the prison authorities, also often appears to have been treated by the Prisons Department as a similar kind of 'waste' land, with resources available for use on a roadwork of national importance. This seems evident in documentation over the Rotoaira prison camps.

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<sup>1802</sup> Memo Chief Surveyor Lands & Survey to Controller General of Prisons, 13 May 1927 and reply from Controller General Prisons, memo 8 July 1927, J 40, 1920/16/9, ANZ

<sup>1803</sup> For example, correspondence re Rotoaira prison along Waimarino-Turangi road, 1917-27, J 40, 1920/16/9; J 40 1919/16/1 ANZ

For example, in 1918, the prison gaoler Jordan wrote to the Inspector of Prisons that Rotoaira number 3 camp would need to be gazetted as a prison. He noted that, ‘This is all Maori land but there is no fear of any trouble with them’. He was confident that if an agreement was drawn up, the owner Mr Huku Down would sign it.<sup>1804</sup> Similarly in 1920, regarding the establishment of a new camp at the head of Lake Rotoaira, Jordan wrote to the Controller of Prisons, ‘I have the consent of the owner of the land at Lake Roto-Aira to establish the camp there, the owner is of course a Maori and I would strongly advise whoever is in charge of the camp not to fall out with the Maoris under any consideration whatever, they are strange people but can be managed quite well with a little tact’.<sup>1805</sup> This indicates that informal arrangements and consents may have been obtained from individual owners to gain agreement to the temporary occupation of some sites. Where necessary, the Prisons Department might also have considered making more formal agreements with owners. However, there is no evidence on file of any such formal agreement being made for Rotoaira. The occupation of sites in areas where there appears to have been little or no settlement generally appears to have occurred on an informal basis without rent being paid and with prison authorities taking advantage of nearby resources such as rock and timber. It should be noted that the Rotoaira camps were largely outside, although close to the original Waimarino block. Nevertheless, it seems that Rotoaira was a forerunner to Waikune Prison, and remaining Maori owners in Waimarino may well have believed that the patterns established by that camp would be followed by the similar Waikune Prison camps.

### **10.3 The establishment of Waikune Prison road camp 1920 -1930s**

As well as the prison work on the Waimarino to Turangi road, the Government appears to have decided to also use prison labour on a similar programme of upgrading sections of the Main Trunk highway, or what became known as State Highway 4. This included the section of highway between Ohakune and Waimarino township (National Park). This section ran through what was originally the Waimarino block, much of which by this time had been awarded to the Crown, and was therefore Crown land as Waimarino 1. However, part of it ran through Waimarino 4, a reserve originally set aside for non-sellers out of the original Waimarino purchase.<sup>1806</sup>

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<sup>1804</sup> Memo 25 December 1918, J 40, 1919/16/1 ANZ

<sup>1805</sup> Memo 13 March 1920, J 40, 1920/16/9 ANZ

<sup>1806</sup> See Clayworth, ‘Located on the Precipices and Pinnacles’ especially chapter 7

A decision to employ prison labour on this part of the road appears to have been made in 1920, by Minister Coates. On his instructions, camps were transferred from the Waimarino to Rotoaira Road (the old Rotoaira prison camp) and work began on the Waimarino to Ohakune stretch of the highway in December 1920.<sup>1807</sup> It seems that prison camps were moved from the Whakapapanui area (previously part of Rotoaira Prison) to sites just north of Erua railway station for the main camp and a sub camp near Horopito nearer the Ohakune end of the section.<sup>1808</sup> Presumably, the new camps were expected to operate in a similarly mobile fashion to the old Rotoaira prison camps that had worked on the Waimarino to Turangi Road.

The 21 miles of road between Ohakune and Waimarino was expected to employ 80 to 100 prisoners. Work was expected to begin on the section between Waimarino and Makotote first, hence the establishment of the main camp just north of Erua. A sawmill was also established at the main camp for milling timber for the construction of road bridges. It seems that Makotote was also considered a suitable site for quarrying metal for the road. Seventy nine acres at the main prison camp site just north of Erua station and all buildings and enclosures on this land were proclaimed Waikune prison in 1921, by notice dated 1 April 1921.<sup>1809</sup> By March 1921, a cellblock and ancillary buildings had been erected on the main camp site.<sup>1810</sup> Within a month of this, in April 1921, the site had 28 prisoners and a location for the nearby sawmill had been selected.<sup>1811</sup> Early sub-camps for Waikune Prison, included Makatote or Pokaka, Makaretu, Mangatepopo and Horopito.

#### **10.4 Waikune Prison and adjoining Maori land**

The original Waikune Prison was proclaimed on what was originally Waimarino block land purchased by the Crown in 1886-87, and awarded to the Crown by the Native Land Court in 1887, as Waimarino 1, as described in previous chapters. It was therefore, located on what was by 1921, Crown land. The proclamation for the prison located it immediately south of the Waimarino 4 non-seller reserve and to the east of the main trunk railway and road. The Waimarino 4 reserve was Maori land that had been allocated to a number of Waimarino non-sellers by the government land purchase officer, W J Butler, as land not included in the Crown award of the Waimarino 1 block. (see map 9 of this report).

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<sup>1807</sup> Correspondence 1920, J40, 1921/7/12 pt 1, ANZ

<sup>1808</sup> Memo, 11 January 1921, Inspector of Prisons to Controller General of Prisons J 40, 1921/7/12 ANZ

<sup>1809</sup> *NZ Gazette* 7 April 1921, no 34, p 854, notice dated 1 April 1921

<sup>1810</sup> Letter 31 March 1921, Controller General Prisons to Engineer in Chief, J 40, 1921/7/2 ANZ

<sup>1811</sup> Memo Inspector of Prisons, 19 April 1921 J 40, 1921/7/2 ANZ

The 1921 gazette notice described the land proclaimed as Waikune Prison, as being part of block IV, Manganui Survey District, containing some 79 acres bounded to the north by Waimarino 4 block, on the south by a branch of the Waimarino stream and on the west by the Main Trunk road and railway. The land was therefore immediately adjoining Waimarino 4 on its northern boundary and east of what was then the Main Trunk railway and road. As already noted, in 1921, the highway along the prison area was the old route, which had still to be realigned to the route it is today. The prison land as proclaimed in 1921, is likely to have included sections 1 and 5 and part sections 3 and 4, block IV, Manganui Survey District. The old route State Highway 4 ran through this area, with some small areas of land between it and the railway, presumably also included in the proclamation. The wording of this proclamation indicates that the area was not just being proclaimed for the detention of prisoners. The Crown land involved was also being set apart for the prison.

#### **10.5 The Main Trunk railway and road through Waimarino 4**

At this point, it is necessary to provide a brief outline of the history of Waimarino 4, just to the north of the Waikune Prison as it was established in 1920. Peter Clayworth has described the history of the 3450 acre Waimarino 4 block in more detail in his report on the Waimarino reserves, noting Waimarino 4 was one of a number of reserves created for Maori non-sellers, when the Crown was awarded the large Waimarino 1 block as a result of purchase.<sup>1812</sup> (see map 9 of this report). Waimarino 4 contained a number of traditionally important areas for non-sellers and this appears to have been why Butler felt obliged to include it as a non-seller reserve. It included the important Waimarino plains village of Ngatokorua, in the shadow of Hauhungatahi, where both Kerry-Nicholls and Rochfort had enjoyed the hospitality of the chief Te Peehi Turoa as described in earlier chapters. As also described, Te Peehi Turoa had remained an influential non-selling chief. As well as the settlement sites, the reserve also contained cultivations, while Rochfort had set up camp in what became the reserve near the village site, while continuing his work on the railway.<sup>1813</sup> The reserve also contained at least two urupa. As will be described, official documents include a sketch plan showing grave sites on what became partition 4A5 and an urupa on what became partition 4A1, which was specifically excluded from sale in 1961. In spite of the considerable importance of the Waimarino 4 to non-sellers, the reserve had already been subject to considerable pressure

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<sup>1812</sup> Clayworth, chapter 7.1

<sup>1813</sup> ML 1368, survey plan of Waimarino 4 reserve 1895

from purchasing and public works takings by the time Waikune Prison was proclaimed in 1921.

The first of the public works takings from Waimarino 4 appear to be the Main Trunk railway and road (later State Highway 4). These already ran through Waimarino 4 by 1921 when the prison was proclaimed. As noted in earlier chapters, this area of the Waimarino plains between Ohakune and National Park, was part of an ancient travel route to the west of the volcanic peaks between the Manganui a te Ao area and Rotoaira and then Taupo. Rochfort had also identified the area as the location for the proposed Main Trunk railway and road in the 1880s. The area had continued to be used as a track through the 1880s and Rochfort had based himself in the area to continue central surveys for the road and railway.<sup>1814</sup> It seems likely therefore, that the owners in this reserve would have known of this track when the location of the block was agreed.

By the late nineteenth century, the track between Taumarunui and Ohakune, was known by Pakeha settlers at least, as ‘Rochfort’s track’.<sup>1815</sup> In anticipation of the future importance of the track as an arterial road, early construction work was undertaken on the track in the 1880s and 1890s, to widen it from a horse track into a dray road from the Upper Whanganui area at Totaratatia (five miles above Taumarunui) to the Waimarino plain, a distance of about 23 miles and generally following the course of the Piopioatea River. This was then extended, further widening the horse track into a dray road between the Waimarino and Murimotu plains, a further approximately 24 miles and requiring bridges to be built at the Makatoke and Manganui a te Ao rivers.<sup>1816</sup>

The proposed upgraded dray road is shown traversing Waimarino 4 on a map of the proposed Main Trunk Railway published in 1889.<sup>1817</sup> This road was, therefore, presumably already in existence when the final surveys for the Waimarino 4 block were completed by the mid-1890s. Again it seems likely that the Maori owners would have known of this when Waimarino 4 was finally created by around 1895. It is possible that they might have welcomed this road and the possibility of the nearby railway, which at this time was shown as passing close by but not through the reserve. The same 1889 map shows the proposed Main

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<sup>1814</sup> Rochfort’s camp is shown on the plan of Waimarino 4, WD 1368, 1895.

<sup>1815</sup> J 40, 1925/7/1, unlabelled newspaper cutting, May 1926. ANZ

<sup>1816</sup> *AJHR* 1887 sess I D-1 p 34

<sup>1817</sup> Sketch map of Central and Taranaki routes North Island Main Trunk *AJHR* 1889 D-1

Trunk railway route as just skirting the eastern side of Waimarino 4.<sup>1818</sup> At the time it was widely anticipated that such works would provide considerable economic opportunity, not just on building work but also in providing access to their land for the extraction of resources such as timber and also for continuing economic development through farming. The close proximity of transport routes was also widely expected to increase the value of the rest of the reserve. Even so, it is not clear that the Maori owners necessarily knew or agreed that what was essentially an ancient track through their reserve would be vested in the Crown when it was developed as a road. It also seems likely, that in common with other landowners, the Maori owners of the reserve would have expected adequate compensation if land was to be taken for the road (and the railway).

The rough dray road through the reserve was further developed as a service road when the railway was constructed through the Waimarino 4 reserve between 1906 and 1908. By 1918, the advent of ‘popular motoring’ and the consequent opportunities for tourism, resulted in increasing pressure for improvements to the road. This was considered beyond the capacity of local bodies in the area, and by 1920, the Government appears to have agreed to use prison labour for improvement work on this part of the road, while the Public Works department concentrated on building the nearby Raurimu hill road.<sup>1819</sup>

While the road would have been known of when the Waimarino 4 reserve was agreed and later created, it is not so clear that it was understood that the railway would pass through the reserve when it was agreed. As noted, the 1889 map shows the proposed Main Trunk railway route as just skirting the eastern side of Waimarino 4.<sup>1820</sup> Subsequently, as more precise surveys were conducted and alternatives considered, it seems that the Main Trunk railway route was realigned through Waimarino 4, possibly as a result of the development of the Raurimu spiral to the north. By 1895, when the survey for Waimarino 4 was finally undertaken, the proposed railway route is shown cutting through the reserve, although it is not known whether any discussions were held with owners over this.<sup>1821</sup> However, as with the road, the railway may also have been expected to bring economic benefits.

Any expected benefits from the railway were considerably delayed, however, as the building of the central route of the Main Trunk railway from Marton to Te Awamutu took much longer

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<sup>1818</sup> Sketch map of Central and Taranaki routes North Island Main Trunk *AJHR* 1889 D-1

<sup>1819</sup> J 40, 1925/7/1, unlabelled newspaper cutting, May 1926, ANZ

<sup>1820</sup> Sketch map of Central and Taranaki routes North Island Main Trunk *AJHR* 1889 D-1

<sup>1821</sup> Survey plan for Waimarino 4, March 1895, WD 1368

than originally anticipated. The construction work on the Main Trunk railway began in 1885, at both ends of the Main Trunk line from Te Awamutu southwards and from Marton northwards. Eventually it took some twenty three years to complete, with the central sections around Waimarino 4 being the last to be finished. The railway was built in five to ten mile sections and in a series of stages. These began with rough surveys of each section, followed by bushfelling where necessary, and preparatory work including building bridges and viaducts and selecting station sites. The precise direction of the line was generally established at this time, followed by formation and then laying of the track. The preparatory work therefore, often took place well before final track laying.

Early reports on progress with the construction of the railway mention some contracts being awarded to Maori labour as had been agreed with interior chiefs. For example, the 1887 report notes that some work on the Puniu and Te Kuiti sections were let to Maori contracts.<sup>1822</sup> However, after this time there is no further mention of Maori labour and it is not known whether the Government continued to ensure that some of the work was let to Maori. In fact, within a few years progress on the railway slowed substantially with economic recession. This resulted in work at the northern end of the railhead progressing no further than the Poro-o-tarao tunnel, north of Taumarunui, in the first ten years. In 1890, for example, the Main Trunk railway was described (with the exception of the Poro-o-tarao tunnel) as being at a ‘standstill’.<sup>1823</sup> What little work there was on the railway was also undertaken for a number of years by relief labour.<sup>1824</sup> It is not known to what extent Maori were able to participate in this relief work. The remaining Maori land in the King Country along the route of the railway was also seen as an impediment to construction, with the government determined to purchase such land ahead of construction.<sup>1825</sup> The Poro-o-tarao tunnel was finally opened for traffic in late 1896. Progress was also relatively slow from the south in the first ten years, especially with required bush felling and the building of the Makohine viaduct north of Hunterville.<sup>1826</sup>

The preliminary bushfelling work for the Main Trunk line does not appear to have penetrated into the northern borders of the original Waimarino block until 1901. Reports of 1901 noted that the northern work had finally extended over the Whanganui River and had ‘now

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<sup>1822</sup> *AJHR* 1887 Sess I, D-1, report 31 March 1887, p 33

<sup>1823</sup> *AJHR* 1890 D-1 p 4

<sup>1824</sup> *AJHR* 1891 D-1 p 9

<sup>1825</sup> *AJHR* 1891 D-1 pp 7-9

<sup>1826</sup> Annual reports of public works and railways, *AJHR* D-1 1887-1891

commenced to tap the celebrated Waimarino forest'.<sup>1827</sup> Most of the railway building work in what was the original Waimarino block appears to have taken place between 1903 and 1908. At the same time, a service road for the railway was reconstructed and extended along the railway route, involving upgrading the original dray road.<sup>1828</sup> The rail tracks appear to have reached the Raurimu spiral just north of Waimarino 4 by the end of 1906.

In 1905, in an effort to push forward progress with the railway, a new central construction site was established at Ohakune and preparation work was also begun for the Makatote and Manganui a te Ao viaducts. Road work was also begun northwards from Ohakune towards Manganui a te Ao and south from Taumarunui towards Makatote and the Manganui a te Ao.<sup>1829</sup> It seems, therefore, that much of the actual construction work for the railway and upgraded road through the Waimarino 4 block is likely to have taken place in the years 1907-1908, with bushfelling beginning as early as 1906.

Railway construction work was followed by the progressive opening of the line to goods and passenger traffic. The Taumarunui railway station was opened on 1 December 1903, followed by the opening of the Main Trunk railway line from Auckland to Taumarunui in 1904, a distance of some 175 miles.<sup>1830</sup> By March 1908, the northern railhead had reached as far as Makatote from the north and Ohakune from the south. The distance between northern and southern railheads was then just 24 miles.<sup>1831</sup> The northern and southern ends were finally connected on the Manganui o te Ao viaduct (just south of Waimarino 4 and in the original Waimarino block) on 3 August 1908, while the first passenger train travelled the full length of the line from Wellington to Auckland on 7-8 August 1908.<sup>1832</sup> These delays presumably also caused considerable delays in any benefits to the owners of Waimarino 4 as a result of this work.

No evidence has been found in the time available for this report, concerning the building of this section of the railway, including any possible negotiations with the owners in Waimarino 4 over the route of the railway and the impact it might have on sites such as urupa or negotiations on other possible issues such as compensation for the land, the possible use of

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<sup>1827</sup> *AJHR* 1901 D-1 p v public works report 22 October 1901

<sup>1828</sup> For example, progress reports 1903-1908 in *AJHRs* D-1 1903-1908

<sup>1829</sup> *AJHR* 1906 D-1 sess II p v App E p 57

<sup>1830</sup> *AJHR* 1908 D-1 App E p 61; *AJHR* 1904 D-1 p 5

<sup>1831</sup> *AJHR* 1907 D-1 p v

<sup>1832</sup> *AJHR* 1908 D-1 pp i-v

timber and other materials from the block for the works or the employment of Maori labour on some of the contracts for this part of the railway.

In 1910, it seems that land for both the Main Trunk railway and road through Waimarino 4 was officially taken. This was presumably as the result of the completion of the line through the block in 1907-8 and the upgrading of the accompanying dray road into a service road for railway work. In February 1910, land was taken for the ‘remaining portion’ of the North Island Main Trunk Railway in the Waimarino and Makaretu sections. This was taken by powers and authorities under section 188 of the Public Works Act 1908. This section provided a taking procedure where any railway was constructed under the provisions of any special Act. The taking included five sections from ‘Waimarino Native Reserve No 4’ all being within block IV of the Manganui survey district. The five sections totalled over just over 64 acres.<sup>1833</sup>

According to Clayworth, the Certificate of Title for Waimarino 4, also shows two takings for roads in the block later in 1910. These were for just under 23 acres in October 1910, followed by just over 6 acres in November 1910.<sup>1834</sup> It is not clear from surviving records, what authority this road taking was made under and whether it included the whole road or just parts of it as a result of realignments with railway work. In 1910, this road through Waimarino 4 was also an older, more winding route, than the present re-aligned road today. Clayworth has noted that by 1910, the Waimarino 4 reserve had already been partitioned by owners. After the reserve was finally surveyed in 1895, it had been partitioned into two main subdivisions in 1905, a northern subdivision Waimarino 4B and a southern subdivision Waimarino 4A, which was closest to what would become Waikune Prison.<sup>1835</sup> In 1907, both these partitions had been further subdivided, with the southern Waimarino 4A being partitioned into a further five subdivisions, Waimarino 4A1-4A5.<sup>1836</sup> The railway and road takings were made through these subdivisions, partly dividing 4A2 and 4A5 and running through 4A1. (see map 9 of this report)

It seems that, at this time, the railway taking along the west of 4A5 left a small urupa of about 13 perches lying just to the east of the railway. The subsequent road taking a few months later skirted around the east of this urupa area, physically cutting it off from the rest of 4A5

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<sup>1833</sup> *NZ Gazette* 17 February 1910 no 15 p 596, proclamation dated 14 February 1910

<sup>1834</sup> Clayworth, chapter 7.3

<sup>1835</sup> Clayworth, chapter 7.3

<sup>1836</sup> Clayworth, chapter 7.2

(although it was apparently still left as part of the title to this partition).<sup>1837</sup> Located between the railway and road, title to this cemetery has remained a subject of confusion. This urupa is not mentioned in the official takings and no correspondence has been found concerning it. Presumably it was left out of the takings, even though this left it isolated between the railway and the road, because this enabled the takings to otherwise go ahead as rapidly as possible and without compensation being paid, while avoiding the complications of the few protections concerning urupa at this time.

No evidence has been found of any compensation being awarded or paid for the taking of the land for the Main Trunk road or railway through Waimarino 4 at this time. It is possible that this land was taken as part of the five percent of a Maori land block the Crown was able to take within a certain period of title being issued for both roads and rail without the payment of compensation, although proclamation details are not clear about this.<sup>1838</sup> If so, then in order to use this provision, the urupa would have been excluded from the taking. Further discussion on takings for the Main Trunk railway can be found in the separate Cleaver report, still in preparation, on Whanganui Public Works Takings of Maori land.

## **10.6 Further public works takings in Waimarino 4**

Ironically, while economic benefits from the road and rail routes through the reserve appeared elusive, the existence of these transport routes through the block and the Waimarino (National Park) railway station, appear to have made the reserve a more attractive target for further land takings for public works purposes. These appear to have begun shortly after the railway was completed through the area. The first appears to have been for a military training ground. In February 1911, the Crown took some 1417 acres of land from Waimarino 4 as part of a much larger area of land taken for a military training ground. This taking was in the east of Waimarino 4 and contained parts of what had then become Waimarino 4B2, 4A5, and the eastern part of 4A1.<sup>1839</sup> About a year later, by notice of January 1912, part of this taking was revoked, on the grounds of it not being required for the purpose it was originally taken, for the land in Waimarino 4A5 and 4A1. The 1051 acres of Waimarino 4B2 further to the north remained taken for the training ground.<sup>1840</sup> It is not clear why this revocation was made.

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<sup>1837</sup> See CT296/202 issued when 4A5 became general land on sale in 1921-22.

<sup>1838</sup> Marr, *Public Works takings of Maori Land*, chapter 7

<sup>1839</sup> Clayworth, chapter 7.3

<sup>1840</sup> Clayworth, chapter 7.3, proclamation 758, 24 January 1912, CT 191/241, *AJHR* 1911, H-19 p 5

Possibly it was realised the land involved was unsuitable or it may have been a response to settler objections who were negotiating lease agreements and timber rights with Maori owners at around this time.

At around the same time as this revocation, in January 1912, the Crown notified an intention to take more land in the Waimarino 4 block, this time in 4B2, in the north of the reserve and just west of the railway line. This taking was for scenic purposes, to protect scenic views for passengers travelling the Main Trunk railway.<sup>1841</sup> Some of the Maori owners appear to have become aware of this intention, even though they were apparently unclear about the defence taking. In February 1912, Haitana Te Kauhi and 12 other owners objected to the Minister of Public Works about public works takings in the reserve, including land takings for roads and the railway, the railway station, and the taking of earth and gravel in building these, all without compensation. They also objected to the proposed scenic taking and what they still understood was a proposed defence taking. They wanted the land left to them as a home and for the cultivation of their children in future.<sup>1842</sup> Government officials reported that the objections made by the owners were not considered sufficiently serious to warrant the abandonment of the takings. Rather than consider the cumulative impact of takings, officials insisted on treating each taking separately. With regard to the proposed scenic reserve, officials noted the objectors did not seem to be living on that part and therefore the claim regarding a home and cultivations did not appear valid. With regard to the claims for materials used for various other works, officials insisted that the value of this was more than offset by the increased value of the land as a result of the railway (and presumably road).<sup>1843</sup>

Officials did not refer to the earlier road and rail takings but noted that compensation was being awarded for later takings. In March 1912, the Native Land Court had awarded compensation for the 1051 acres of land taken in Waimarino 4B2 for defence purposes.<sup>1844</sup> In May 1912, the Crown also went ahead with the taking of just over 128 acres of land from Waimarino 4B2, for the scenic reserve. In 1913, compensation was also awarded for the scenic reserve taking.<sup>1845</sup>

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<sup>1841</sup> Clayworth chapter 7.4

<sup>1842</sup> Letter Te Kuahi and others to Minister of Public Works (translation) 29 February 1912, ABKK w4069 box 122 52/6, ANZ, cited in Clayworth, chapter 7.3

<sup>1843</sup> Correspondence March-April 1912, ABKK w4069 box 122 52/6, ANZ cited in Clayworth chapter 7.3

<sup>1844</sup> Clayworth chapter 7.3

<sup>1845</sup> Clayworth, chapter 7.4

## 10.7 Waimarino 4 partitions by 1920

It seems that the Maori owners had begun to try and gain some economic benefits or at least ease rates and tax burdens by leasing some Waimarino lands and selling some timber rights on them, although not the land itself. The land does not appear to have been suitable for very intensive farming and a local settler, Charles McDonnell, appears to have attempted to acquire lease and timber rights over much of the Waimarino 4 block from 1905 at about the same time partitioning began. His efforts were frustrated at first by owner partitioning, but by 1912, McDonnell had acquired land leasing rights and timber rights over large portions of the block. The aggregation of leaseholding and timber rights appears to reflect the marginal nature of much of the reserve. Nevertheless, the owners appeared determined to hold the land and in 1911, rejected McDonnell's efforts to have the block vested in the local Maori Land Board for leasing.<sup>1846</sup>

Leasing continued however, and in October 1919, a Pakeha farmer, J Crowe, negotiated a lease agreement for Waimarino 4A5 then containing around 112 acres, for 42 years from 1 July 1919. However, before this lease was confirmed, the block 4A5 was apparently sold to a family member E Crowe in May 1920. There was some confusion over the various family dealings but the Aotea Maori Land Board apparently confirmed this sale in May 1922.<sup>1847</sup> On this sale, the land became general land and a certificate of title, CT 296/202 was issued. This certificate of title indicates that the small cemetery area of 13 perches, now located between the railway and the highway to the west of 4A5 was also still considered part of the title to 4A5 at this time. The Crowe family appear to have followed the same process in building up considerable interests in Waimarino 4. By 1924, J Crowe had acquired not only the freehold title to Waimarino 4A5 and 4B1 but also leasehold titles to the remaining area of 4B2 not already taken for public works and 4A2 and 4A3, along with timber rights to Waimarino 4A3.<sup>1848</sup> This aggregation again appears to reflect the generally marginal nature of the land.

No evidence has been found on why, after such determined opposition to selling for so long, land sales in the reserve began in the 1920s. It is possible that by this time, the reserve had proven too economically marginal to support the owners. This may have been exacerbated by the delays with road and railway construction and consequent delays in anticipated benefits

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<sup>1846</sup> Clayworth, chapter 7.2

<sup>1847</sup> Clayworth, chapter 7.5

<sup>1848</sup> Clayworth, chapter 7.5

from these. The subsequent history of the whole of Waimarino 4 has been covered in detail by Clayworth.<sup>1849</sup> This chapter concentrates on those developments in Waimarino 4 most closely linked to developments with Waikune Prison.

It is possibly the number of public works takings for various purposes and then the establishment of the Waikune Prison site just south of the block in 1920 also helped persuade the owners to sell. The prison may have been expected to provoke further land takings and loss of resources such as timber and gravel, while the use of prison labour may have threatened any remaining road work in the vicinity. It is also not clear, that with the highway now separating the cemetery from the rest of 4A5, the owners were aware that this area was also appears to have been sold as part of 4A5. Certainly, by the time Waikune Prison was established just south of the block, Waimarino 4 had already come under considerable pressure for various public works purposes and sales were beginning, although the purchases were then still to be confirmed. No evidence has been found in records of the public works takings or confirmations of sale that the Government required any special consideration of this land, given that it was one of the few reserves from the large Waimarino block purchase.

### **10.8 Waikune Prison and the main highway 1920s-1930s**

At the same time as the first sales of Maori land in Waimarino 4 began, Waikune Prison began operations on its southern border. Initially, the intention seems to have been to employ Waikune Prison labour mainly on road building, under the direction of the Public Works Department along the same pattern of mobile work camps as had been used for Rotoaira Prison. The main road work for Waikune, as already described, was intended to be on the Ohakune-Waimarino road, with subsidiary employment on timber milling and quarrying to provide material for road works. The Main Trunk road and railway routes between Waimarino (National Park) and Ohakune had already been built by this time, but the main trunk road required considerable straightening, reforming and widening to make it safe and passable for motor transport in all weather.

Waikune Prison work on the Waimarino-Ohakune road appears to have followed similar patterns to earlier prison work in the area, with sub camps being created and moved or disbanded as work required. Work appears to have begun on this road with work gangs

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<sup>1849</sup> Clayworth, especially chapter 7

located at the main camp and at a sub camp at Makatote.<sup>1850</sup> By 1927, prison management were considering establishing a new sub camp at Horopito nearer to Ohakune as work on the road progressed. The site chosen was described as good land on a paddock currently leased to a settler by the Crown, with a nearby stream for water and a quarry nearby at Makatote (Pokako). It was expected that road making in the Erua locality would be completed by the coming summer and in a few months Horopito would be closer for road making gangs. By 1928, the sub camp at Horopito had been established and a total of 88 prisoners were reported at Waikune with 39 of these at the Horopito sub camp.<sup>1851</sup> At this time a start was also made on the 'new road' or deviation on the western side of the railway between Pokako and Horopito. This was intended to eliminate several hairpin bends on the old main Ohakune-Waimarino highway.<sup>1852</sup>

### **10.9 The proclamation and disposal of Horopito sub-camp, 1929**

It seems that it was decided necessary to declare the Horopito sub-camp a site for prison purposes under the Prisons Act 1908. The proclamation notice dated 17 April 1929, declared that the area of land described and all buildings or enclosures used or occupied on it were to be a prison known as Horopito prison for the purposes of the Prisons Act 1908. This proclamation apparently included land as well as providing for the detention of prisoners. The just over four acres of land described in the notice was a portion of part section 2, block XVI Manganui survey district, Waimarino County.<sup>1853</sup> Presumably, this was the location of the Horopito sub-camp.

In 1968, inquiries were made from private interests to purchase this site. It was described at this time as land containing an old gravel pit, with the excavated part now full of water, while the surrounding land was covered in rough growth. It was regarded as being adequately fenced and no other government department had indicated a wish to have the land.<sup>1854</sup> Justice also no longer required the land and an authority for disposal, J 7/10 of 12 January 1968 was issued.<sup>1855</sup> As there appeared to be no government objection to the disposal, the site was

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<sup>1850</sup> Report, Inspector of Prisons, 12 April 1926, J1, 5/11/169, ANZ

<sup>1851</sup> Report of Inspector of Prisons, 1928, J1, 5/11/169, ANZ

<sup>1852</sup> *AJHR* 1929 H-20 p 15, report on Waikune prison.

<sup>1853</sup> *NZ Gazette*, 26 April 1929, no 28 p 1044, proclamation dated 17 April 1929.

<sup>1854</sup> Memo from District Land Purchase Officer, Works, Wanganui, to District Commissioner of Works, 6 February 1968, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1855</sup> Memo from District Land Purchase Officer, Works, Wanganui, to District Commissioner of Works, 6 February 1968, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

declared Crown land for disposal on 29 April 1968, under section 35 of the Public Works Act 1928 (land acquired for a government work and no longer required).<sup>1856</sup> Following this the site was onsold to the private purchaser under Certificate of Title 6D/439. Some years later, in 1978, it was realised that the site had never been removed from its proclamation for prison purposes. This proclamation was revoked by Statutory Regulation 1978/251.<sup>1857</sup> The Waikune Prison Horopito sub camp site was therefore disposed of to private interests in 1968, and was not part of the lands of the prison when it was later closed and declared surplus for disposal.

### **10.10 Secondary work for Waikune Prison, 1920s-1930s**

Waikune Prison management also quickly sought out other secondary road works and timber milling work for Waikune Prison labour from the 1920s. Within a short time, the prison had gained contracts for other roads in the region, including taking over maintenance of the Waimarino to Tokaanu Road from 1923. A sub-camp was also located at Makaretu, to work on the forming and metalling of the Raurimu to Waimarino Road.<sup>1858</sup> In 1923, an additional sub camp was established at Mangatepopo, to build the Bruce Road on the Whakapapa side of Mount Ruapehu. The Bruce Road was built to provide car access to the mountain for tourists from the Waimarino (National Park) railway station and the main Waimarino to Tokaanu road to the Whakapapa huts located on the mountain.<sup>1859</sup> Prison labour was used to build this road from 1924, on contract to the Tongariro National Park Board.<sup>1860</sup> This included obtaining rock from the nearby Mangatepopo quarry. The first cars travelled over the Bruce Road in 1925. Into the 1930s, prison labour was still being used to grade, improve and maintain the road.<sup>1861</sup> Waikune prison labour was also employed extensively for the Tongariro National Park Board from the 1920s, including building park bridges, paths, accommodation huts, bath buildings and a swing bridge over the Whakapapa stream.<sup>1862</sup> In 1928, Waikune Prison labour was being used for maintenance work on the Te Kuiti to Bulls highway, and into the 1930s, prison labour continued to be employed on road maintenance on the Waimarino to Tokaanu Road, the Raurimu Spiral Road, the Otokou to Tokaanu deviation and the Bruce Road.<sup>1863</sup>

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<sup>1856</sup> *New Zealand Gazette*, 24 April 1968, no 24, p 683

<sup>1857</sup> Letter Commissioner of Crown Lands to Commissioner of Works 16 March 1978, ABVP 7404 w5218/76 13/7/12/1 v2 ANZ

<sup>1858</sup> *AJHR* 1924 H-20 report on Waikune Prison camp, Erua, p 14

<sup>1859</sup> J 40, w1190, 1935/7/19 ANZ

<sup>1860</sup> J 40, w1190, 1935/7/19 ANZ

<sup>1861</sup> J 40, w1190, 1935/7/19 ANZ

<sup>1862</sup> *AJHR* 1924 H-20 p 14 and *AJHR* 1925 H-20 p 13 reports on Waikune Prison camp, Erua

<sup>1863</sup> Annual reports Waikune Prison, *AJHR* H-20, 1931-33

The road work was also supported by quarrying from the time the prison was established in 1920. This began with efforts to provide materials for road work, with new metal pits being opened as old ones were worked out.<sup>1864</sup> Additional materials quarried by prisoners were also sold to a variety of organisations in the district for various purposes. For example, by 1930, the prison was supplying crushed metal and sand on contract to the Kaitieke and Waimarino County Councils, the Prisons Department generally and to the building contractors for the Chateau Tongariro.<sup>1865</sup> It is not clear how much account the prison took of land title when quarries were established. In most cases these seem to have been on Crown land although it has not been possible in the time available to thoroughly investigate this. For example, the quarry at Mangatepopo appears to have been located on National Park land.

By 1929, the prison had also built up a fleet of motor vehicles. These were used not only for road work but for transport contracts in the district, including the haulage of material to the building site for the new Chateau Tongariro.<sup>1866</sup> Haulage was also later undertaken for a number of Government departments in the district, including telegraph poles for the Post and Telegraph Department and carting goods for other prison camps (Rangipo and Hautu) in the area.<sup>1867</sup> In the late 1920s and 1930s, the prison also appears to have contracted to supply bread, milk and laundry facilities to the Chateau, although not without complaints from private businesses in the area.<sup>1868</sup>

Timber milling was also a major source of work for Waikune Prison labour from when the prison camp was first established. This was also initially intended to provide raw materials for road work such as for bridges. It was recognised, for example, that the improvement of the main highway required the building of a number of road bridges. However, with the establishment of a sawmill at the main camp, as with gravel, additional timber also seems to have been sold to other Government departments, such as Public Works, and private businesses and local authorities.

The timber milled by Waikune camp appears to have been initially taken from the seventy nine acre reserve surrounding the main camp and also from nearby Crown lands under the control of the Forest Service. Some years later, the Forest Service noted that in 1921, the

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<sup>1864</sup> *AJHR* 1924 H-20 report on Waikune prison camp, Erua, p 14

<sup>1865</sup> *AJHR* 1930 H-20, p 16, report on Waikune Prison

<sup>1866</sup> *AJHR* 1929 H-20 p 15 report on Waikune Prison.

<sup>1867</sup> *AJHR* 1931 H-20 p 8 report on Waikune Prison

<sup>1868</sup> Correspondence late 1920s and 1930s, J1, 12/12/17 ANZ

Waikune Prison camp was granted a licence to mill 331 acres in a block to the east of the Waimarino River and prison camp.<sup>1869</sup> This licence, described by the Forest Service as really more of an agreement, expired in 1926.<sup>1870</sup> Prisons Department correspondence appears to confirm the more informal nature of the agreement, with the Prisons Department noting in 1921 that the Forest Service had told them they could take timber from the block east of the Main Trunk line and at the back of the prison camp.<sup>1871</sup> This timber was on Crown land administered by the Forest Service. Even with the expiry of the agreement, the Inspector of Prisons reported in 1926, that prison labour from the main camp was also being employed on building a bush tram line to the Erua railway station and the sawmill ground was being re-organised.<sup>1872</sup>

While it had a block of timber made available by the Forest Service, prison management quickly realised it did not contain sufficient timber of the type required by Public Works for building large road bridges, in particular white pine.<sup>1873</sup> This caused prison management to look elsewhere for such timber. It also seems that the prison realised there were commercial opportunities in having prison labour extract and mill timber for fence posts and firewood, selling this on contract to the Public Works Department and other agencies. This appears to have been encouraged by a nearby farmer named 'Crow', presumably the same Crowe who was leasing Maori land in Waimarino 4 by then, allowing the prison to take dry wood from his land for sale as firewood.<sup>1874</sup> This presumably helped Crowe clear the land for farming while the prison gained from selling posts and firewood.

Waikune Prison management also looked for suitable sources of timber elsewhere, not just for road bridges but also to fill the contracts it had gained for posts and firewood. File records of 1921, show that at this time, prison management sought to gain the use of logs that had previously been felled on the legal roadway when the road was first built for posts and firewood and it sought timber rights over forested land in the area between Waimarino and Erua railway stations for white pine and totara for bridges and less suitable timber for firewood, posts and similar contracts.<sup>1875</sup>

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<sup>1869</sup> See sketch plan showing area of 331 acres milled by prisons department 1921, J1, 6/1/11 ANZ

<sup>1870</sup> Letter, 12 May 1941, Director of Forestry to Secretary Tongariro National Park Board, J1, 6/1/11 ANZ

<sup>1871</sup> Memo, 6 April 1921, Controller-General Prisons to Public Works Department J 40, 1921/7/2 ANZ

<sup>1872</sup> Report, Inspector of Prisons, 12 April 1926, J1, 5/11/169 ANZ

<sup>1873</sup> Letter 6 April 1921, Controller General to Engineer in Chief PWD, J 40, 1921/7/2 ANZ

<sup>1874</sup> Memo, 19 April 1921, Inspector of Prisons to Controller General of Prisons, J 40, 1921/7/2 ANZ

<sup>1875</sup> Correspondence 1921, J 40, 1921/7/2 ANZ

In 1921, the Inspector of Prisons explained that it was intended to acquire rights to timber in the bush area between the Erua and Waimarino railway stations.<sup>1876</sup> This included Crown land that was under a mix of Lands and Survey and Forest Service control and the military training ground still under Defence control that included Waimarino 4B2 taken from Maori owners. It seems likely that some of this land was also Maori land in Waimarino 4. The Inspector reported that one small area of this land was under lease from the Native Land Court to a settler, but otherwise it all seemed useful and the Department should try and secure the timber rights.<sup>1877</sup>

It seems that the Prisons Department had already been removing timber from the military reserve when the Rotoaira camps were operating on the Waimarino-Turangi road. For example, a letter from the officer in charge at Waikune of 1922, noted that the Prisons Department had a previous agreement with Defence to remove timber from the training ground for the previous seven years.<sup>1878</sup> The Prisons Department, like many private loggers in the area, also appears to have believed that it was not necessary to be too particular about operating within the strict boundaries of timber rights in the area, even where they were precisely known. For example, in their search for stands of white pine, Waikune Prison staff found themselves competing with loggers from the Hawkes Bay Power Board who were also seeking out stands of white pine for poles.<sup>1879</sup> This was particularly true of timber on Crown land, which was considered available for national purposes. By mid-1921, however, there was some concern that this freedom might be curtailed, particularly from pressure to expand the Tongariro National Park boundaries and also from Forest Service efforts to more effectively police milling and logging on Crown land.

For example, in 1921, prison management noted that it seemed likely that some parts of the military training ground were likely to be transferred to Forest Service control and if so the prison would need to protect its interests in bush in the area. If they could not remove silver pine and totara from areas outside their milling area it would impact on their road work.<sup>1880</sup> The Controller General of Prisons noted that he was writing to Defence to seek an agreement to continue taking timber from the training ground and to also lease some of the more open

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<sup>1876</sup> Memo, Inspector of Prisons, 19 April 1921, J 40, 1921/7/2 ANZ

<sup>1877</sup> Memo, Inspector of Prisons, 19 April 1921, J 40, 1921/7/2 ANZ

<sup>1878</sup> Memo to Controller General from Waikune Prison, 7 August 1922, J 40, 1921/7/2 ANZ.

<sup>1879</sup> Memo 10 March 1921 officer in charge Rotoaira prison, Erua, to Controller General Prisons, J 40, 1921/7/2 ANZ

<sup>1880</sup> Memo 24 August 1921, officer in charge Waikune to Controller General Prisons, J 40, 1921/7/2 ANZ

ground for grazing for the prison. However, 'in the meantime' he instructed the prison to 'proceed getting timber for various purposes from whatever place you consider most convenient'. If there was any trouble from other departments, the Controller General would take responsibility. He had heard nothing official about the Forest Service taking control of the military area and until he did, they would continue as before.<sup>1881</sup>

In mid-1922, the Forest Service reported critically on the activities of the Waikune prison in previous logging and milling timber without much in the way of authority or control on the Waimarino plains. The Forest Service complained that the Prisons Department had been cutting bush for several years during the construction of the Lake Taupo Road in stands of timber scattered over the Waimarino plains, including in the military reserve.<sup>1882</sup> Waikune Prison management strenuously denied that it had removed any timber without clear authority.<sup>1883</sup> However, the file record as described, does not seem to support this.

It seems likely that much of this logging took place on Crown land. However, it also seems likely that the prison had little idea of where the boundaries between Crown land and remaining Maori land in Waimarino 4 to the north of the prison lay. Waikune Prison management interest in finding suitable timber for road work and other contracts appears to have encouraged early informal expansion of Waikune Prison into the northern Waimarino 4 lands. During the 1920s, Waikune Prison also began developing a prison garden and farm. This began on quite a small scale, but by the 1930s, the prison was almost self-sufficient in growing vegetables.<sup>1884</sup> The development of a prison garden and dairy farm also appears to have encouraged interest in the northern Waimarino 4 lands.

### **10.11 Early pressure on Waimarino 4 from Waikune Prison, 1920s**

It has already been noted that, from the 1920s, Waikune Prison management had become interested in timber in lands to the north of the prison. A sawmill was established at the main prison camp to provide timber for road working purposes and a block of Crown land to the east of the prison camp had not contained enough suitable timber and by 1926 had anyway been milled.<sup>1885</sup> Prison management almost immediately became interested in timber land

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<sup>1881</sup> Memo 30 August 1921, Controller General Prisons to Acting Gaoler, Waikune, J40, 1921/7/2 ANZ

<sup>1882</sup> Memo for Minister of Forestry from Director of Forestry 9 June 1922, J 40, 1921/7/2 ANZ

<sup>1883</sup> Correspondence 1922, J 40, 1921/7/2 ANZ

<sup>1884</sup> AJHR 1933, H-20 p 15, report on Waikune Prison.

<sup>1885</sup> Letter, 12 May 1941, Director of Forestry to Secretary Tongariro National Park Board, J1, 6/1/11 ANZ

north of the main camp some of which was in Waimarino 4.<sup>1886</sup> Prison authorities had already been involved in removing timber from the military training ground area when Rotoaira camps were established along the Rotoaira Road within the training ground, and this continued under Waikune Prison management when that prison gained contracts to supply posts and firewood and to continue maintenance work on the Waimarino to Turangi road.

It does not seem likely that the training ground was ever used for the military purposes and by mid-1921, the Government had agreed to Forest Service control over the military training ground area, including that part that had previously been taken from Waimarino 4B2. There does not appear to have been any official consideration of returning the Waimarino 4B2 lands to their original owners at this time, and this was not legally required at the time, if the land was required for another government purpose. As noted, on learning about the possible Forest Service acquisition, Waikune Prison management had been keen to protect their access to timber on the training ground.<sup>1887</sup> The Prisons Department had requested the Defence Department for continued rights to mill bush on the training ground and a right to use the open areas of the training ground for grazing.<sup>1888</sup> In the meantime, as described, the prison continued logging of its own accord where 'convenient'.

The Defence Department did agree to the prison continuing to take timber from the training ground but on a number of conditions. These included the payment of a royalty, and only 'selective' logging of the training ground, with the Forest Service marking selected logs to avoid spoiling scenic values. The Defence Department also agreed that the prison could lease the remaining open land at a nominal rent.<sup>1889</sup> After receiving this Defence agreement in principle including the conditions, but without waiting for any formal agreement, prison authorities instructed the gaoler at Waikune to 'in the meantime' make his own selection of timber from the training area, taking care not to 'cause too much destruction from the scenic point of view'.<sup>1890</sup>

Waikune Prison activities in this regard provoked considerable criticism from both Defence and the Forest Service, with claims and counterclaims of how far the prison may have worked outside any agreement and conditions set down and how much timber was taken from the

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<sup>1886</sup> Memo, Inspector of Prisons, 19 April 1921, J 40, 1921/7/2 ANZ

<sup>1887</sup> Memo Officer in Charge Waikune to Controller General Prisons, 24 August 1921, J 40, 1921/7/2 ANZ

<sup>1888</sup> Memo from Prisons to Defence 30 August 1921, J 40, 1921/7/2. ANZ

<sup>1889</sup> Memo 28 September 1921, from Defence to Controller General of Prisons, J 40, 1921/7/2 ANZ

<sup>1890</sup> Memo 29 September 1921, Controller General Prisons to Gaoler, Waikune, J 40, 1921/7/2 ANZ

training area. By 1922, the prison appears to have ceased logging due to the criticism.<sup>1891</sup> However, the file records also reveal the prison (and apparently other government departments) lack of awareness of the remaining Maori land in the area, particularly that part of Waimarino 4A1, which had originally been included in the training ground but then removed by the later revocation. The eastern part of 4A1 was now sandwiched between the military training ground where the prison was logging and the recently sold 4A5, over which the prison was also informally expanding from the south. Although 4A1 was still technically Maori land, this does not seem to have been appreciated by the prison or government departments generally, most of whom seemed unaware of the revocation.

The Waikune Prison logging operations on the military training ground area also provoked complaints from the Maori owners of 4A1. Lawyers acting on behalf of Haitana Tawhero and others, owners in 4A1, just south of the actual boundary of the military training ground wrote to the Justice Department in April 1922, seeking compensation for approximately 1000 posts taken by the prison from their land, apparently as a result of prison post cutters wrongly moving over the boundary into 4A1.<sup>1892</sup> Waikune Prison officers denied that any timber had been cut other than from military or prison reserve land.<sup>1893</sup> The matter was pursued further by lawyers for the owners of 4A1, however, claiming that it did indeed seem posts had been cut from Maori land and seeking compensation or alternatively threatening further legal proceedings.<sup>1894</sup> Prisons officials again denied that any timber had been taken from Maori land in the area. They claimed that from their understanding of maps of the land, the land being claimed by the Maori owners was in fact the property of the Defence Department.<sup>1895</sup>

In fact, the sketch map on file clearly shows that the Maori owners were referring to that part of 4A1 sandwiched between 4A5 and the military training ground while the prison was denying that this was still Maori land.<sup>1896</sup> Unfortunately, the file record ends at this point and no further information has been found about how this claim was resolved. By this time, the Government was moving to include the training ground within Tongariro National Park. While some interest groups accepted some timber could continue to be removed from old milling sites to help provide revenue for the park, other groups insisted that logging in the

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<sup>1891</sup> Letter Controller of Prisons to Minister of Justice 11 May 1922, J 40, 1921/7/2 ANZ

<sup>1892</sup> Letter 27 April 1922, to Justice Department on behalf of Haitana Tawhero and others, J40, 1921/7/2 ANZ

<sup>1893</sup> Memo from officer in charge Waikune Prison to Controller General Prisons, 5 May 1922, J40, 1921/7/2 ANZ

<sup>1894</sup> Letter from Collins and Howie, 8 July 1922, J 40, 1921/7/2 ANZ

<sup>1895</sup> Letter Controller General of Prisons to lawyers 13 July 1922, J 40, 1921/7/2 ANZ

<sup>1896</sup> Sketch map of military training ground area and prison site, showing 4A1, J 40, 1921/7/2 ANZ

former military area should cease.<sup>1897</sup> As Clayworth has explained, in 1922, the military training ground was included within the boundaries of the newly expanded Tongariro National Park.<sup>1898</sup> According to Clayworth, this proclamation including the training ground, also included those parts of Waimarino 4A1 and Waimarino 4A5 that had originally been included in the training ground and then removed by later revocation. This error was later corrected by gazette notice of April 1924, when 4A1 and 4A5 were again removed.<sup>1899</sup> However, this error appears to confirm the continuing assumption by government authorities that 4A1 had always been taken. While 4A1 continued as Maori freehold land, the lack of practical government recognition of their ownership and their vulnerability to public works takings must have been apparent to all remaining Maori owners in Waimarino 4. By this time 4A5 was also being confirmed as sold from Maori ownership.

The attitude of the prison to land in the district is also reflected in its approach to a request in the 1920s from the then Mayor of Auckland, Sir James Gunson, to buy some spare prison huts to be located on the military training ground. Gunson explained that he wished to use the huts himself and for his friends when visiting the National Park. As part of this he intended to encourage Aucklanders to visit with him and stimulate their interest in the park. Gunson was also a member of the Tongariro National Park Board. The Justice Minister and the prison management agreed to this request as it was for a ‘quasi public’ purpose and the huts were considerably renovated and extended for Mr Gunson’s use. The correspondence does not indicate where exactly on the training ground area the huts were located, but presumably it was close to the Bruce Road access road up the mountain. However, the prison made no real effort to check out the status of the land when it placed the huts. Instead, the Controller General of Prisons noted to the Justice Minister in 1921 that ‘so far as I am aware, the site upon which the huts now stand is waste land that is absolutely unused’.<sup>1900</sup>

It seems that in the early 1920s, Waikune Prison had extended sawmilling activities into what had been Waimarino 4B2 (now military training ground) and possibly also 4A1 under the incorrect impression it was military training ground. At the same time, the prison had also informally expanded to the north of the main prison site, into Waimarino 4A5, which was at first leased Maori land and then by 1922 confirmed sold from Maori ownership.

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<sup>1897</sup> Letter Waikune Prison to Controller General of Prisons 7 August 1922, J 40, 1921/7/2 ANZ

<sup>1898</sup> Clayworth, chapter 7.3

<sup>1899</sup> Clayworth, chapter 7.3

<sup>1900</sup> Memo Controller General of Prisons to Minister, 4 May 1921, J 40 1945/7/2 ANZ

The land in 4A5 (and the other leasehold areas) does not appear to have been intensively farmed although there were pockets of good land in 4A5. The Crowes had attempted farming, and as previously described, had allowed the prison to remove dry timber for firewood, presumably to assist with clearing the land for farming. In 1922, it also seems that E Crowe offered to lease about an acre of land in the southern part of 4A5 to the prison. He offered that for a rental of 10 shillings per year the prison could lease this land and farm it, but could not remove timber or soil without consent and it was required to build a fence between the leased area and the rest of 4A5. After some confusion about which of the Crowes actually had the right to enter such a lease, the prison took up the offer in June 1922.<sup>1901</sup> It also seems that as the Crowes struggled, the prison was allowed to extend further into 4A5 on an informal basis.

Within a short time, in 1924, as the revocations of the area from National Park land were being made, the widowed Jean Crowe, on-sold the freehold title to Waimarino 4A5 and 4B1 and leasehold titles to the remaining area of 4B2 not already taken for public works and 4A2 and 4A3, along with timber rights to Waimarino 4A3 to the Waimarino Development Company, a partnership of local farmers and a subsidiary of the Marton Sash and Door Company.<sup>1902</sup> It is not clear what happened with the southern acre of 4A5 at this time that had already been fenced off by the prison. It is not clear whether the Company was even aware of this area, or if it was, it seems to have allowed the prison to continue using that part of 4A5, for nominal or no rent, and also to expand grazing into much of the rest of the area of 4A5. This expansion was later disclosed by the Controller-General of Prisons in noting that ‘ever since the Waikune Prison has been established’ it had been able to use nearby land in Waimarino 4A5 block.<sup>1903</sup>

Through the 1920s, therefore Waikune Prison, had informally expanded into areas of Waimarino 4, with its milling and farming operations effectively sandwiching the eastern part of 4A1 between them, and with the prison apparently unaware, in the 1920s, that this was even Maori land. This informal expansion had generally been to support the establishment of the main camp, while the focus of prison labour remained on road making activities.

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<sup>1901</sup> Correspondence May-June 1922, ABVP 500 w4927 box 17, 7/10/5 pt 1 ANZ

<sup>1902</sup> Memo Director General Lands to Secretary for Justice 7 October 1960, ABVP 500, w4927/17, J7/10/1 pt 2 ANZ

<sup>1903</sup> Memo from Controller General of Prisons to Minister of Justice, 6 march 1939, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

During the 1920s, prison management also began building up housing for prison staff working at Waikune. There was combined accommodation for single men, in most cases developed from the relocated huts used for earlier camp supervision. In the 1920s, some separate housing was also developed for married and more senior officers. Most of this was on the main site and close to the main buildings. However, it was also decided that it would be convenient to have one warder house located at Waimarino township. This was especially true when supervision of prison supplies to and from the railway station was required and the work contract for maintaining the Waimarino-Tokaanu Road was taken up. In 1924, the prison agreed to take over finishing a partly built cottage in the township in return for the costs being taken off the yearly rental. This site was mortgaged by the owner, however, and in 1926 the mortgagee threatened to sell up because of failed payments. In an effort to protect their interest, the prison agreed to buy the property in 1926.<sup>1904</sup> This was the beginning of a number of acquisitions and disposal of sections and houses at Waimarino (National Park) township for Waikune Prison warders over subsequent years. None of these sections appeared to have been acquired from Maori ownership for the prison and these houses were separate from the main prison site. These will be referred to briefly in later sections of this chapter but have not been researched in detail as they do not appear to be relevant to the main issues regarding the main prison area.

### **10.12 The near closure of Waikune Prison, 1931**

By the later 1920s, prison authorities began to find that timber milling and road work opportunities for Waikune Prison labour were becoming increasingly limited. The inclusion of large areas of surrounding land, including previous State Forest reserve, within Tongariro National Park, the hostility of the Park Board to continued milling and the expiry of existing timber cutting licenses by 1926, appear to have led to a decision to stop milling at the prison. In 1926, the Cabinet approved of no more bush being cut, with the prison sawmill to be closed and the mill stock and machinery to be sold.<sup>1905</sup> In August 1926, prison authorities instructed that milling was to cease in the area and the mill site was to be closed down and cleaned up.<sup>1906</sup> The main activities for the prison then became road maintenance and transport haulage, and to a lesser extent farm activities.

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<sup>1904</sup> Correspondence 1923 to 1926, ABVP 500, w4927 box 17, 7/10/5 pt 1 re CT 192/42 ANZ

<sup>1905</sup> J 40, 1926/7/7 Cabinet approval, 14 May 1926 ANZ

<sup>1906</sup> Letters 18, 24 August 1926 re closure of mill, J 40, 1921 /7/2 b 224 ANZ

While road maintenance work continued, there was also some concern by prison authorities that new sources of road work would need to be found. For example, in 1927, the Inspector of Prisons reported that it was hoped that more road work could be obtained in the area and expressed a preference for work on building access roads to Crown lands prior to opening such lands for settlement. This work was considered especially suitable for prison labour as these roads were felt to be less likely to be 'infested' with motorists and swaggers.<sup>1907</sup>

In 1931, it seems that it had been decided to revoke the prison proclamation over most if not all the Crown land originally proclaimed. By notice of 20 October 1931, around 70 acres of the original 79 acres originally proclaimed a prison reserve for the main camp was declared to be no longer a proclaimed prison reserve. This area was described as being bordered to the north by Waimarino 4A5, to the west by the Main Trunk railway and the Ohakune-Taumarunui road and to the southeast by a branch of the Waimarino stream.<sup>1908</sup> It is not clear from the proclamation, exactly where the remaining nine acres were located on the previous site, but it appears to have been intended to include the area where the prison buildings were located. These prison buildings were located just south of 4A5 as shown on sketch maps of the 1920s.<sup>1909</sup> However, it seems that although reduced in area, the prison continued to operate, as annual reports on the prison continue through the years 1931-32, without mention of any closure. It seems possible that the remaining nine acres was considered adequate for containing the main cell block area and ancillary buildings, while farming expanded into 4A5.

It was not possible in the time available, to find out why this revocation was made, or what it signalled. It may have been anticipated that the camp area could be reduced in anticipation of eventual closure once the road works ended. Possibly, by this time, it was also felt that the additional area of Crown land was no longer useful to the prison, having already been milled and apparently not suitable for farming. This may also have been assisted by the informal expansion of the prison to the north into 4A5, where land was more suitable for a prison garden and for dairy cattle. It also seems that the expansion of Tongariro National Park in this area was anticipating the decline and eventual closure of Waikune, which had always been regarded as a temporary kind of prison camp.

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<sup>1907</sup> Report Inspector of Prisons, 27 August 1927, J1, 5/11/169 ANZ

<sup>1908</sup> *NZ Gazette* 29 October 1931, p 3019, notice dated 20 October 1931.

<sup>1909</sup> For example, sketch map on J 40, 1921/7/2 ANZ

### 10.13 Waikune Prison and acquisitions of Waimarino 4A5 land, 1930s

It seems possible, that the life of Waikune prison was then extended by the economic depression of the 1930s and the expansion onto 4A5 that enabled the camp to remain almost self sufficient in vegetables and offered the possibility of further farm development. Just a few years later, in 1934, under the Prisons Act 1908, 13 acres of land ‘being part of Tongariro National Park’ [and therefore Crown land] in block IV Manganui survey district, bounded to the north by Waimarino 4A5, towards the east and south by the Waimarino River from its intersection with the 4A5 block as far as its intersection with the Ohakune-Taumarunui Road, and to the west by that road to its intersection with the southern boundary of Waimarino 4A5, and all buildings and enclosures on the land were declared to be a prison known as the Waikune Prison for the purposes of the Prisons Act.<sup>1910</sup> It appears that this 13 acres, along with the use of 4A5 may have been considered sufficient to keep the prison operating as a farm on a largely self sufficient basis through the 1930s depression.

Shortly after this, it appears that just over 4 acres of land in the southernmost part of 4A5 was transferred from the Waimarino Development Company to the Crown in August 1935. This small area was given a new certificate of title (CT 465/24). A new certificate of title was then issued for the remainder of 4A5 (CT 465/25). No documentation of the time has been found of this early purchase but it seems to have had nothing to do with the prison and prison management seemed largely unaware of it. Later documentation indicates that this area, containing an ‘excellent’ stand of bush and providing access to the National Park had been transferred to the Crown by the company, in return for the Crown allowing the company to stack timber on scenic reserve land near the Waimarino station for ten years at a fee of 1 shilling per year.<sup>1911</sup>

While the prison seemed unaware of this legal transfer, as already noted prison management anyway never seemed entirely clear about legal boundaries and at this stage was more interested in using land convenient for its purposes on an informal basis if necessary. At this time, the prison seems to have simply extended past this bush area and continued informal use of 4A5 land that was convenient for farming and grazing.

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<sup>1910</sup> *NZ Gazette*, 15 November 1934, no 83, p3562, proclamation dated 9 November 1934. ANZ

<sup>1911</sup> File note referring to L&S file 4/440 and agreement, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

With the apparent Crown recognition of its continuation through re-proclamation and the transfer of some National Park land, Waikune Prison management continued to use prison labour on road maintenance work in the district into the 1930s, although this was restricted by the economic depression. No capital was available for new works with all work being maintenance of existing roads. Prison management continued relocating camps as work and quarry materials were finished in particular areas. For example, in 1935, prison management was considering closing the Mangatepopo sub camp as soon as the nearby quarry was worked out. It was hoped that it might be possible to open new quarries at Whakapapanui or Whakapapaiti stream with sub camps possible at either site.<sup>1912</sup> However, with limited road work, by 1937, all the Waikune sub camps were closed and the main prison buildings rearranged to accommodate all remaining prisoners.<sup>1913</sup> Road maintenance was also reduced, with two quarries in operation at Makatote Gorge and Horopito.<sup>1914</sup>

In 1937, an inspection of the main Waikune Prison buildings revealed that many of the prison buildings were old and in a poor state of repair. Because Waikune Prison had been established as a temporary camp, many of the buildings had been moved on site when they were no longer required at other locations. They were in poor condition and had few facilities.<sup>1915</sup> By this time, additional to the main prison buildings, there were also three separate warder cottages on the main site, along with the additional cottage at National Park although this would shortly be removed to Hautu Prison in 1937, when it was decided it was no longer required by Waikune.<sup>1916</sup> In the meantime, the prison farm appears to have gained more importance for the prison, with farm buildings erected on the southern part of what was now 4A5 and informal grazing on the rest of that block.

In 1939, Waikune Prison received a new opportunity to transform itself into a more permanent operation with an offer to purchase the rest of 4A5 land from the Waimarino Development Company. The Waimarino Development Company was a subsidiary of the Marton Sash and Door Company and by 1939, appears to have decided to sell its interests in 4A5 and to give Waikune Prison the first option to purchase the land it was already using. As previously described, in March 1939, the Controller-General of Prisons explained to the

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<sup>1912</sup> Letter officer in charge, Waikune, to Controller General of Prisons, 14 September 1935, J 40, w1190, 1935/7/17 ANZ

<sup>1913</sup> *AJHR* 1937-8, H-20 p 16, report on Waikune Prison

<sup>1914</sup> *AJHR* 1939 H -20 p 14 report on Waikune Prison.

<sup>1915</sup> Report, District Engineer Public Works to Officer in Charge Waikune, 3 September 1936, ABVP 500 w4927 box 17, 7/10/5 pt 1 ANZ

<sup>1916</sup> Correspondence, 1936-37, ABVP 500, w4927 box 17, 7/10/5 pt 2 ANZ

Justice Minister that ‘ever since’ the prison was established it had the use on a gratuitous basis, five acres of the 4A5 block immediately adjoining the residence of the officer in charge of the prison. This five acres was used for a prison garden and part of it was grassed and used for grazing the prison dairy cows. He was apparently referring the area that had already been (apparently unknown to the prison) already purchased by the Crown. He explained that an additional 100 acres to the north had also been used by the prison without charge for grazing cattle. Until recently, a cottage on the block had also been used as a warder’s cottage, although it was now being leased privately.<sup>1917</sup>

The Prisons Department was very reluctant to ‘lose’ this land as it would otherwise be very difficult for Waikune Prison to find pasture for dairy cows and such good land for the prison garden, which supplied almost all the prison requirements for vegetables. It was also believed that further crops could be grown on the additional land in the block if it was also purchased. The company had offered to sell the 5 acres for £75 or the total 100 acres (including the 5 acres) for £450. A purchase of the property was recommended.<sup>1918</sup> This was approved by Cabinet in March 1939.<sup>1919</sup>

When officials came to formalise the transfer, it was recognised that while 4A5 had originally contained around 112 acres this had been reduced. In 1938, road improvements had also resulted in an area of around one rood being proclaimed for road purposes and an area of around two roods of road subsequently closed as part of road improvements over the block.<sup>1920</sup> The 4A5 block therefore now also contained a closed road and was all the land in Certificates of Title 465/25 (the new title for the remainder of 4A5 after 1935) and 467/278 (the closed road). The title to 4A5 also still included the old cemetery site sandwiched between the railway and the highway.<sup>1921</sup> Officials noted at this time, that ‘at some time’ around four acres containing an ‘excellent’ stand of bush and providing access to the National Park had been transferred to the Crown by the company, in return for the Crown allowing the company to stack timber on scenic reserve land near the Waimarino station.<sup>1922</sup> It was also

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<sup>1917</sup> Controller-General of Prisons to Minister of Justice, 6 March 1939, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1918</sup> Controller-General of Prisons to Minister of Justice, 6 March 1939, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1919</sup> File annotation of Cabinet approval, March 1939, on ,memo 6.3.39, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1920</sup> *New Zealand Gazette* no 77, 1938, p 2238

<sup>1921</sup> Sketch plan showing location of graves CT 296/202, and note re road proclamation and revocation Ct 465/25 and CT 467/278, ABWN w5021/178 25/355/1 pt 1 ANZ

<sup>1922</sup> File note referring to L&S file 4/440 and agreement, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

found that there had been an error in the original survey calculations. This resulted in a current calculated area of around 108 acres for the block.

A purchase of the block was agreed between the Prison Department and the company for the asking price of £450, even though this had originally referred to a larger area. This seems to have been a willing purchase with no element of compulsion, as the company had apparently already decided to sell the land when the prison became interested. It is also possible the company was fortunate to have such a ready buyer in the prison at a time when the district was still suffering the effects of economic depression. The prison was also willing to buy at the price asked. Nevertheless, although the Public Works Department acknowledged this, officials still appear to have insisted that as the land was required for a public purpose, it should technically be taken by proclamation under the Public Works Act by provisions allowing taking by agreement.<sup>1923</sup> A memorandum of agreement was signed by the company and R Semple the Minister of Public Works on 25 July 1939.<sup>1924</sup> Following this, the land in 4A5 was declared 'taken for the purposes of a prison' under the Public Works Act 1928, by proclamation dated 9 November 1939.<sup>1925</sup> This included just over 108 acres of Waimarino 4A5, and an additional just over 2 roods of closed road passing through Waimarino 4A5. Technically therefore, it seems the land was acquired by agreement under public works measures. This was a substantial addition to the 13 proclaimed acres of the main prison site. Most of the main prison buildings were presumably on the 13 acres proclaimed prison in 1934, although by 1939, the prison seems to have had use of the cottage on 4A5 for warder housing and had also built some farm buildings on the block.

#### **10.14 The near closure of Waikune Prison, 1940s -50s**

Once Waimarino 4A5 was purchased, Waikune Prison management appear to have set about more substantial development of the farm area with prison labour. This was at first delayed by wartime shortages in seeds and materials, but by 1946, annual reports for the prison were including reports on farm development as well as road maintenance and haulage work. By 1946, much of the farm land had been sown in pasture or root crops for winter feed. The farm began supplying milk and cream to the Chateau, local residents, boarding houses and

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<sup>1923</sup> Correspondence between PWD and company May-August 1939, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1924</sup> Memo of agreement, 25 July 1939, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1925</sup> *New Zealand Gazette*, no 138, 16 November 1939, p3058

sawmills and began haymaking. By 1948, the prison farm was supplying milk and cream to the Kaitieke Dairy Factory.<sup>1926</sup>

Prison management also continued seeking road maintenance work including the operation of quarries at Horopito, Makatote, Whakapapaiti and Whakapapanui. Surplus metal was also supplied to numerous sawmillers and contractors in the district and the two County Councils. The prison vehicles also continued to be used to undertake haulage for a variety of organisations on contract. In the late 1940s, the prison buildings were also extended and renovated.<sup>1927</sup>

Prison labour also seems to have continued to be involved in acquiring timber for road work requirements. This does not appear to have been regarded as a major activity at first and was not generally reported on. However, there were complaints in the early 1940s, for example, from the Tongariro National Park Board that the prison had been removing fencing timber from the park. The Forest Service also seemed convinced of this, noting that boundaries were not clear in the area, and not well understood by prison staff.<sup>1928</sup> The allegations were denied by the prison, claiming that private loggers were taking the wood. Concerns that the prison and private loggers were taking timber from areas outside their legal rights were a common complaint at this time. However, the continuing need to find opportunities to employ prison labour, and the restrictions of the expanding National Park lands, appears to have increasingly attracted prison management attention to remaining lands in Waimarino 4 block.

At the same time, the future of Waikune prison was again in doubt. In the early 1950s, it was recognised that with much of the complex requiring upgrading, a decision had to be made on whether Waikune should finally be closed in acknowledgement that it had always been intended to be no more than a temporary road work prison camp, or whether it should be substantially upgraded and consolidated as a permanent prison institution. By this time there were issues with poor quality milk from the prison farm, difficulties in farming and substandard dairy buildings. There were also difficulties in finding secure sources of road work in the district for prison labour. In May 1950, the Minister of Justice noted that in the past Waikune had been always intended as a temporary roadside prison camp but it had been temporary for a ‘good long time’. He suggested it was time to decide whether to ‘launch out’

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<sup>1926</sup> *AJHR* H-20 1946 -1950, reports on Waikune Prison

<sup>1927</sup> *AJHR* H-20 1946 -1950, reports on Waikune Prison

<sup>1928</sup> Memo from Director of Forestry to Secretary Tongariro National Park Board 12 May 1941, J1, 6/1/11 ANZ

or gradually fade out at Waikune.<sup>1929</sup> Prison management had already suggested possibly acquiring nearby Maori land for development, but at this stage Justice Department officials were reluctant to do this, as they did not believe the land in the area was worth developing. Nevertheless, it was noted that the Minister was in favour of having prison labour generally used for land development.<sup>1930</sup>

In the meantime, in 1954, the Secretary for Justice informed Works that no definite assurance could be given about the future of the prison. A planned new National Prison Centre at Waikeria might allow the prison to be closed, but it was taking longer than expected to commission and in the meantime, it seemed that even if road and quarry work for Waikune dried up altogether, it would still have to be kept open just to cope with general prison overcrowding. In the meantime, some necessary upgrading work had to be undertaken at Waikune, also allowing for the possibility of future expansion. This included urgent and essential work on the new ablution block, a new sanitary and drainage system, replacement of the present unsafe storage for equipment and fuel, and a new water supply.<sup>1931</sup>

Some of this upgrading work did take place. For example, in April 1957, in response to Justice Department requests, the Forest service agreed that Waikune prison could use three and one half acres of Erua State Forest for a sewage treatment plant site. This was an informal agreement and it was noted that it was not intended to release this area from reservation as a State Forest. Instead, Justice and Works officials were authorised to enter Erua State Forest to carry out all necessary work for the plant and for inspections and maintenance. The Forest Service also had no objection to visitors being allowed to inspect what was a new scheme for the country, as long as it was notified of any such visit. Officials were also required to take every care to ensure that damage to the forest was as minimal as possible and that all regulations and requirements for the control and prevention of damage to forests were adhered to. The Justice Department was also required to pay the Forest Service for the estimated value of trees that were to be felled to build the plant, an estimated £175.<sup>1932</sup> The sewage plant appears to have been located on State Forest Reservation land (Crown land) on block IV Manganui Survey District, just west of the main highway and opposite the main prison complex. This informal agreement, although it produced no formal change in land title, did

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<sup>1929</sup> Letter Minister of Justice to Under Secretary Justice, 5 May 1950, ABVP 55 w4927/18, J 7/1016 v1 ANZ

<sup>1930</sup> File notes May 1950, ABVP 55 w4927/18, J 7/1016 v1 ANZ

<sup>1931</sup> Letter Secretary for Justice to Works, 23 September 1954, ABVP 7404 w4927/103, 13/7/12/10 pt 1 ANZ

<sup>1932</sup> Letter A L Poole Assistant Director Forestry to Commissioner of Works 23 April 1957, ABVP 7404 w4927/103, 13/7/12/10 pt 1; copy on ABVP 7404 w 4927/103, 13/7/12/1 pt 3 . ANZ

allow for an informal use that would later become an issue in the disposal of Waikune Prison as will be described in later sections.

In the 1950s, it also seems that some warder housing for the prison was extended north of the main complex into the southern part of the 4A5 block. It has already been noted that in 1939 a house near the southern boundary of 4A5 had previously been used as warder housing. This had been acquired for the prison as part of the 4A5 purchase. In the 1950s, as the prison was upgraded, more warder housing appears to have been added. With shortages of labour following the war, it was also recognised that the prison would have to provide more and improved accommodation if it was to attract warders to a remote location such as Waikune. The housing improvements appear to have begun with the building of three new warder cottages just north of the main prison buildings.<sup>1933</sup> It seems likely that these three houses at least, along with the original purchased cottage, were located on the southernmost part of 4A5. For example, in 1953, in preparation for building the new houses, it was noted that the old dairy building had to be demolished.<sup>1934</sup> This dairy appears to have originally been located on 4A5.

The combination of the preference of the Minister to have prisoners engaged in development work and the enthusiasm of prison management to secure the future of the prison also appears to have led to a decision within a few years to seek to acquire more land to consolidate and develop the Waikune Prison holdings as an alternative or complementary to road and quarry work. As National Park land was clearly unavailable, prison management attention turned again to nearby Waimarino 4 land still held in Maori ownership.

### **10.15 The purchase of Waimarino 4A1, 4A2 and 4A4 blocks, 1961**

With Tongariro National Park and Forest Service land apparently unattainable, Waikune prison management began to take an interest in nearby Maori-owned Waimarino 4A1, 4A2, 4A3, and 4A4 partitions for ‘future development purposes’.<sup>1935</sup> This land was a mix of open land, native forest and some regenerating native forest previously cut over for milling. It is not clear, why as previously, the prison did not simply seek timber rights to the block rather than

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<sup>1933</sup> Memo 2 May 1950, Officer in Charge Waikune to Controller-General of Prisons, and correspondence re prison cottages 1950-53, ABVP 7404 w 4927/103, 13/7/12/1 pt 3 ANZ

<sup>1934</sup> Memo 2 March 1953, Superintendent Waikune to Secretary for Justice, ABVP 7404 w 4927/103, 13/7/12/1 pt 3, ANZ

<sup>1935</sup> Clayworth, chapter 7.6

seeking title as well. It seems to have been connected to the desire of prison management to provide for the future of the prison by moving away from reliance on casual work opportunities to engaging in land development programmes. These would not only meet government preferences for developing land, but might also help the future of the prison by providing for more secure employment opportunities.

In 1954, Waikune Prison management sought official approval for acquiring the Waimarino 4 partitions, claiming that previously it had been possible to find work for Waikune prison labour on maintaining highways in the district. However, the Ministry of Works had not been able to provide the same amount of work in recent years and the prison had been obliged to seek alternative work opportunities.<sup>1936</sup> The Waimarino partitions had millable native timber, including miro, rimu, matai, totara and kahikatea. Officials expected this would provide milling employment for inmates, while the timber could be put to 'very good use in many of our institutions'.<sup>1937</sup>

Justice officials then contacted the Department of Maori Affairs over possibly acquiring the Maori-owned Waimarino partitions. Maori Affairs officials advised that the owners' permission was required to acquire the lands and Justice officials should seek permission to purchase. They also advised that the owners were unlikely to be willing to sell. The feeling against selling apparently led to purchase efforts being temporarily abandoned, but efforts were reopened again in 1958. This time, Justice sought the assistance of the Lands and Survey Department to undertake the purchases. Purchases of Maori land by this time were made through the system of meetings of assembled owners.

The issues raised by this meeting of assembled owners process in the purchase of Maori land cannot be adequately covered in this report. It does seem notable that by this time Lands and Survey officers appeared confident that they could use this process to gain sufficient votes to ensure the land the prison wanted would be acquired, even though it was clearly understood by Lands and Survey, Maori Affairs and Justice officials that there was significant opposition among some owners to a sale. Lands and Survey officials accepted the process might take some time and warned Justice that it could not hope for too early a settlement in the matter.

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<sup>1936</sup> UnderSecretary Justice to Commissioner of Works 23 September 1960, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1937</sup> UnderSecretary Justice to Commissioner of Works 23 September 1960, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

Nevertheless, they were confident that the sale of the blocks to the Crown ‘appears inevitable’.<sup>1938</sup>

The tactics used by officials to pressure the sale are evident in the file records and presumably reflect many of the issues concerning manipulation by land purchase officers of these kinds of meetings. These included the judicious use of meetings so as not to antagonise possibly cooperative owners, and to suit the needs and preferences of cooperative sellers, the use of proxy votes to ensure a successful vote, pressure on major shareholders to cooperate and the use of relative shareholding to outvote possibly more numerous opponents of a sale who held lesser shares. None of this was illegal, but the use of these tactics and the continuing pressure exerted over a number of years does appear to have amounted to significant official interference in the process, on the side of those parties interested in purchasing. It could also be seen as introducing a significant element of compulsion into the sale.

In the case of the 4A1, 4A2, 4A3, and 4A4 blocks, a meeting to consider selling had been called in 1959, but rejected the sale offer.<sup>1939</sup> Undeterred, Lands and Survey officials kept up the pressure but were careful not to openly antagonise possibly cooperative owners, advising in 1960 that it would be unwise to call another meeting until they could be sure of more support for a sale.<sup>1940</sup> In view of the ‘pressing needs’ of the prison, Lands and Survey kept up inquiries among owners. By June 1960, officials believed that sufficient owners might agree to two of the blocks being sold, while emphasising the necessity of ensuring that any meeting was only called at a time when it was known the major shareholder who supported selling would be able to attend.<sup>1941</sup> In July, the Board of Maori Affairs approved negotiations for the sale of 4A2 and 4A4.<sup>1942</sup> By August-September 1960, officials felt able to call further meetings to discuss possible sales of these two blocks, while noting there appeared to be no possibility of purchasing the other two, 4A1 or 4A3 in the near future. Just a few days later 4A1 was also felt to be a possibility although the urupa on it would need to be partitioned. Meetings of August 1960, then agreed to sell 4A1, 4A2 and 4A4 (a combined acreage of around 832 acres) and their timber for an agreed price to be increased if a Forest Service

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<sup>1938</sup> Memo Director General of Lands to Secretary for Justice 12 May 1960, ABVP 500 w4927/17, J 7/10/1 pt 2 ANZ

<sup>1939</sup> Memo Director General of Lands to Secretary Department of Maori Affairs 21 June 1960, ABVP 500 w4927/17, J 7/10/1 pt 2..ANZ

<sup>1940</sup> Memo 12 May 1960, ABVP 500 w4927/17, J 7/10/1 pt 2 ANZ

<sup>1941</sup> Memo Director General of Lands to Secretary Department of Maori Affairs 21 June 1960, ABVP 500 w4927/17, J 7/10/1 pt 2 ANZ

<sup>1942</sup> File note, 13 July 1960, ABVP 500 w4927/17, J 7/10/1 pt 2 ANZ

valuation proved to be higher, although a partition was required for an urupa on 4A1.<sup>1943</sup> These agreements were carried on a 'share basis' where a few owners holding largest shares were able to carry the vote.<sup>1944</sup>

The Forest Service valuations of the timber made in September 1960, came out considerably higher than originally assumed, but Justice decided to purchase the land anyway based on this timber valuation and the agreed price for land. Lands and Survey apparently advised the price was still reasonable and when the native timber on the blocks was milled, the purchase price 'will be more than recouped'.<sup>1945</sup> The Maori Land Court confirmed the sales on 29 September 1960.<sup>1946</sup> The Court required payment to be made to the Maori Trustee and any commission charged by the Trustee to be paid by the purchaser, although it was later confirmed that this commission was not likely to be charged.<sup>1947</sup> The Minister of Justice approved the purchase of the blocks on 22 September 1960.<sup>1948</sup>

There were some qualifications regarding 4A1. The Waimarino Development Company had a right of access over the western part. That company, had been liquidated in 1956, but it was a subsidiary of Marton Sash and Door, who wanted the right continued. It was agreed to cancel the old right and issue a new one to the parent company. The Maori Land Court had also agreed that 4A1 could first be partitioned into two divisions 4A1A and 4A1B. The 4A1B subdivision contained 4.7 perches to be excluded from the sale, as the site of an urupa to be retained by 4A1 owners. The Court also apparently raised the issue of access to the urupa as it was sited some six chains from the road. Lands and Survey representatives reported that it had verbally agreed that access would be made available to the owners 'if and when it was found necessary'.<sup>1949</sup>

Once again, purchase negotiations had been conducted for these blocks for the prison, but officials appeared to believe that as the purchase money was to come from the Public Works account and as the land would be used for a public purpose, forming part of Waikune Prison

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<sup>1943</sup> File correspondence, August 1960, ABVP 500 w4927/17, J 7/10/1 pt 2 ANZ

<sup>1944</sup> Clayworth, chapter 7.6

<sup>1945</sup> Memo Justice to Works 23 September 1960, ABWN 889 w5021/178 25/355/1 pt 1 ANZ

<sup>1946</sup> Memo Chief Surveyor to District Commissioner of Works, 4 October 1960, ABWN 889 w5021/178 25/355/1 pt 1 ANZ

<sup>1947</sup> Justice minute 12 October 1960, ABVP 500 w4927/17, J 7/10/1 pt 2 ANZ

<sup>1948</sup> Justice minute, 12 October 1960, ABVP 500 w4927/17, J 7/10/1 pt 2 ANZ

<sup>1949</sup> Memo Director General Lands to Secretary for Justice 7 October 1960, ABVP 500, w4927/17, J 7/10/1 pt 2 ANZ

reserve, the land would be technically taken under the Public Works Act.<sup>1950</sup> This appears consistent with the official attitude to the 1939 acquisition, where it was also insisted that a taking be made even though there was an agreement regarding purchase.

Officials of the Ministry of Works also appear to have had some concerns with the conduct of negotiations and the price agreements. Presumably, they believed they could have gained a better deal, possibly under threat of compulsory taking, or they could have simply taken the land, as it was required for a public purpose and the money was to come out of a Works account. This is implied in one memo regarding the purchase by Works officials, ‘there is not much now that LPO can do. Price arrangements have all been made...’<sup>1951</sup> The Commissioner of Works also believed ‘This matter would have been more appropriately handled throughout by the Ministry of Works, but has now gone so far with Lands and Survey that it may proceed’. He also believed that if the owners would agree to the land being taken by proclamation, this ‘will be preferable to acquisition by transfer. The land will clearly be acquired for a public work, and our Act should be used’.<sup>1952</sup>

This was followed by some interdepartmental confusion over how title might actually be acquired for the prison. The district Commissioner of Works appears to have decided to ‘leave Lands and Survey to arrange for the transfer of the lands’, and to request ‘them to make the transfer to ‘HM the Queen for prison purposes’’.<sup>1953</sup> Lands and Survey appeared to believe that Maori Affairs Department officers would prepare a memorandum of transfer to the Crown for prison purposes, but title would actually be taken by issue of a proclamation under the Public Works Act.<sup>1954</sup> Works officials believed that there was no need for a memorandum of transfer. The owner resolutions, when adopted by the Board of Maori Affairs, would be enough to constitute a contract of purchase for the purpose of section 32 of the Public Works Act 1928 and would then form the basis for issue of a proclamation pursuant to section 23. Works also insisted that it would be the office to issue proclamations under the Public Works

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<sup>1950</sup> Memo from Secretary for Justice to Commissioner of Works, 23 September 1960, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1951</sup> Note 26 September 1960 on memo from Justice to Works, 23 September 1960, ABWN 889 w5021/178 25/355/1 pt 1 ANZ

<sup>1952</sup> Memo Commissioner of Works to District Commissioner of Works, Wanganui, 26 September 1960, on memo of 23 September 1960, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1953</sup> Memo from District Commissioner of Works, Wanganui, to Commissioner of Works, 11 October 1960, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1954</sup> Memo Chief Surveyor Lands and Survey to District Commissioner of Works 17 October 1960, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

Act.<sup>1955</sup> Section 32 of the Public Works Act 1928, provided for agreements for the taking or purchase of land required for public purposes. Under section 32(4) where an agreement was entered into, a taking proclamation could be issued under section 23 (providing for taking by proclamation) without following the necessary procedures required to allow for objections.

These discussions were ended prematurely, however, when officials presumably from Lands and Survey went ahead in the meantime and had the land declared ‘Crown land’ pursuant to section 265 of the Maori Affairs Act 1953.<sup>1956</sup> This Act, by section 265, provided for the Governor General to declare by proclamation that land that had been ‘duly acquired’ by or on behalf of the Crown ‘by purchase or exchange’ to be Crown land. This land was then to be proclaimed Crown land subject to the Land Act 1948. Technically it seemed, therefore, that these blocks were actually treated as a Crown purchase, not as a compulsory taking.

Works then decided that the blocks should be ‘set apart pursuant to section 25 of the Public Works Act 1928, for prison purposes’.<sup>1957</sup> Section 25 of this Act referred to ‘Crown land’ required to be set apart for a public work. This again seemed to confirm that effectively the blocks were considered purchased and already Crown land when they were ‘set apart’ for prison purposes. They were not technically ‘taken’ from Maori ownership for the prison. The 831 acres in 4A1A, 4A2 and 4A4 blocks were proclaimed ‘set apart for prison purposes’ in August 1961.<sup>1958</sup> It seems therefore, that although this may have been the intention of Works, these blocks were not even technically ‘taken by agreement’ from the Maori owners for public works purposes, as had happened over 4A5 in 1939.

Issues do remain, however, of whether there was an element of compulsion in this purchase. This appears raised by the significant pressure and involvement of officials in what was regarded as an ‘inevitable’ purchase, and the knowledge that otherwise the Ministry of Works might use compulsory provisions to take land for a public prison purpose. It does seem possible that the price paid was perhaps better than Maori could have expected if they were obliged to negotiate with another department such as Works. Nevertheless, the price paid was no more than valuation and Justice clearly felt timber value alone would more than recoup the total purchase price.

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<sup>1955</sup> Memo District Commissioner Works Wanganui to Chief Surveyor lands and Survey 19 October 1960, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1956</sup> *NZ Gazette* 29 March 1961, p 493, notice dated 23 March 1961

<sup>1957</sup> Memo District Commissioner of Works to Chief Surveyor Lands and Survey, 29 June 1961, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>1958</sup> *NZ Gazette* 1961, p 1246, notice dated 7 August 1961

There is no evidence of official appreciation of the possible impact this sale might have in reducing the remaining non-seller block originally set aside because of its special importance to Maori in the area. In addition, while Justice claimed a pressing need for the timber for the prison, there is some indication that at the time the acquisition of the blocks was simply believed to be a good idea for future possible needs while there was little in the way of immediate plans for use of the blocks. For example, a number of years after the blocks were purchased, an internal Justice minute noted that it had now been four years and it still had not been decided how the land and timber on the purchased blocks might be used, 'we should soon make up our minds what to do about it'. It was also suggested that expert advice should be sought about whether it was worth developing the land and whether it otherwise might be suitable for tree planting. Decisions were also required on the Native timber on 4A4 and 4A1 and whether further land rationalisation was required.<sup>1959</sup>

#### **10.16 The acquisition of Waimarino 4A3 for Waikune Prison, 1966**

Although Justice was unable to purchase 4A3 at the same time as the other partitions, Justice officials asked Lands and Survey officers to continue to exert pressure to acquire the remaining 4A3 partition. Prison officials also decided that a proper survey of the prison boundaries was required, as these were not clear. The timber rights for 4A3 were then held by lease by a Mr Wilson of Bulls. This lease was due to expire in August 1964, and the only access to the block was now through the other blocks the prison had acquired.<sup>1960</sup>

Although it was officially claimed that this block was also required for forestry work for prison labour, file notes suggest that in the short term this block was even more a case of simply acquiring convenient land for the prison. An internal file note suggested that if nothing was done to renew the lease, 'we may as well take it over to square off our boundaries'.<sup>1961</sup> The Secretary for Justice then contacted Lands and Survey again to see if 4A3 could be purchased.<sup>1962</sup> Once again Lands and Survey officials agreed to pressure owners to gain agreement to the sale of the block, using similar tactics to those used in the earlier blocks. In October 1964, the Commissioner of Crown Lands noted that there was opposition to selling 4A3 from one family of owners in particular, but it was hoped that by seeking out relatives

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<sup>1959</sup> Justice minute, 27 November 1963, ABVP 500 w4927/17, J 7/10/1 pt 2 ANZ

<sup>1960</sup> Superintendent Waikune Prison to Secretary for Justice, 8 June 1961 and 19 July 1961, ABVP 500 w4927/17 J 7/10/1 pt 2 ANZ

<sup>1961</sup> Justice minute 3 June 1964, ABVP 500 w4927 box17, J 7/10/1 pt 2 ANZ

<sup>1962</sup> Secretary for Justice to Lands and Survey 15 June 1964, ABVP 500 w4927 box17, J 7/10/1 pt 2 ANZ

outside the district and adding their votes to other shareholders who would sell, enough votes could be gained to outvote the opposing family.<sup>1963</sup> In February 1965, it was felt inadvisable to call a meeting until success could be assured with a majority of shares.<sup>1964</sup>

However, by April 1965, it seemed officials felt they had sufficient owners whose combined shares would be enough to agree to a sale.<sup>1965</sup> At around this time, Justice also acknowledged that negotiations with the Maori owners had been ‘protracted’.<sup>1966</sup> Justice officials noted the block was surrounded by other blocks the prison now had and decided to recommend their Minister approve the purchase of the block ‘although we have no immed[iate] plans for it’.<sup>1967</sup> Nevertheless, when seeking approval from the Minister, the Secretary for Justice noted that the milling of timber on the block ‘will provide further useful employment for inmates from Waikune’ and the block would be a ‘valuable acquisition to our land holdings in the Waikune area to provide worthwhile employment for the inmates’.<sup>1968</sup> The purchase, up to a price of £1500, was approved by J Hanan, Minister of Justice, on 14 May 1965.<sup>1969</sup>

Once again, the Ministry of Works was not impressed by the proceedings. In a memo to the Secretary for Justice, the Commissioner of Works noted that while Lands and Survey had purchased the adjoining blocks earlier, these areas were being acquired for a public work and were being charged to the Ministry of Works vote ‘and I feel should have been negotiated by this Department. However, in this instance it appears negotiations have progressed so far that it would be advisable for the Commissioner of Crown lands to complete the purchase’.<sup>1970</sup> Eventually, after a further rejection at a meeting of 19 November 1965, a majority of owners by shares, agreed to sell 4A3 for £2000 at a meeting held on 24 November 1966, at Tokaanu.<sup>1971</sup> By this time, the Crown had agreed to offer £1,941 based on a new valuation of

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<sup>1963</sup> Commissioner Crown Lands to Director General Lands and Survey 7 October 1964, ABVP 500 w4927 box 17, J 7/10/1 pt 2 ANZ

<sup>1964</sup> Commissioner of Crown Lands to Director General of Lands 16 February 1965, ABVP 500 w4927 box 17, J 7/10/1 pt 2 ANZ

<sup>1965</sup> Director General Lands to Secretary for Justice, 9 April 1965, ABVP 500 w4927 box 17, J 7/10/1 pt 2 ANZ

<sup>1966</sup> Memo Secretary for Justice to Minister of Justice 11 May 1965, ABWN 889 w5021 box 178, 25/355/1 pt 1 ANZ

<sup>1967</sup> File note 29 April 1965 on letter 9 April 1965 DG Lands to Secretary for Justice ABVP 500 w4927 box 17, J 7/10/1 pt 2 ANZ

<sup>1968</sup> Secretary for Justice to Minister of Justice, 11 May 1965, ABWN 889, w5021 box 178 25/355/1 pt 1 ANZ

<sup>1969</sup> File note, on letter 11 May 1965 Secretary for Justice to Minister, ABWN 889 w5021 box 178, 25/355/1 pt 1 ANZ

<sup>1970</sup> Commissioner of Works to Secretary for Justice, 2 June 1965, ABVP 500 w4927 box 17, J 7/10/1 pt 2 ANZ

<sup>1971</sup> Director General Lands and Survey to Secretary for Justice, 7 December 1965, ABVP 500 w4927 box 17, J 7/10/1 pt 2 ANZ

the timber on the land, so the agreed price was very close to this.<sup>1972</sup> This was confirmed by the Maori Land Court at a sitting at Wanganui on 1 February 1967.<sup>1973</sup>

The acquisition of Waimarino 4A3 appears to have been treated similarly to the partitions purchased earlier in 1961. The land was apparently declared Crown land and then declared to be Crown land 'set apart for prison purposes' under section 25 (providing for Crown land to be set aside for a public work) of the Public Works Act 1928, by a notice dated 16 January 1968.<sup>1974</sup> Once again it appears that the land was considered to be already Crown land (through purchase) before it was set aside for prison purposes. Therefore, again, it does not seem to have even been technically 'taken' from the Maori owners for the prison.

Again, however, issues remained of whether there was an element of compulsion in the purchase of 4A3, given the pressure placed on owners to sell and the likely knowledge of the owners that the land could be taken by compulsion by Works, should purchase negotiations fail. There is also no evidence of official concern with 4A3 that the Crown might have some obligation to protect this land in Maori ownership given its original creation as a non-seller block and instead consider possibly releasing some National Park lands for prison purposes. Nor is there evidence of any official acknowledgement that the land may have had special value to Maori other than for purely economic reasons. For example, the Director General of Lands and Survey noted in 1966, that it had been impressed on the owners that the Crown offer for 4A3 was more than adequate 'as the block had no useful value to the owners'.<sup>1975</sup> In addition, in this case even more than the other blocks, while officials claimed the block would be valuable and required for prison purposes, it seems that the acquisition was more to conveniently consolidate land holdings, while short term there were no immediate plans for use of the block.

Confusion also continued over the various proclamations required for the block for prison purposes. There is a file note of the actual steps required. These were first, Lands and Survey to declare the land Crown land (on purchase). Following this, Works was to declare the Crown land set aside for prison purposes under the Public Works Act (at the request of Lands and Survey). Then the last step was to have another proclamation under the Penal Institutions

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<sup>1972</sup> Memo DG Lands to Secretary for Justice, 6 December 1966, ABVP 500 w4927 box17, J 7/10/1 pt 2 ANZ

<sup>1973</sup> Director General Lands and Survey to Secretary for Justice, 16 February 1967, ABVP 500 w4927 box17, J 7/10/1 pt 2 ANZ

<sup>1974</sup> *New Zealand Gazette*, 1 February 1968, no 5 p 129, notice dated 16 January 1968

<sup>1975</sup> Memo Director General Lands and Survey to Secretary for Justice 6 December 1966, ABWN 889 w5021 box178, 25/355/1 pt 1 ANZ

Act, which would enable the land and buildings to be used as a prison (for the detention of inmates).<sup>1976</sup> Even with this guide, and possibly because a number of different departments were involved, the final step was not taken until many years later. The omission of the final step was apparently not realised until 1983, when later exchanges of land with Tongariro National Park were being made. The exchange and the earlier purchased partitions 4A1, 4A4, and 4A2 were then finally declared proclaimed for prison purposes under the Penal Institutions Act 1954, by a notice dated 7 March 1983.<sup>1977</sup>

With the acquisition of the Waimarino partitions, Waikune Prison management appears to have become more actively involved in forestry. This included the development of new sawmilling facilities, tree planting and other forestry work and test planting of trees to determine the viability of extending forestry on prison land. In 1964-5, the prison also took over the management of the Erua Forest, which the Forest Service was finding difficult to maintain because of staffing problems.<sup>1978</sup> At this time it seems the prison may have re-acquired a sawmill plant to assist with the removal and sale of timber. Later correspondence of the 1970s refers to the replacement and upgrading of an already existing sawmill plant on 4A2.<sup>1979</sup> These older sawmill buildings were located close to the western boundary of 4A2 near 4A3.<sup>1980</sup>

### **10.17 Alterations to Waikune Prison land as a result of road and rail realignments**

By the 1960s, Waikune Prison had acquired a significant landholding mainly as a result of acquisitions of former Waimarino 4 partitions. Subsequent to this there were a number of relatively small alterations in this landholding, including some alterations to previously Maori-owned Waimarino land as a result of improvements and realignments to the railway and road lines. This affected estimates of the final prison landholding, once it was decided to close the prison and declare it surplus in 1986.

Road improvements and realignments took place as the result of prison work along the length of the road running through the old Waimarino 4 partitions, and along the originally proclaimed prison land, just south of the Waimarino 4. It has already been noted that the 1939

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<sup>1976</sup> File note 10 March 1967, ABVP 500 w4927 box17, J 7/10/1 pt 2 ANZ

<sup>1977</sup> Notice 1983/32 dated 7 March 1983 under s4 Penal Institutions Act 1954 to take effect from 20 March 1983, ABVP 7404 w5218 box76, 13/7/12/1 pt 2 copy on pt 6 ANZ

<sup>1978</sup> *AJHR* 1965 H-20 annual report on prisons, p 8

<sup>1979</sup> Plans for reorganisation of sawmill, 1973, ABVP 500 w 4927 box 4, 6/16/8 pt 3 ANZ

<sup>1980</sup> Valuation Department report June 1987, ABVP 7404 w5218 box 76, 13/7/12/1 v 4 ANZ

purchase of 4A5 had also included a closed road area of just over 2 roods as a result of highway improvement while a small amount of 4A5, just over 1 rood, 27 perches, was proclaimed as part of the new road route.<sup>1981</sup>

In the 1960s, Waikune prison management also set about formalising a number of other additions and losses as a result of continuing realignments and improvements to the Main Trunk railway and road lines through what had now become prison lands, including what were previously Waimarino 4 lands. This appears to have reflected the determination of prison management by this time to more exactly ascertain the boundaries of prison land and to rationalise and consolidate holdings to better develop and use the land. However, as will be described, this rationalisation was only partially successful and informal land uses continued in some areas. The following appear to be some of the major rationalisations of title and agreements over land use.

A series of roading proclamations were made in the 1960s, declaring some land closed road and added to the prison land while some prison land was declared part of the new improved roads. In 1964, land was declared road from part 4A5 (just over 2 roods and 27 perches) and small areas were also declared road from part section 2, part section 3, part section 4 and part of the Waimarino stream bed all in block IV Manganui Survey District. At the same time, a section of part Waimarino 4A5 (just over 5 acres) and sections 2, 3 and 5 and part section 4 of Block IV were declared to be a closed road.<sup>1982</sup> This followed realignments of road running the length of what was no prison land. This was followed by a proclamation in late 1964 under s 25 of the Public Works Act 1928, which declared just over 3 acres of land in total from Waimarino 4A1A, 4A2, and 4A5 blocks, now held for prison purposes, to be taken for road purposes.<sup>1983</sup> This was made up of just over 1 acre from 4A1A, over 2 acres from 4A2 and 9.4 perches from 4A5. In 1965, an area of just over 9 acres of closed road, was declared added to closed road and other land held as Waikune Prison land.<sup>1984</sup> In 1966, closed road from 4A1A, 4A2 and 4A5 (just over 4 acres) was declared added to land held for Waikune Prison.<sup>1985</sup>

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<sup>1981</sup> *NZ Gazette*, 20 October 1938, p 2238, proclamation under Land Act 1924, dated 13 October 1938.

<sup>1982</sup> *NZ Gazette* 22 October 1964, p 1840, proclamation under Public Works Act Amendment Act 1948, s 29, 21 September 1964

<sup>1983</sup> *NZ Gazette*, 28 January 1965, p 82, proclamation dated 17 December 1964, to take effect from 1 February 1965.

<sup>1984</sup> *NZ Gazette* 11 February 1965, p 189, notice under s 29 of Public Works Amendment Act 1948, dated 30 January 1965

<sup>1985</sup> *NZ Gazette*, 1966, p 227, proclamation notice dated 2 February 1966

A major alteration to the Main Trunk railway route also caused adjustments to title for Waikune Prison lands. In 1969, Railways built a deviation of the Main Trunk railway line to ease a curve where the railway ran through what was now Waikune Prison farm and had previously been 4A2. This was known as the 'Erua Curve' easement. By the early 1970s, an adequate survey of the realigned line was completed and land was available for exchange. Proclamations of 27 September 1972, declared just over 8 acres of railway land being part of Waimarino 4A2 (originally taken from the Maori owners in 1910 for the Main Trunk railway) to now be set apart for prison purposes (for Waikune Prison).<sup>1986</sup> At the same time, just over 7 acres of Waikune Prison land, mostly from 4A2 and a small amount from the corner of 4A4 (which had been purchased for the prison from Maori owners in 1961 as described) was declared set apart for the North Island Main Trunk railway line.<sup>1987</sup>

### **10.18 Waikune Prison exchange of land with Tongariro National Park, 1960s-80s**

In the 1960s, prison authorities also sought to rationalise their landholdings with land that had been acquired by National Park, but which was used or required by the prison. In particular this involved the old southern part of 4A5 which had been purchased as access to Tongariro National Park from the Waimarino Development Company in 1935 and which now effectively separated prison activities between the main complex and the area of the new 4A5 block purchased in 1939. It also involved land to the east of 4A5 which had for some time been leased by the prison from the National Park.

In 1964, while prison authorities were attempting to acquire 4A3, a lease with Tongariro National Park also came to their attention. This lease was of 50 acres of National Park immediately to the east of the 4A5 prison farm area.<sup>1988</sup> A ten year lease at an annual rental of £12-10-0 and with a right of renewal for another ten years for this land, was due to expire on 30 June 1964. It is not clear when this renewable lease was first agreed. It is possible it was as early as 1934, when 13 acres of National Park land was re-proclaimed as Waikune Prison. In 1964, the secretary of the Tongariro National Park Board asked if the prison wanted to renew the lease, noting that the 50 acres had originally been set aside so the prison farm of 125 acres could be built up.<sup>1989</sup> Waikune Prison management immediately sought to try and purchase

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<sup>1986</sup> *NZ Gazette*, 12 October 1972, p 2278, proclamation notice dated 27 September 1972

<sup>1987</sup> *NZ Gazette*, 12 October 1972, p 2278, proclamation notice dated 27 September 1972

<sup>1988</sup> Sketch plan of 50 acre area on ABVP 500 w4927 box 17, J 7/10/1 pt 2 ANZ

<sup>1989</sup> Secretary Tongariro National Park Board to Superintendent Waikune Prison 22 May 1964, ABVP 500 w4927 box 17, J 7/10/1 pt 2, ANZ

the 50 acres involved in the lease.<sup>1990</sup> However, this was rejected by the Park Board.<sup>1991</sup> In contrast to the pressure placed on Maori owners, the prison appears to have accepted this refusal and a new ten year renewable lease agreement was signed with the Park Board at a new annual rental of £25 per year on 18 December 1964.<sup>1992</sup>

As the prison sought to consolidate its lands and expand warder housing, prison authorities noted the inconvenience of the access area to National Park just to the north of the main complex. In 1965, it was noted that the prison required permission from the Park Board to go through this strip of bush but it cut the farm off from the main complex. They generally went around and gained access to the farm from the road but it was inconvenient and it was decided to ask permission to have an access road through the bush.<sup>1993</sup>

Shortly after this, it seems that the prison expanded warder housing on to the area originally intended for the access road. However, in 1968, further consideration was given to exchanges that might suit both the prison and the Park Board. This basically proposed exchanging some of the more open Park land north of the Waimarino stream, some of which was already being grazed, to the prison. This included that part of the grazing lease north of the stream and the old part of Waimarino 4A5 that had been transferred to the Park as an accessway which was now largely built around with warder housing (around 118 acres). In return, the prison would transfer some remaining forest land (around 30 acres) previously part of 4A1A to the east of the highway, to the National Park.<sup>1994</sup> This exchange was agreed on 19 May 1969.<sup>1995</sup>

It seems that Waikune Prison began administering and using that part of the land agreed for transfer to it, almost immediately. However, the legal title exchange took some time to put into effect. In 1980 efforts were still being made to do this. It seems that it was found that under park legislation, land could not be removed from Tongariro National Park (including for the exchange) except by legislative authority and some efforts were made to correct this in the early 1980s.<sup>1996</sup> Eventually, the exchange was made as land from the Tongariro National

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<sup>1990</sup> Memo Superintendent Waikune, to Secretary for Justice, 28 May 1964, ABVP 500 w4927 box 17, J 7/10/1 pt 2 ANZ

<sup>1991</sup> Letter Park Board to Justice, 3 July 1964, ABVP 500 w4927 box 17, J 7/10/1 pt 2, ANZ

<sup>1992</sup> Park Board to Secretary for Justice, 15 September 1964, and file correspondence November-December 1964, ABVP 500 w4927 box 17, J 7/10/1 pt 2 ANZ

<sup>1993</sup> Correspondence 1965, ABVP 500 w4927 box 17, J 7/10/1 pt 2 ANZ

<sup>1994</sup> Sketch plan of proposed exchanges of land, stamped 26 November 1968, ABVP 500 w4927 box 17, J 7/10/1 pt 2 ANZ

<sup>1995</sup> Letter 17 September 1969, ABVP 7404 w5218 box 76, 13/7/12/1 v2, ANZ

<sup>1996</sup> Draft legislative provisions, ABVP 7404 w5218 box 76, 13/7/12/1 v2 ANZ

Park, being section 2, block 1, Ruapehu survey district (just over 112 acres to the east of 4A5) section 8, block IV, Manganui survey district (just over 5 acres mostly the 1935 transfer of 4A% and some of the previous lease) and section 9, block IV, Manganui survey district (just over 1 acre between the old 4A5 transfer of 1935 and the Waimarino stream). At the same time, it was considered that marginal strips along the Waimarino stream (sections 3 and 10) had to be retained out of this land to be transferred to the prison as Crown land reserved from sale under section 5 of the Land Act 1948. This referred to the process of reserving riverside strips of land on subdivision as Crown land not available for disposal.<sup>1997</sup>

In return the exchange involved just over 30 acres of 4A1A being transferred in exchange from the prison to the National Park. This was part of the eastern part of 4A1A (now known as section 7) and the old closed road area from 4A1A (now known as section 1). In 1982, what had been National Park land in section 2, block 1, Ruapehu Survey District and sections 8 and 9, block IV, Manganui Survey District (around 48 hectares with the exclusion of the river strip land) were declared Crown land set apart for prison purposes (for Waikune Prison).<sup>1998</sup> In 1982, section 1, block 1, Ruapehu Survey District (closed road) and section 7, block IV, Manganui Survey District (previously 4A1A) of around 12.345 hectares, previously prison land, was declared Crown land under section 42 of the Public Works Act 1981.<sup>1999</sup> At the time, it was considered that section 40 offer backs under the recently passed Public Works Act 1981 did not apply because both areas to be exchanged 'are at present or have previously been Crown land'.<sup>2000</sup> This, on the face of it made little sense, but it was shortly after the 1981 public works requirements (discussed in more detail in later sections) came into effect and it is possible the land was meant to be considered exempt as it was required for another public purpose, that is, for addition to either National Park or prison land. In 1983, as previously described, it was realised the exchanged land and land purchased earlier still needed to be proclaimed for prison purposes under the Penal Institutions Act 1954.<sup>2001</sup> This was achieved by notice 1983/32 under section 4 of the Penal Institutions Act 1954, effective from 20 March 1983.<sup>2002</sup>

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<sup>1997</sup> Secretary for Justice to Commissioner Crown Lands, 15 October 1982, ABVP 7404 w5218 box76, 13/7/12/1 v2 ANZ

<sup>1998</sup> *NZ Gazette*, 1982, p 2576, notice dated 23 July 1982

<sup>1999</sup> *NZ Gazette*, 1982, p 2574, notice dated 23 July 1982.

<sup>2000</sup> MWD recommendation, 9 June 1982, ABWN 889 w5021 box178, 25/355/1 pt 1 ANZ

<sup>2001</sup> Letter Secretary of Justice to Minister of Justice 1983, copy on ABVP 7404 w5218/76, 13/7/12/1 vol 6 ANZ

<sup>2002</sup> Copy of notice 1983/32 on ABVP 7404 w5218/76, 13/7/12/1 v 2

With the rationalisation of landholdings during the 1960s, Waikune Prison management also engaged in improvement and rebuilding of some of the main prison buildings now that the prison's future seemed more assured. It has not been possible in the time available to investigate the extent of this in detail. However, it is noted that major building work at this time included the erection of a new workshop block, and a new administration building, common room and library block.<sup>2003</sup>

### **10.19 Waikune Prison warder housing in Waimarino (National Park) township**

During the operation of Waikune prison, a number of areas of land were acquired or disposed for prison purposes outside the lands acquired from the Waimarino 4 block and not involving Maori land. The early acquisition of a house site in National Park township and the Horopito sub camp land taking have already been described. Following the initial acquisition of the house site at Waimarino (National Park) township, it appears that a number of house sites for prison use, mainly for warder housing, were acquired and disposed of or transferred for other government use from time to time in the township as circumstances required. For example, in 1949, a prison house in the township appears to have been transferred to Forest Service use.<sup>2004</sup> A property at 22 Miller St, National Park, was also declared no longer required and proclaimed Crown land for disposal on 16 January 1969.<sup>2005</sup> A house site on the corner of Carroll St and SH 4 in the township originally acquired for general government buildings in 1954 and used by the prison was declared Crown land for disposal in 1975.<sup>2006</sup> These transfers and disposals of house sites in the township for Waikune prison staff continued into the 1980s.<sup>2007</sup>

As previously noted, all the various acquisitions and disposals of house sites in the township related to Waikune have not been investigated in detail for this report because they do not appear to involve land acquired from Maori ownership for the prison. Nor, for the most part, do they seem to have been the subject of later claims for possible use in Treaty settlements. In some cases, in contrast to the housing that was part of the main prison site, the sites also do not appear to have been regarded as exclusively for the use of Waikune. Prison authorities also had a number of other prisons such as Hautu and Rangipo in the district for which such

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<sup>2003</sup> *NZ Gazette*, 1962, p 2019, 1386

<sup>2004</sup> ABWN 889, w5021 Box 178, 25/355/1 pt 1 ANZ

<sup>2005</sup> *NZ Gazette*, 1969 p 27, ABVP 7404 w 5218 box76 , 13/7/12/1 pt 1 ANZ

<sup>2006</sup> *NZ Gazette* 1975, p 2785, ABWN w5021 box 178 , 25/335 pt 1 ANZ

<sup>2007</sup> *NZ Gazette*, 1980, p 3757 ABVP 7404 w5218 box 76, 13/7/12/1 v 2 ANZ

housing could be used. There were apparently two house sites associated with Waikune at National Park, at the time the prison was declared surplus, although they appear to have been considered separately for disposal purposes as will be described in later sections of this chapter.

### **10.20 The operation of Waikune Prison, 1970s-80s**

It seems that during the 1970s and 1980s, Waikune Prison continued as a permanent low security prison institution, focussing increasingly on farm and forestry work and with periodic maintenance and upgrading of the prison complex including warder housing as required. For example, in 1973 it appears to have been agreed between the prison management, the Forest Service and Works that the sawmill area on 4A2 would be upgraded and a timber treatment plant added. It does not appear, however, that forestry operations on the acquired 4A blocks were ever extensive. There were some plantings of douglas fir and pine, especially on 4A2. However, officials investigating the blocks for disposal in the later 1980s, noted that 4A1A, 4A4 and 4A3, especially, only had about 25 percent of each block planted in pine and douglas fir. The remainder was bush, unchanged since acquisition.<sup>2008</sup> Instead, by now, most prison forestry operations appear to have centred on Erua Forest on lease from the Forest Service. The prison sawmill was also mostly involved in producing fence posts and battens, for which there seems to have been high demand.<sup>2009</sup> It appears that a new 534m<sup>2</sup> sawmill plant was built on what had been 4A2 block for this in the 1980s.<sup>2010</sup>

### **10.21 The decision to close Waikune Prison, 1986**

It has not been possible in the time available to fully analyse all developments surrounding the disposal of Waikune prison site. Instead, the following is a brief outline, intended to identify the major issues involved and the developments as far as these were possible to research in the time available and with information available. It is likely to still be necessary for more in depth research to take place as those parties in the claim indicate is required.

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<sup>2008</sup> Internal MWD memo 26 June 1987, ABVP 7404 w 5218 box76 13/7/12/1 v 5 ANZ

<sup>2009</sup> Correspondence 1973, ABVP 500 w4927 box 4, 6/16/8 pt 3 ANZ

<sup>2010</sup> Internal Works memo re possible exemptions for block 4A2, July, 1987, ABWN 889 w 5021 box 178, 25/355/1 pt 1 ANZ

In mid-1986, prison authorities decided to close Waikune Prison, with all inmates expected to be gone by December 1986.<sup>2011</sup> In November 1986, the Waikune prison complex assets were described as a land area of 450.1996 hectares, with either 25 or 26 warder houses (two at National Park village), a self contained sewage system, a self contained water supply system, kitchen and dining area, a sawmill, a cell block (91 single rooms) single staff accommodation for eleven, a chapel, recreation and TV rooms, ablution blocks, classroom and workshop, garages, a laundry, an administration block, a social hall with bar and landscaped grounds and recreation areas.<sup>2012</sup>

It is not entirely clear from the information available, what led to the decision to close the prison. In July 1986, in notifying the Commissioner of Lands, the Secretary for Justice explained that the decision had been made following a ministerial review of the Department of Justice.<sup>2013</sup> The Deputy Secretary of Justice later informed the Justice Minister that the prison had been declared surplus because of expected reduced numbers of prisoners as a result of recent legislation, the unsuitability of the site for upgrading to medium or maximum security and its unsuitability for remand prisoners because of location. Justice was also required to consider the revenue that might be available from underutilised assets.<sup>2014</sup> In later correspondence, the Justice Minister confirmed that the decision was made when inmate numbers were at a lower level, and it was expected that the Criminal Justice Act 1985 would further reduce the prison population, especially among those of lower security classification for which Waikune was used. Its remote location and limited facilities were also not considered suited to the developing requirements of the penal system. It was also believed that more could be achieved with prisons of modern design closer to population centres. More modern prisons were also considered more economical to maintain and operate.<sup>2015</sup>

It does seem that finance was a significant factor and the Justice Department was required to and expected to make significant revenue gains from a sale of Waikune that could be used for other purposes. This expectation seemed to be encouraged by the immediate interest

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<sup>2011</sup> Letter 23 July 1986, Secretary for Justice to Commissioner of Crown Lands ABVP 7404 w5218 box 76, 13/7/12/1 v 4 ANZ

<sup>2012</sup> Letter 4 November 1986 Secretary for Justice to King Country Regional Development Council, ABVP 7404 w5218 box 76 13/7/12/1 v 2 ANZ

<sup>2013</sup> Letter 23 July 1986, Secretary for Justice to Commissioner of Crown Lands ABVP 7404 w5218 box 76, 13/7/12/1 v 4 ANZ

<sup>2014</sup> Letter 2 October 1987, Deputy Secretary Justice to Associate Minister Justice, ABVP 7404 w5218 box 76, 13/7/12/1 v 4 ANZ

<sup>2015</sup> Letter Minister of Justice to J Bolger Leader of the Opposition, 24 March 1988, ABVP 7404 w5218/76 13/7/12/1 v 4 ANZ

expressed by a number of organisations in the complex, including those involved in outdoor education, recreation, religious activities, and various tourism ventures. For example, in July 1986, Works received a letter from Ruapehu Alpine Lifts, expressing interest in the complex buildings when they became available.<sup>2016</sup> At this period in mid-late 1986, Justice and Lands officials appear to have believed that the prison complex could be sold as a valuable commercial proposition. Justice believed the complex might provide then with the equivalent of around £2.35 million in revenue. A church group had also indicated it would be prepared to spend around £3 million for the complex.<sup>2017</sup>

It seems the decision to close the prison came as a surprise to local authorities and others of the district who had expected more notice and involvement in consideration of the future of the prison, given it had such a major economic impact on the local community. For example, in June 1983, the King Country Regional Development Council protested that it had not been advised of the prison closure and noting that staff at the prison (32) and their families made up a significant part of the National Park township economy.<sup>2018</sup> In correspondence, the Council also asked to be kept informed of any decisions over the future use of the prison complex.<sup>2019</sup> By late 1986, officials had also become aware that there was considerable interest in the complex from Whanganui Maori, not just for possible offer back of land held for public works purposes and now declared surplus, but also as part of possible remedies for Waitangi Tribunal claims and/or as part of development assistance for local communities. Justice officials were therefore aware, from a relatively early stage, of considerable local interest in the future of the prison complex and site.

However, at this stage and for some considerable time, Justice and other officials involved in the prison disposal were mainly focussed on maximising financial returns through the disposal process as rapidly as possible. This was encouraged by Government policies of the time, which required a more commercial focus for government operations generally.

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<sup>2016</sup> Letter from RAL, 10 July 1986, ABWN 889 w5021/178, 25/355 pt 1 ANZ

<sup>2017</sup> Letter 19 December 1986, Director General Lands to Minister of Lands, ABVP 7404 w4927/103, 13/7/12/1 pt 3 ANZ

<sup>2018</sup> Letter, 23 June 1986 from King Country Regional Council, ABWN 889, w5021/178, 25/355 pt 1 ANZ

<sup>2019</sup> Letter, 2 September 1986, from King Country Regional Development Council, and correspondence September-November 1986 between Council and Justice and Works, ABWN 889, w5021/178 pt 1 ANZ

## 10.22 Requirements for the disposal of surplus government land, mid-1980s.

By mid-1986, disposal of Government land held for public works purposes and declared surplus to requirements, was required to be carried out according to current Cabinet procedures and the requirements of operative legislative provisions. The Cabinet procedures governing the initial disposal of Waikune Prison had been established by Cabinet agreement at a meeting of 5 December 1983.<sup>2020</sup> The new procedures were primarily intended to 'promote the rapid disposal' of surplus land and had been prepared as a result of Cabinet concern that existing procedures were not achieving the 'swift and efficient results' required.<sup>2021</sup> They were intended to take effect immediately, and were expected to reduce disposal times for surplus land 'to a maximum of 110 days'.<sup>2022</sup>

In general, the new procedures required government agencies to declare their surplus land to the Department of Lands and Survey with a copy of this notice to the Ministry of Works and Development. The Department of Lands and Survey would be responsible for the majority of disposals, for disposal procedures and for assuming administrative responsibility for the land to be disposed of, including maintenance, outgoings and leases. In some cases, generally where requirements under the Public Works Act 1981 were involved, the Ministry of Works would be responsible for disposal instead. This was to be in cases where the land was required for another government work or essential local work under the Public Works Act 1981, where a former owner accepted an offer back under section 40 of the Public Works Act 1981, where construction of a government work had created a severance that could only be sold to an adjacent freehold owner and where the land was required for compensation purposes under the Public Works Act 1981 where the possible recipient had expressed written interest in this option.<sup>2023</sup>

The existing process of circularising government departments and local authorities advising them of surplus land was to cease and instead a register of interest would be relied on by the departments involved in disposal to alert them to such agency requirements. The Ministry of Works on receiving notice of surplus land was to examine the implications of the offer back provision of the 1981 Act (section 40) and advise the Department of Lands and Survey. Works was to have responsibility for any disposals required under the 1981 Act. Lands and

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<sup>2020</sup> Cabinet Office Circular, CO(83)17, 5 December 1983, copy on ABVP 7404 w5218/16, 13/7/12/1 v 2 ANZ

<sup>2021</sup> Cabinet Office Circular, CO(83)17, 5 December 1983

<sup>2022</sup> Cabinet Office Circular, CO(83)17, 5 December 1983

<sup>2023</sup> Cabinet Office Circular, CO(83)17, 5 December 1983

Survey would retain administrative responsibility for the land, while Works completed any necessary action under the 1981 Act. The Department of Lands and Survey was also to act on an agency basis to the government agency disposing of the land, charging that agency a commission of two percent of the sale price and any costs incurred in administering the property until its disposal.<sup>2024</sup>

In applying public works requirements to government land for disposal, the Ministry of Works was required to take into account the then relatively new provisions of the Public Works Act 1981. This Act has been analysed in more detail in other reports.<sup>2025</sup> Therefore, only a brief outline (as relevant to issues concerning Waikune Prison) is provided here.

The 1981 Act contained some important policy changes from the public works legislation that had applied previously. For example, in response to public concern, the 1981 Act contained the concept of significantly restricting the extent to which land could be compulsorily acquired to only land required for an ‘essential work’ (section 22) as defined in section 2 of the Act. This concept would later be removed as largely unworkable, as it was argued that the definition of an ‘essential work’ was largely arbitrary and could endlessly be expanded as had previously happened with the definition of ‘public work’, making the intended restriction meaningless. It was removed with the Public Works Amendment Act (no 2)1987.<sup>2026</sup> Nevertheless, the concept of an ‘essential work’ remained in 1986, when the Waikune site was first declared surplus.

The 1981 Act also reintroduced, in amended form, an old principle of offer back of land which had been acquired for a public work and declared surplus, at first right of purchase to the original owners or their successors or to adjacent landowners. This offer back principle had been originally introduced into New Zealand in early public works legislation from earlier English principles and had generally provided for a first right of offer back to the owner of land the acquisition had been made from or adjoining landowners.<sup>2027</sup> This principle had been weakened in a number of cases, so that land required for education purposes, for example, did not have to be offered back from 1928 and from 1945 land required for housing subdivision

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<sup>2024</sup> Cabinet Office Circular, CO(83)17, 5 December 1983

<sup>2025</sup> For example, Davies, Russell, ‘History of Public Works Acts in New Zealand, including Compensation and Offer-back Provisions’, Land Information New Zealand, 2000; Salmond, P, *The Compulsory Acquisition of Land in New Zealand*, Wellington, 1982; Marr C, *Public Works Takings of Maori Land in New Zealand, 1840-1981*, Waitangi Tribunal Rangahaua Whanui series, 1997.

<sup>2026</sup> Davies, pp 11-12

<sup>2027</sup> Marr, *Public Works Takings of Maori Land*, p 145

was also excluded from offer back requirements.<sup>2028</sup> From 1928, the Crown could also declare surplus land Crown land under various Land Acts and then use it for various other purposes, and a 1948 amendment allowed land taken for a public work to be used for secondary purposes other than that for which it was originally taken. A 1952 amendment also enabled local authorities to change the use of land from the purpose for which it was originally taken. In 1954, the principle of offer back was completely repealed and new provisions enabled the authority to sell land with public notice and notice to adjacent landowners but without any greater right of first re-repurchase.<sup>2029</sup> The Crown could also continue to decide to have the surplus land declared Crown land for disposal for other public purposes, including to local authorities without having to sell it publicly.

During the 1970s, public concern resulted in the re-consideration of offer backs of surplus land acquired for public works to the original owners, their successors or adjacent owners. The two main forces behind this were the growing Maori protests in the 1970s about the loss of Maori land, including for public works purposes, and the difficulty of having such land returned to Maori when it was no longer required, culminating in the hikoi led by Whina Cooper and her subsequent involvement in a large petition to Parliament concerning the loss of Maori land. This petition was presented to Parliament in June 1976 and was referred to the Maori Affairs select committee for consideration. There was also considerable concern from farmers and their organisation Federated Farmers by the 1970s, about the compulsory acquisition of land for public purposes and the return of surplus land originally acquired for such a purpose. The National Government pledged no more compulsory land takings for public purposes in its 1978 election manifesto.<sup>2030</sup>

There was also considerable general community concern regarding the ‘fairness’ of offering surplus land to original owners or successors. Davies notes a number of general court cases that highlighted the ‘moral’ inequity of taking authorities acquiring land, holding on to it for a number of years without using it for the original purpose and then acquiring profit from speculation with it as the opportunity arose.<sup>2031</sup> There also seemed to be a similar trend overseas, with a number of commentators and officials referring to the Crichel Down case in

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<sup>2028</sup> Marr, *Public Works Takings of Maori Land*, p 145

<sup>2029</sup> Marr, *Public Works Takings of Maori Land*, p 146, PW Amendment Act 1954 section 4(1)

<sup>2030</sup> Davies, p 32

<sup>2031</sup> Davies p 52

Britain, in particular, where land taken during war years was sold with little regard for the wishes of former owners.<sup>2032</sup>

All these pressures led to the Cabinet on 29 May 1978, (CM 78/20/29) inviting the Minister of Justice to establish a committee of officials to report on issues involved in the question of whether land acquired for the Crown for a particular purpose and no longer required, should be offered on a reasonable basis to the original owners or their representatives.<sup>2033</sup> The officials committee produced its report by 1980. By 1981, the Department of Lands and Survey was advising its offices of the policy adopted by Government. This included that all land acquired by the Government or Local Authorities 'except where there was no element of compulsion' should be offered back when it was no longer required.<sup>2034</sup> The disposing body was to have an overriding discretion to consider the 'equity of the situation' and the circumstances of the original acquisition. Current market value was also to be used as the basis for establishing a sale price, 'except in exceptional and special circumstances'. This appears to have been the intention behind the insertion of offer back provisions into the Public Works Act 1981.

These provisions eventually became sections 40-42 of the Public Works Act 1981, amended within a short time by the Public Works Amendment Act 1982. Section 40 (1) provided that 'where land held under this or any other Act or in any manner for a public work' was

- (a) no longer required for that public work; and
- (b) not required for any essential work; and
- (c) not required for any exchange under section 105 of the 1981 Act

The Commissioner of Works (later Chief Executive of relevant authority, originally Lands and later Linz) or local authority was to endeavour to sell the land in accordance with section 40 (2), if it was applicable to the land.

Section 40 (2) originally provided that the Commissioner (Chief Executive) or local authority was to offer to sell the land by private contract to the person from whom the land was

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<sup>2032</sup> Davies, pp 52-53 and ABWN 6095 w5021, 13/269/3 pt 2 ANZ

<sup>2033</sup> Officials Committee report on the Disposal of Government and Local Authority Land, ABWN 6095 w5021, 13/269/3 pt 2 ANZ

<sup>2034</sup> Lands and Survey administration circular 1981/10, 13 July 1981, ABWN 6095, w5021, 13/269/3 pt 3 ANZ

acquired, or to the successor of that person at a price fixed by a registered valuer or if agreed at a price determined by the land valuation tribunal, *unless* he or she considered it would be ‘impractical, unreasonable or unfair’ to do so. A 1982 amendment recognised that the word ‘impractical’ should be replaced with ‘impracticable’ (that is not capable of being put into practice) and remedied this. The same amendment also added a further reason for not applying section 40 where there had been ‘a significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired or is held’. The 1982 amendment also enabled the offer to be made at the current market value determined by a registered valuer *or* if the Commissioner of Works (Chief Executive) or local authority considered it reasonable, at a lesser price. If there was no agreement over the price it could be determined by the Land Valuation Tribunal.

Section 40 (3) implicitly acknowledged that the offer back was supposed to apply to those owners who would not have sold willingly. It was accepted that an ‘element’ or ‘shadow’ of compulsion could exist not just for land taken under compulsory provisions but also for land purchased by agreement under public works provisions or even acquired by other means such as ordinary purchase. For example, when it was known that the land was for a public work and otherwise compulsory provisions were available. However, by separating out compulsory provisions to only ‘essential works’ in 1981 it was held that all other acquisitions from this time must therefore have been made without any threat of compulsion. Therefore, the effect of subsection (3) and its amendment in 1987 when the concept of ‘essential work’ was removed, was to apply section 40 to almost all land acquired for a public work *except* for land not an essential work acquired from when the 1981 Act came into force and until the 1987 amendment removed the concept of ‘essential work’.

Section 40 (4) provided that when the authority believed on reasonable grounds that the size shape or situation of the land meant it could not be sold to anyone but the adjacent owner the land could be sold to that owner at a negotiated price. Where it applied, this subsection overrode all other section 40 subsections.

Section 40 (5) defined the term successor as the person who would have been entitled to the land under the will or intestacy of that person, had he owned the land at the date of his death and where part of a person’s land was acquired or taken, includes the successor in title of that person.

There were a number of minor amendments around this time, such as the Commissioner of Works being replaced by the Chief Executive of the Lands Department, the department of Survey and Land Information and then Land Information New Zealand, as the relevant agencies were restructured.

Section 41 of the 1981 Act referred specifically to offer back of land that at the time of acquisition had been Maori land or general land owned by Maori. This dealt mainly with the procedure available for disposal to Maori owners. Section 41 originally provided that ‘notwithstanding anything in sections 40 and 42 of the Act where any land to which section 40(2) applies’ immediately before its taking or acquisition was Maori freehold land or general land owned by Maori and beneficially owned by more than 4 persons and not vested in any trustee(s) then the authority could dispose of the land either through section 40 of the Public Works Act 1981 or apply to the Maori Land Court for an order under section 436 of the Maori Affairs Act 1953. Davies has noted that this meant the right to use the Maori Affairs Act alternative was restricted to land beneficially owned by more than four persons before its acquisition. Otherwise, there was a freedom to choose whichever course was more appropriate.<sup>2035</sup> Section 436 already enabled the authority to set a price for the land or leave it to Court discretion. The 1982 amendment to section 40 allowing land to be sold at less than market price further aided this discretion. Later, when the Te Ture Whenua Maori Act 1993, was passed, this replaced the Maori Affairs Act 1953, in references in section 41 with disposal under section 134 of the Te Ture Whenua Act.

Section 42 of the Public Works Act 1981 generally provided for the means of sale of land not required for a public work, where an offer back was declined within a reasonable period or land was no longer required for a public work, or the offer back provisions did not apply. The Minister was to cause such land to be gazetted Crown land subject to the Land Act 1948 and the land could then be disposed of and administered under that Act. This section was also subject to later amendments, although the most significant of these for the prison case, allowing a solatium payment for loss of opportunity to purchase following a return to Maori as a result of a Treaty of Waitangi settlement was not made until 1996 and therefore was not relevant to early attempts at disposal.

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<sup>2035</sup> Davies, p 61

The Waikune Prison disposal also began at a time of major Government restructuring, including the creation of State Owned Enterprises. These were intended to be separate legal entities registered under the Companies Act 1955. They were identified as having commercial functions and were required to function as successful businesses and to obtain the best commercial return on any surplus assets. Section 24 (4) of the State Owned Enterprises Act 1986 provided that sections 40-42 did not apply to the transfer of land to a state enterprise but continued the application of section 40-41 after this. Other legislation for similar commercial entities being created from local authorities led to similar legislation enabling sections 40-42 of the Public Works Act to be bypassed when land was transferred to them, for example, the Port Companies Act, 1988. Similar amendments were also passed for Crown research agencies in the Crown Research Institutes Act 1992.

Maori concern about the possible loss of land in this way for settlements and offer backs resulted in the Treaty of Waitangi (State Enterprises Act) 1988 where land which was to be returned to Maori under section 8A of the Treaty of Waitangi Act 1975 or for land returned to Maori ownership by Act of Parliament, which was previously held for a public work would not be subject to sections 40 to 41. A solatium payment was possible for those losing rights in these instances. This was still a very limited remedy for cases where public works land was also subject to Maori claim. Maori concern that Government policies emphasising commercial priorities might strike across rights to regain land either through claims or the public works offer back process continued to be an important background to early attempts to dispose of Waikune Prison land.

It can be seen from this, that when Waikune Prison was declared surplus, there was a right of offer back to former owners or their successors of land held for a public work. However, this right was limited and subject to certain exceptions, while the authority responsible for deciding whether an offer back could be made retained a considerable amount of discretionary power over applying terms such as 'reasonable', 'fair' or 'significant change'. With the relatively new introduction of the provisions, there was also considerable room for uncertainty over the interpretation of many key words and phrases in the provisions and how they might be applied. As Davies has noted, 'sections 40 and 41 of the Public Works Act 1981 have proven to be a source of continuous litigation'.<sup>2036</sup>

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<sup>2036</sup> Davies, p 68

There were a number of exceptions to offer back requirements provided in legislation by 1986. These were:

- when the land was required for another public purpose for which land could be taken, section 40(1)(b);
- where the land was required for exchange for other land taken for a public work in particular circumstances, section 40(1)(c);
- where the designated authority considered it 'impracticable, unreasonable or unfair' to offer back the land, section 40(2)(a);
- where there had been a 'significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired or is held', section 40(2)(b);
- where the designated authority believed on 'reasonable grounds' because of the 'size, shape, or situation' of the land, it could only be sold to an adjacent landowner. The authority could then sell that land to the adjacent owner at a negotiated price, section 40(4).

There was also room for uncertainty in the interpretation of some of these provisions. As noted previously, the presumption of offer back seems to have originally been based on an assumption of compulsion, including even an 'element' or 'shadow' of compulsion in an apparently agreed purchase. This was made clear in Cabinet Works Committee documents leading up to the passing of the new legislation where, for example, minutes of the Committee of December 1980, agreed that all land acquired by Government or Local Authorities should be offered back to the original owners when it was no longer required for the purpose for which it was originally acquired or for any other purpose for which compulsory power could be used 'where there was no element of compulsion'.<sup>2037</sup> This was also referred to by the Government Member, Schultz, in reporting the Bill back from select committee consideration in 1981. Commenting on the drafting and select committee consideration of the Bill, Schultz explained that the Bill also provided that surplus land would be offered for repurchase 'if its initial purchase was made under the threat of or by compulsory acquisition'.<sup>2038</sup> WF Young in

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<sup>2037</sup> Cabinet Works Committee minutes, 17 December 1980, ABWN 6095 w5021 b 389, 13/269/3 pt 2 ANZ

<sup>2038</sup> *NZPD* 1981 vol 438, p 1478

speaking to the introduced Bill also explained the National Government focus on the Bill as protecting the rights of the individual against the State and local bodies, although he also vaguely referred to it granting ‘extra protection to our Maori friends’.<sup>2039</sup> The member Townshend also confirmed the offer back provisions were intended to be in keeping with Government policy on the rights of the property owner and were intended to apply to ‘any land that was compulsorily acquired before the new Act comes into force’.<sup>2040</sup>

During debate on the second reading of the Bill, W Young referred to the significant changes made to the Bill since its introduction and as part of this, noted the rewriting of the provisions concerning offer back of surplus land. He claimed these provisions would ‘now give effect to the general principle that when land has been acquired by the Government or by a local authority for a public work, and subsequently ceases to be required for a public work in respect of which there is a power of compulsory acquisition, the land should be offered back to the original owner or his representative, except in circumstances where there was no element of compulsion at the time the land was originally acquired’.<sup>2041</sup> Section 40(3) by exempting land clearly not taken by compulsion also tended to confirm this.

However, the actual wording of section 40 as it was passed, simply referred to land held or acquired in any manner for a public work that was no longer required, not on any presumption of any degree of compulsion. It may have been felt that this might be addressed in the right of the authority to consider what was ‘unreasonable or unfair’ and the Ministry of Works appears to have initially taken this general approach, but a later case, Bowler Investments Ltd v Attorney General found that each case had to be looked at on its merits and it could not be assumed that section 40 only applied where there was compulsion with regard to acquisition for a public work.<sup>2042</sup>

The terms ‘impracticable, unreasonable or unfair’ were of course open to interpretation not only as to exactly what they meant, but also over to whom they were intended to apply to, the agency holding the surplus land, the potential offeree, or the public generally. There was also some uncertainty about what constituted ‘significant change’ in the character of the land for the public purpose. The acquisition of land for some kind of public ‘work’ almost always signified some change to the original state of the land to carry out the work. ‘Land’ was also

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<sup>2039</sup> *NZPD* 1981 vol 438 pp 1483-1484

<sup>2040</sup> *NZPD* 1981 vol 438 p 1485

<sup>2041</sup> *NZPD* 1981 vol 440, p 3615

<sup>2042</sup> Unreported judgement of Tipping J, 9 November 1987, CP 320.86, Christchurch registry; Davies p 68

generally considered to include trees and buildings. However, the way ‘significant’ change was interpreted could potentially severely restrict the application of offer back. Even the definition of ‘successor’ caused some uncertainty. It was at first interpreted to mean the most recent successor from the original owner. However, in the 1990s, a new interpretation noted that successor in the section might only refer to the person who would have been entitled to the land if he had owned it at the date of his death.<sup>2043</sup>

There was also some uncertainty over when the former owners had to be considered. It appears to have initially been assumed, for example, that if the land was already acquired by the Crown for some time before it was set aside for a public work, then the provisions might not apply. In the case of Waikune Prison, for example, much of the complex was originally located on what had been Waimarino 1. This had already been awarded to the Crown as a claimed purchase in 1887, many years before the land was set first set aside for prison purposes in 1921. However, the wording of section 40 simply stated offer back potentially applied to ‘any land held under this or any other Act’ or in any other manner for any public work which was no longer required’. It was later acknowledged that this therefore did not necessarily preclude the original owners of Waimarino 1. It may have been expected that again, this kind of situation might be considered when it came to application of what was considered ‘reasonable’ or ‘impracticable’ but this also left considerable room for interpretation.

By 1986, therefore, authorities were faced with what was then a fairly new set of requirements when considering the disposal of surplus government land. It does not seem to have been fully appreciated at the time that these requirements might have the potential to involve quite complicated investigations in some cases, or possibly it was believed that in these cases exceptions such as ‘unreasonable’ might apply. The applications of terms such as ‘unfair’ or ‘significant’ had also not been significantly tested by this time.

With these limitations and uncertainties in mind, it remains to be seen how the responsible authorities attempted to address the disposal of Waikune Prison. It has turned out to be a lengthy and complicated affair, perhaps best outlined in a series of stages.

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<sup>2043</sup> Davies p 60

### 10.23 Initial attempts to dispose of Waikune Prison, 1986-87

By August 1986, in accordance with the procedures and requirements in place at the time, Justice had notified the Department of Lands and Survey and the Ministry of Works that Waikune Prison had become surplus to requirements.<sup>2044</sup> The Commissioner of Crown Lands confirmed having taken over administrative responsibility for Waikune Prison land and assets as the agent of Justice from 4pm, Friday 28 November 1986.<sup>2045</sup> The Ministry of Works and Development also became responsible for applying the relevant sections of the Public Works Act 1981 and investigating whether offer back provisions would apply to any part of the closed prison site. (see map 10 of this report)

The initial confidence of Justice and Lands that the complex could be sold for a good price seems clear from initial reactions to early proposals for the site, including Maori interest. For example, in late 1986, officials noted that an application for the use of the complex as a whare wananga was likely, but also noted that it was unclear whether those behind it had the \$3 million likely to be required.<sup>2046</sup> The Department of Maori Affairs was involved in helping to coordinate preparation of the proposal to develop a wananga on the site, and in early 1987, submitted a proposal to Cabinet seeking the transfer of the Waikune Prison complex to the Department of Maori Affairs for use by Whanganui tribes.<sup>2047</sup>

This submission proposed a transfer of the Waikune prison complex from the Land Corporation to the Department of Maori Affairs, effective from 1 November 1987. The proposal noted that the Whanganui Whare Wananga Trust had for some time been seeking a base for the establishment of a school of indigenous material culture. The Board of Maori Affairs had commissioned a study of possible uses for the prison complex and aimed to incorporate the whare wananga in its proposal, while also offering to maximise the benefits of the complex by offering a multi purpose training centre for all New Zealanders. This was also expected to create opportunities for Maori, for example, in management, catering and servicing of the complex and for forestry and farming.

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<sup>2044</sup> For example, Letter 23 July 1986, Secretary for Justice to Commissioner of Crown Lands ABVP 7404 w5218 box 76, 13/7/12/1 v 4 ANZ

<sup>2045</sup> Letter 4 November 1986, Commissioner Crown lands to Secretary for Justice, ABVP 7404 w5218 box 76 , 13/7/12/1 v2 ANZ

<sup>2046</sup> Letter 19 December 1986, Director General Lands to Minister of Lands, ABVP 7404 w4927 box103, 13/7/12/1 pt 3 ANZ

<sup>2047</sup> Letter 3 April 1987, Deputy Secretary Maori Affairs to Secretary for Justice, ABVP 7404 w5218 box 76, 13/7/12/1 v 5 ANZ

Once the complex was transferred to Maori Affairs, the proposal anticipated the establishment of a management committee with representatives from members of the Board of Maori Affairs, representatives of Whanganui iwi and Maori Affairs officials. It was also anticipated that a Conservation Department representative might be included at a later date. It was also intended that funding of the complex would eventually require no ongoing government funding. Nevertheless, in the short term, the Justice Department would require reimbursement of the \$2.35 million compensatory savings it was expecting, plus reimbursement of costs incurred by Land Corporation for the disposal, already estimated, by early 1987, at some \$150,000. The disposal costs, plus costs of refurbishing the complex and the replacement of removed equipment would require an additional \$750,000.<sup>2048</sup> It is clear that the complex buildings were considered an important part of this proposal. It also acknowledged the need to obtain compensatory funding to reimburse Justice and for costs in administering the disposal.

When notified of this proposal, the Secretary for Justice replied that, while he supported the Maori Affairs Department aims to provide *whare wananga* to preserve the cultural heritage of *tangata whenua*, his first concern was to ensure that the Justice vote was reimbursed ‘at a ‘market’ value for the prison assets’ so that he was not only able to ‘meet my revenue targets but also to receive future capital provision for other fixed assets to the same value’ (in accordance with Treasury circular 1986/15). In particular, Justice was concerned that the Maori Affairs Department had estimated the value of the prison complex at \$2.35 million which was only the Justice estimate of revenue to be gained from the disposal of the prison complex itself. Justice expected the adjoining forest, which was intended to be sold separately, to be conservatively worth at least another \$500,000.<sup>2049</sup> It seems that at this time, Justice was convinced that it could obtain considerably more than just the valuation price of the prison complex, especially if it was sold as a going concern.

In June 1987, Justice noted that the Cabinet Policy Committee had declined the Maori Affairs proposal regarding the transfer of the prison complex. The Deputy Secretary for Justice noted to Landcorp that he was ‘pleased’ to receive this advice.<sup>2050</sup> It is not clear from file records exactly why the Deputy Secretary welcomed the rejection of the proposal, but it seems likely

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<sup>2048</sup> Memo to Cabinet from Minister of Maori Affairs and Lands, April 1987, ABVP 7404 w 4927 box 103 13/7/12/1 pt 3 ANZ

<sup>2049</sup> Letter 28 April 1987 Secretary of Justice to Secretary of Department of Maori Affairs, ABVP 7404 w5218 box 76, 13/7/12/1 v5 ANZ

<sup>2050</sup> Letter 29 June 1987, Deputy Secretary Justice to Landcorp, ABVP 7404 w4927 box 103, 13/7/12/1 pt 3 ANZ

that at this stage Justice was still confident that the complex could be sold for a good commercial return, whereas the proposed transfer would be made at no more than valuation. This belief, encouraged by Government policies to make the best possible return on assets as rapidly as possible, also appears to have influenced initial disposal efforts in terms of offer back requirements.

It seems clear from the file record that in considering offer back requirements, the initial focus of Works officials was to try and apply the exemptions to the offer back provisions as extensively over the site as possible. It seems to have been considered, that if as much of the land as possible was found to immediately 'qualify' for exemptions, then further detailed investigations concerning the circumstances of acquisition would not be required and the matter would be completed in the quickest possible manner. The initial investigations, therefore, appear to have been conducted only so far as seemed absolutely necessary to establish whether as much of the land as possible would qualify for exemptions.

It seems that initial effort was also focussed on the site of the main prison complex so it could be disposed of as rapidly as possible. Officials seemed confident a section 40 'clearance' could be obtained for this area. The adjoining prison areas used for farming or plantation purposes did not appear to be quite so straightforward and it was thought this land might need to be offered back to the former Maori owners.<sup>2051</sup>

This information was based on early investigations by Works officials. In October 1986, Works did acknowledge that investigations were proving more complicated than originally anticipated. Nevertheless, officials indicated that an exemption was likely for prison land east of the main highway formerly owned by the Waimarino Development Company. The assumption seems to have been at this stage that this included all prison land east of the highway including the main buildings. Investigations were continuing for the area west of the highway and it was thought likely some of this might need to be offered back to the former Maori owners. Investigations were also continuing into areas of prison leasehold land and two prison staff houses in the National Park township.<sup>2052</sup>

In December 1986, after an initial investigation, officials recommended section 40 exemptions for some of the prison land. This included land that was previously Waimarino

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<sup>2051</sup> Letter 19 December 1986, Director General Lands to Minister of Lands, ABVP 7404 w4927 box 103 13/7/12/1 pt 3 ANZ

<sup>2052</sup> Letter 22 October 1986, Works to Justice, ABVP 7404 w5218 box 76, 13/7/12/1 v 5 ANZ

4A5 [acquired in 1939]; section 2 block 1 Ruapehu SD and sections 8 and 9 block IV Manganui SD [acquired through National Park exchange 1982]; and part Waimarino 4A2 block [acquired from Maori owners 1961].<sup>2053</sup> (see map 10 of this report)

The reason given for the recommended section 40 exemption for 4A5, was on the grounds of ‘significant change’ in the character of the land since the date of acquisition. It was claimed that 4A5 contained ‘significant improvements’ as it contained much of the prison complex of the prison complex, being the cell blocks, administration buildings, chapel, laundry, chapel, etc.<sup>2054</sup> This was, of course, incorrect as was later admitted by Works. As already described, most of the prison complex was not in fact located on 4A5, but just to the south on land that had been part of Waimarino 1, originally awarded to the Crown as a result of claimed purchase in 1887. This land had subsequently been proclaimed for prison purposes in 1921 and again in 1934. At the time it was set apart for a prison it had been Crown land. As already described, 4A5 had been purchased from the Waimarino Development Company for farm use and did not contain the majority of prison buildings. It contained some farm buildings and the southernmost part had some staff housing from expansion in the 1950s, but most housing still seems to have been south of 4A5.

The recommendation also claimed that sections 2, 8 and 9 had been set apart for prison purposes pursuant to section 42 of the 1981 Act and ‘therefore must have been given section 40 consideration’. However, although the reasoning at the time was not quite clear, it seems that offer back was not applied then as the land involved in the exchange had been required for another government purpose (National Park or prison) and no section 40 consideration had therefore been required. However, the situation was different now as the part of the exchange involving prison land was no longer required. Presumably, therefore, section 40 consideration was now required. This land had been National Park land when it was acquired for the prison and previous to that had become Crown land when it was awarded as Waimarino 1.

Part 4A2 was also recommended exempt from offer back on the grounds of ‘significant change’ in the character of the land since acquisition, because of the sewage treatment plant. Again, Works later had to acknowledge that the sewage plant was not actually located on

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<sup>2053</sup> Memo from Works to Justice December 1986, ABVP 7404, w5218 box 76, 13/7/12/1 v 5 ANZ

<sup>2054</sup> Memo from Works to Justice December 1986, ABVP 7404, w5218 box 76, 13/7/12/1 v 5 ANZ

4A2.<sup>2055</sup> It was also stated that numerous other pieces of prison land were still under investigation and might need to be offered back to the former Maori owners.

There is no doubt that there was a complicated history of land acquisition for Waikune and officials were under considerable pressure to meet Cabinet expectations of swift disposals. Nevertheless, the standard of initial investigation did not bode well for satisfactory application of section 40 requirements. With the main focus simply being to try and ‘clear’ as much land as possible by applying exceptions, the focus was on finding evidence that would enable an exception to offer backs. If exemptions could be obtained, then it seemed this was regarded as obviating the necessity for any further investigation.

It appears that the exemption from section 40 offer back requirements for 4A5 at least was officially approved in January 1987, on the basis of ‘significant change’ although this was based on inaccurate information, as noted. Further to this an exemption for 4A2 was approved on 8 July 1987, on the grounds of ‘significant change’ because of ‘improvements’ made by the erection of a sawmill plant on the site and a plantation of pine and douglas fir on the block.<sup>2056</sup> By this time, it seems to have been assumed that these exemptions covered all the land east of the highway, including the main prison buildings (although this was incorrect) and the 4A2 block west of the highway, which was the block closest to the main prison complex and had most improvements on that side. In June 1987, while Works property management officers believed that most of the land to the east of the state highway had received a section 40 clearance and could now be declared Crown land, they believed that most of the property west of the highway, what had been Waimarino 4A1A, 4A3 and pt 4A4 blocks, purchased and set apart for prison purposes in the 1960s, did not ‘qualify’ for a section 40 exemption. This land in 4A1A, 4A4 and 4A3, was described as generally flat to undulating land with about 25% of each block planted in pine and douglas fir and the remainder bush, unchanged since acquisition. Works officials believed these areas should therefore be offered for sale at current market value to former owners or successors pursuant to section 41(e) of the Public Works Act 1981 (regarding former Maori owners).<sup>2057</sup>

At this time, Works officials seemed to be focussed only on applying the ‘significant change’ exemption to the land. This was presumably considered the most ‘objective’ of the criteria

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<sup>2055</sup> Memo from Works to Justice, 1 December 1986, ABVP 7404, w5218/76, 13/7/12/1 v 5 ANZ

<sup>2056</sup> Recommendation re 4A2 block, internal MWD memo approved 8.7.87, ABWN 889 w5021/178 25/355/1 pt 1 ANZ

<sup>2057</sup> Internal MWD memo 26 June 1987, ABVP 7404 w 5218 box 76 13/7/12/1 v 5 ANZ

available and therefore least open to challenge. No record was found in research for this report of any in depth consideration at this stage of the circumstances of acquisition and whether this might affect any application of exceptions. Crown Counsel Mr C B Littlewood was later sharply critical of the reports made in conjunction with these recommendations for exemptions in a legal opinion of 16 December 1988, describing one in particular as ‘cursory and insubstantial’.<sup>2058</sup> Nevertheless, it seems likely that the known emphasis on rapid disposal and the focus on what could be most easily and rapidly ‘cleared’ of offer back requirements is likely to have encouraged this approach.

Another approval for a section 40 exemption of that part of the land that comprised the original proclamations of 1921 and 1934 (and actually contained most of the prison complex) was approved in January 1988. These were part 2, section 2, block IV Manganui Survey District; section 5, block IV, Manganui Survey District and sections 14 and 15 block IV Manganui Survey District. It was now known (by 1988) that this land had originally been Crown land awarded as Waimarino 1 as a result of purchase in 1887. However, this acquisition was also only investigated in a very cursory manner, with the assumption that since it seemed there were some non-sellers, then the original Waimarino 1 purchase could not have been by compulsion. It was noted that there were substantial improvements on the land ‘sufficient to justify an exemption on the grounds of significant change’ However, in view of the ‘original acquisition history’ it was recommended that an exemption be approved on grounds of unreasonableness.<sup>2059</sup> This was not explained but possibly it was an attempt to prevent a challenge to the exemption based on a claim that the original purchase of the Waimarino 1 block was a willing agreement with no element of compulsion. Notes on this report indicate that it was now understood that the main prison complex was located on this land and the original recommendation regarding 4A5 was based on incorrect information although no mention was made of possibly correcting this. The notes also indicate the possibility of an injunction against the sale of the property. It was nevertheless decided that a recommendation for a section 40 exemption on the ground of significant change in character was more appropriate and this was approved on 27 January 1988.<sup>2060</sup> (see map 10 of this report)

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<sup>2058</sup> Opinion of Crown Counsel Littlewood 16 December 1988, ABWN 889 w5021 box 178 25/355 pt 1 ANZ

<sup>2059</sup> Internal MWD telex 3 December 1987 ABWN 889 w5021 box 178 25/355 pt 1 ANZ

<sup>2060</sup> Notes on telex 3 December 1987, ABWN 889 w5021/178 25/355 pt 1 ANZ

This meant, that by early 1988, approvals for exemptions had been obtained from requirements to offer back the original site of the prison complex (previously Crown land purchased as Waimarino 1); 4A5 (previously Waimarino Development Company land) erroneously described as containing most of the prison complex, the National Park exchange (previously Crown land as Waimarino 1) and 4A2 previously land purchased from Maori and approved exempt on the grounds of 'significant change' because of the sawmill and tree planting. It had also been decided that land previously 4A1A, 4A4 and 4A3 did not 'qualify' for exemption and would need to be offered back to the former Maori owners.

Following these approvals, a series of gazette notices were issued, declaring the land approved exempt from offer back to be Crown land under the Land Act 1948. By notice dated 21 January 1988, the land in section 2, block 1, Ruapehu Survey District and sections 8 and 9, block IV, Manganui Survey District; the closed road in 4A5 and 4A5 and 4A2 blocks were all declared Crown land subject to the Land Act 1948, pursuant to section 42 of the Public Works Act 1981.<sup>2061</sup> This was the National Park exchange land, the 4A5 block and closed road acquired from the Waimarino Development Company in 1939 and the 4A2 block originally acquired by purchase in the 1960s. A little while later, in June 1988, another notice pursuant to section 42 of the Public Works Act 1981, declared the land in sections 5 (5.2609 ha) 14 (2.1752) and 15 (1.6137) block IV, Manganui Survey District, Crown land subject to the Land Act 1948.<sup>2062</sup> This land had originally been proclaimed prison in 1921 along with added closed roads, and was located south of Waimarino 4 where most of the main prison complex was located. A similar notice of August 1988, declared section 1, SO 35456, formerly part section 2, block IV, Manganui Survey District subject to the Land Act 1948.<sup>2063</sup> This was a narrow triangular piece of land of 8306 square metres, located just south of Waimarino 4 and originally located between the old road and the railway line just west of section 5, the site of the main prison complex. Shortly afterwards, section 2, SO 35476, was also declared Crown land under the Land Act 1948, pursuant to section 42.<sup>2064</sup> This was an area originally from 4A5 of 7539 square metres, the old closed road area through that block. (see map 10 of this report)

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<sup>2061</sup> *New Zealand Gazette* 28 January 1988, no 13, p 271, notice dated 21 January 1988.

<sup>2062</sup> *NZ Gazette*, 1988, p 2566

<sup>2063</sup> *NZ Gazette*, 1988, p 3119.

<sup>2064</sup> *NZ Gazette*, 1988, p 3681

However, even as the approvals for the exemptions were being obtained and gazetted, inaccuracies and further complications over title were becoming evident and a number of major new ‘impediments’ to disposal had become apparent.

#### **10.24 ‘Impediments’ to the rapid disposal of Waikune Prison, 1987-88**

By mid to late 1987, it had become increasingly clear that in spite of efforts to effect the rapid disposal of Waikune Prison, some major difficulties had arisen. These included difficulties with title, complications with zoning and Maori interest in obtaining all or part of the prison site for a combination of offer back and Tribunal claim purposes. A memo from Landcorp (which, on Government restructuring had been created on 1 April 1987 and had taken over responsibility for the prison disposal) to the Justice Secretary of August 1987, in discussing ‘impediments’ to disposal noted that there were some problems with title and with section 40 clearances for the prison site.<sup>2065</sup> The section 40 clearances had become a complicated exercise that was still continuing. Works officials were still in the process of discovering that most of the main complex was on formerly Waimarino 1 land at this stage and the main complex had therefore not actually been ‘cleared’. It was noted that Works officials were encountering difficulties in sourcing the necessary information over this.<sup>2066</sup> It was now known that there was also a possibility that some of the prison land would need to be returned to former Maori owners, increasing time delays and reducing the potential area that might be sold as part of the complex.

There were also other problems in gaining clear title for disposal to some important parts of the complex as a result of previous informal agreements over land use. For example, the pumping station for the water supply for the complex was located on the edge of the Waimarino stream which had originally formed a boundary of the proclaimed prison area. However, with National Park exchanges of land finalised in the 1980s, a section 58 strip (Crown land reserved from sale or disposal under the Land Act 1948) had been created along the Waimarino stream and retained out of the exchange to the prison as Crown land (section 3 block 1 Ruapehu Survey District).<sup>2067</sup> This kind of strip now came under Department of Conservation control and was not available for disposal by Landcorp. The water supply pump

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<sup>2065</sup> Memo Landcorp to Justice, 27 August 1987, ABVP 7404 w 5218/76, 13/7/12/1 v 5 ANZ

<sup>2066</sup> Memo Landcorp to Justice, 27 August 1987, ABVP 7404 w 5218/76, 13/7/12/1 v 5 ANZ

<sup>2067</sup> Letter Landcorp to Justice 18 September 1987, ABVP 7404 w4927/103, 13/7/12/1 pt 3 ANZ

station now appeared to be located on this strip, raising questions as to its status for disposal as part of the Waikune complex.<sup>2068</sup>

The ownership of the prison oxidation ponds was also proving problematic. As previously noted, in 1957, the old Forest Service had agreed to the informal prison use of some Forest Service land for the location of Waikune Prison oxidation ponds. This had never been legally formalised and it was now realised that the prison did not have clear legal title to the land on which the ponds were sited for disposal purposes. The resolution of this difficulty was also likely to cause more delays. A new State Owned Enterprise had been created out of the old Forest Service with the creation of Forestcorp on 1 April 1987. Maori concern about the loss of land to these agencies had been a factor in the New Zealand Maori Council case and injunction against the transfer of Crown land to State Owned Enterprises. This injunction had further complicated matters as it now prevented the Forest Corporation from subdividing selling or leasing the oxidation pond land.<sup>2069</sup>

Another potential ‘impediment’ to disposal was the zoning of the land on which the main complex was located. The main prison complex had an underlying zoning under the operative district scheme of the Taumarunui County of rural 3. This was generally considered inhibitive of development other than for farming, forestry, scenic forestry or other rural or scenic purposes. Some conditional uses were possible, such as schools, and community facilities such as halls, marae and churches. Camping facilities were also permitted, though not camping accommodation. Land west of the highway was zoned rural 1 which was intended to encourage the economic productive use of the land including farming and forestry.<sup>2070</sup>

The rural 3 zoning presented difficulties for sale of the main prison complex as a commercial proposition as justice had been anticipating.<sup>2071</sup> It was possible to seek a departure or change to the zoning but this was likely to be time consuming and expensive. It was also highly possible that a number of key organisations in the district would object. This included the Department of Conservation because the Tongariro National Park adjoined the complex. It was also known that the Taumarunui County Council had concerns about the financial impact of the sale of the complex when it had just made a substantial financial investment in a water

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<sup>2068</sup> Letter from Landcorp to Secretary for Justice, 18 September 1987, ABVP 7404 w4927 box103, 13/7/12/1 pt 3. ANZ

<sup>2069</sup> Letter from Landcorp to Secretary for Justice, 18 September 1987, ABVP 7404 w4927 box 103, 13/7/12/1 pt 3. ANZ

<sup>2070</sup> Valuation Department report 9 June 1987, ABVP 7404 w5218 box 76, 13/7/12/1 v 4 ANZ

<sup>2071</sup> Memo Landcorp to Justice, 27 August 1987, ABVP 7404 w4927 box 103, 13/7/12/1 pt 3 ANZ

and sewage scheme for the nearby National Park township.<sup>2072</sup> Later discussions with Council indicated that it would resist any formal application for a departure or change in zoning for the complex.<sup>2073</sup> It was also likely that some commercial operators already operating in the district might object to any attempt to seek a change in zoning for the complex.<sup>2074</sup> This meant an appeal to the Planning Tribunal was likely and possibly also to the High Court.

Landcorp estimated that if the zoning could not be changed, it was estimated that the value of the complex would be considerably less, around \$1.3 million for the complex, based on Valuation Department figures. This value could be doubled if the zoning was changed and a commercial operator could use the site.<sup>2075</sup> Justice officials were also advised by planning consultants that the value of the complex would 'treble' if the zoning was changed.<sup>2076</sup> Their own estimates placed the value of the complex at even less if the zoning did not change. They estimated that if the houses were sold for removal they would be worth \$500,000 but the rest of the prison buildings were 'worthless' under the current zoning. At the same time, ongoing administration costs, including maintenance and security were \$11,000 per month.<sup>2077</sup>

Another major 'impediment' noted at this time was Maori action over a number of separate but not necessarily mutually exclusive issues relevant to the prison site. One group interested in the disposal were those former Maori owners of the prison lands who wished to pursue their offer back rights under the Public Works Act. In addition, there were a number of Treaty claim issues in the district that could impact on the site. One of these was the claims over the original Waimarino block purchase. Presumably these people may also have had some kind of potential offer back right as well, although misleading information from Works at this time may have tended to obscure this. Nevertheless, these people were also concerned that the site might be retained for any potential compensation for Treaty claims over the Waimarino purchase. Some Whanganui River groups also wanted the prison site considered as possible compensation for this claim, including for metal taken from the Whanganui River bed.

As noted, the prison disposal had also become caught up in general Maori concern and Court action over government privatisation policies. This included the creation of State Owned

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<sup>2072</sup> Letter 19 December 1986, Director General Lands and Survey to Minister of Lands, ABVP 7404 w4927/103, 13/7/12/1 pt 3 ANZ

<sup>2073</sup> Justice, internal notes, for meeting of 16 July 1987, ABVP 7404 w4927 box 103, 13/7/12/1 pt 3 ANZ

<sup>2074</sup> Memo Landcorp to Justice, 27 August 1987, ABVP 7404 w4927 box 103, 13/7/12/1 pt 3 ANZ

<sup>2075</sup> Memo Landcorp to Justice, 27 August 1987, ABVP 7404 w4927 box 103, 13/7/12/1 pt 3 ANZ

<sup>2076</sup> Justice, internal notes, for meeting of 16 July 1987, ABVP 7404 w4927 box 103, 13/7/12/1 pt 3 ANZ

<sup>2077</sup> Justice, internal notes, for meeting of 16 July 1987, ABVP 7404 w4927 box 103, 13/7/12/1 pt 3 ANZ

Enterprises and the possible impact of this on the availability of Government land for both offer back and in settlement of claims. In June 1987, the Court of Appeal had delivered its judgment in the case brought by the New Zealand Maori Council with regard to the transfer of Crown land to State Enterprises. As a result of this, the Crown had also accepted that in disposing of land, it should give consideration to claims already received by the Waitangi Tribunal, probable claims already known to the Crown but not yet lodged, and foreseeable claims based on information already by Crown agencies, such as over old school sites.<sup>2078</sup> Finally, many Maori of the district also supported general community concerns that the prison complex should be used for development and training opportunities for the district, including for local Maori communities.

The offer back and Treaty claim concerns of Whanganui Maori were identified by officials as possible impediments to a quick sale, by complicating offer back clearances and in seeking to have the site used for claim settlement. Maori suspicion over Government intentions had also resulted in Landcorp concern that local Maori might even oppose the rental of some of the prison houses to offset costs while disposal action was completed.<sup>2079</sup> Even so, Landcorp had also received requests from Mr Amohia to lease some of the houses on the site on behalf of some of the claimants.<sup>2080</sup>

Landcorp officials did not see Maori interest in the site as entirely problematic, however. It was noted to Justice, that the Department of Maori Affairs had recently (early August 1987) made another submission to Cabinet proposing a transfer of the Waikune Prison complex to the Whanganui River Maori Trust Board in compensation for metal extraction from the Whanganui River. Landcorp noted this might well prove a solution to the disposal of the site for Justice. The proposal included reimbursement of the value of the site to Justice plus the costs of administering the disposal to date. It might well avoid the current zoning problems being considered a marae or education facility (or at least this would become the problem of the Trust Board) and early discussions indicated the County Council would support transfer of the site to the Board. It would also probably be possible to come to some agreement about transfer of the oxidation ponds given they were now held up by a Maori Council injunction. Such a transfer would also end the ongoing costs to Justice of maintaining and keeping the site secure. Justice was, however, advised to be 'firm' about the transfer value of the complex

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<sup>2078</sup> Dosli internal memo, 9 July 1987, ABVP 7404 w5218/76, 13/7/12/1 v 5 ANZ

<sup>2079</sup> Letter Landcorp to Justice, received 15 June 1987, ABVP 7404 w4927/103, 13/7/12/1 pt 3 ANZ

<sup>2080</sup> File note, 3 August 1987, ABVP 7404 w4927/103, 13/7/12/1 pt 3 ANZ

to the Board.<sup>2081</sup> Landcorp also advised that in the meantime, it would go ahead and seek registrations of interest in the site to gain an indication of interest for disposal purposes.<sup>2082</sup>

This second August 1987 proposal to Cabinet from the Minister of Maori Affairs proposed the approval in principle of a transfer of the Waikune Prison complex from Landcorp control to the Whanganui River Maori Trust Board as part of the compensation due for metal extraction from the Whanganui River. It was noted that in March 1987, the Cabinet had already approved an interim payment to the Trust Board as a start towards this settlement, which was estimated to be valued at around \$4.5 million. Taking into account a settlement of \$2.3 million for Justice for the site, the costs of recommissioning the complex, plus a lump sum of \$1.4 million and minus the interim payment, the funds requested for this proposal were \$4,359,500. At this stage, the Department of Maori Affairs (and presumably Cabinet) seemed unaware of the considerably reduced valuation of the complex as a result of zoning problems. The proposal still sought reimbursement for Justice in good faith at the value it had originally anticipated, without taking into account the significantly lower value if the site was not attractive to commercial operators. Again it seems clear that the prison complex, including the buildings, remained a critical part of this proposal.

The Landcorp action to seek registration of interest in the site, provoked further Maori concern and the Minister of Maori Affairs, Koro Wetere wrote to the Minister of Justice on 20 August 1987, advising of the Maori Affairs initiative and seeking assurance that there would not be a quick sale while the proposal was still being considered.<sup>2083</sup> Justice officials advised their Minister that because of the need to obtain section 40 clearances, and the uncertain title of some parts of the complex such as the sewage ponds, it was most unlikely any sale process could begin before October 1987. However, Justice was averse to any further delay because of the need to ensure estimated revenue from the sale of the assets before the end of the financial year. It was felt that any delay beyond the end of November 'could preclude our being able to meet our revenue targets this year'.<sup>2084</sup> The Minister of Justice subsequently assured Wetere that a quick sale was most unlikely.

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<sup>2081</sup> Memo Landcorp to Justice, 27 August 1987, ABVP 7404 w4927 box 103, 13/7/12/1 pt 3 ANZ

<sup>2082</sup> Memo Landcorp to Justice, 27 August 1987, ABVP 7404 w4927 box103, 13/7/12/1 pt 3 ANZ

<sup>2083</sup> Letter K T Wetere, Minister responsible for Landcorp, 20 August 1987, ABVP 7404 w5218/76, 13/7/12/1 v 5 ANZ

<sup>2084</sup> Letter 21 September 1987, Secretary for Justice to Minister of Justice, ABVP 7404 w4927/103, 13/7/12/1 pt 3 ANZ

In October 1987, also concerned about possible Landcorp moves on a sale, the Whanganui Whare Wananga Trust wrote to Prime Minister Lange asking for a halt to the sale until the Waitangi Tribunal had a chance to investigate the Waimarino block purchase. The Trust was part of the proposal to establish a wananga and forestry training ground on the site.<sup>2085</sup> In January 1988, the interim Whanganui River Maori Trust Board also made a formal objection to the transfer of the Waikune Prison complex to any State Enterprise.<sup>2086</sup>

In February 1988, Cabinet had still not made a decision on the Maori Affairs proposal, and Maori Affairs officials noted that Justice was still very keen for the property to be disposed of to secure anticipated revenue. It was suggested that the Maori Affairs Department could either continue to pursue the request for transfer to the Trust Board or alternatively consider obtaining Government resources for Maori Affairs to acquire and manage the property as outlined in a previous study, to meet a number of objectives for Maori of the area. It seems that at this time, Maori Affairs and Justice officials were meeting to discuss progress on Maori Affairs' efforts to obtain the complex.<sup>2087</sup> After one meeting, Justice officials reported to their Minister that Maori Affairs was considering either acquiring the prison complex for part compensation for the metal extraction from the Whanganui River or for a multi purpose training centre. They also noted that the Waitangi Tribunal had now received three claims that might affect the sale of the prison.<sup>2088</sup>

It seems clear from these continuing expressions of concern from the Maori Affairs Minister and other interested parties, and the notice of Treaty of Waitangi claims, that Justice was well aware of continuing substantial interest in the use of the prison complex as a going concern, including the buildings for a number of purposes. The proposals also acknowledged and provided for necessary reimbursement for Justice, to a level it was aware it might now not otherwise achieve as well as for disposal costs. From present research, it is not clear what the Cabinet response was to the latest proposal. Later documents indicate that the view of the Cabinet Committee was that the complex should be sold on the open market. However, the government also seemed in favour of any sale being delayed pending the determination of relevant Treaty claims.

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<sup>2085</sup> Letter from Trust to Lange, 6 October 1987 ABVP 7404 w5218/76, 13/7/12/1 v 5 ANZ

<sup>2086</sup> Formal objection 29 January 1988, ABVP 7404, w5218/76, 13/7/12/1 v 5 ANZ

<sup>2087</sup> Deputy Secretary Maori Affairs to Minister Maori Affairs 8 February 1988, ABVP 7404 w5218/76, 13/7/12/1 v 5 ANZ

<sup>2088</sup> Letter Deputy Secretary Justice to Associate Minister of Justice, 3 March 1988, ABVP 7404 w5218/76, 13/7/12/1 v 5 ANZ

Because of the original emphasis on rapid, superficial investigations as far as seemed necessary to apply offer back exemptions, it is not clear how well various departmental officials understood at this time, that all the land making up the prison site was either previously Waimarino 1 or Waimarino 4 land. All this land, with one exception, had originally been acquired by the Crown from former Maori owners. The exception was Waimarino 4A5, which had been previously purchased by a company from Maori owners prior to being acquired by the Crown. Further investigations were beginning to reveal that this company no longer existed and of all the acquisitions it had been closest to a true willing sale. Otherwise, all the remaining land was subject in some way to Maori concern, either for public works offer backs or for settlement of Treaty claims. It does not seem to have been considered at this time, that Maori interest may not have been mutually exclusive and the same people may have been interested in both offer backs and Treaty claims, or they may have been willing to negotiate a compromise to serve both interests as both forestry farming and a complex were involved. However, it does not seem to have been thought possible or desirable to encourage such negotiations at this time and the officials responsible also do not seem to have believed it was legally possible, insisting offer back requirements had to be satisfied before further disposal issues could be considered.

It is also not clear that negotiations at this stage could have legally circumvented the section 40 requirements, but they certainly may have allowed such requirements to be applied much more rapidly. This would, however, have required a more accurate and in-depth understanding of the circumstances of acquisition than had been provided by this time. Instead, the agencies involved, seemed to have continued to work in a piecemeal fashion, gradually enlarging investigations as issues became apparent. The section 40 clearance process crept inexorably on, and in the meantime, it appears that Treaty claims were regarded as threatening to cut across this process and cause even more delays.

In the meantime, senior Justice officials appear to have become increasingly anxious that continuing administration costs were rapidly eating into any equity in the site. As previously noted, by early 1988, approvals had finally been received for section 40 'clearances' for the majority of land east of State Highway 4 including the land most of the prison complex was located on, and Waimarino 4A5. It was also intended to declare Waimarino 4A2 Crown land. The grounds for these were a significant change in character of the land since the date of the original acquisition. The other portions known as Waimarino 4A1A, 4A3 and pt 4A4 were to be offered back to the original owners.

In March 1988, in reference to Minister Wetere's requests of September 1987, the Associate Minister of Works and Development noted this progress, although not quite accurately. He also acknowledged requests for information from former owners of some of the land and noted that it had been unnecessary for the Ministry of Works to attempt to trace original ownership since an exemption was anyway being sought.<sup>2089</sup> However, in a response to an inquiry from the Minister of Lands, Tapsell, the names of original owners of the purchased Waimarino partitions were also identified.<sup>2090</sup>

In March 1988, after negotiating with a former tenant over the possible purchase of a former Waikune Prison house at Carroll Street, National Park, it was finally declared Crown land subject to the Land Act 1948 pursuant to section 42 of the Public Works Act 1981.<sup>2091</sup> Otherwise, progress continued to be slow. In October 1988, a Works official informed Lands that Landcorp had advised that four separate claims had now been received by the Waitangi Tribunal 'one of which has at this stage been determined to have merit' although the writer did not clarify on what basis this determination of merit had been made, or who had made it. It was also noted that Landcorp had still not at this time initiated any disposal action for Waikune Prison itself.<sup>2092</sup>

### **10.25 Continuing pressure over disposals of government land**

In 1988, the Justice Department was still required to operate in the context of renewed government efforts to identify and sell off as many surplus government properties as possible and to maximise sale proceeds from these. The 1988 government budget further signalled an intention to sell excess government real estate as far as possible.<sup>2093</sup> The government also continued restructuring with the abolition of the Ministry of Works and the transfer of offer back functions under the 1981 Public Works Act to the Department of Lands. Continued restructuring would see this transferred to the Department of Survey and Land Information (DOSLI) and the Land Information New Zealand (Linz). The Government also issued new Cabinet instructions on the disposal of government land in 1988, which also continued to

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<sup>2089</sup> Letter Associate Minister Neilson to Minister of Lands, 29 March 1988, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>2090</sup> Lists of owners in Waimarino 4A1A, 4A3, and 4A4, ABWN 889 w5021/178, 25/355/1 pt 1 ANZ

<sup>2091</sup> *NZ Gazette*, 1988, p 1153

<sup>2092</sup> Fax 6 October 1988, Works to Lands, ABWN 889 w5021/178, 25/355 pt 1 ANZ

<sup>2093</sup> Memo Director General Lands to branch managers 22 August 1988 ABWN 7616 w 5198 lands 27/3 pt 1 b 2 ANZ

emphasise the need for chief executives to maximise the proceeds gained from the disposal of government land.

A new Cabinet instruction on the disposal of government land (CO (88) 12) of 25 August 1988, replaced the earlier instruction CO(81) of October 1987. Section 8 of the new circular noted that with regard to the disposal of surplus government land, subject to section 40 requirements, it was the responsibility of Chief Executives to maximise the net proceeds from the disposal of such land. Section 10 set out procedures for the Department of Lands regarding offer backs. The department of Lands, later DOSLI was responsible for implementing offer back provisions and negotiating over offer backs. Lands would also account to the disposing department for any sale, while the disposing department would remain responsible for the administration of the land until the settlement date. Departments were reminded that land for disposal included all buildings and other features that were permanently attached to the land.<sup>2094</sup>

On taking over from Works, the Lands department also attempted to rationalise disposal procedures with further circulars to guide applications and implementation of section 40 requirements. These attempted to institute more rigorous and thorough offer backs while at the same time facilitating government requirements for an efficient disposal of land. For example, the guidelines now required a more ‘thorough investigation’ of the details of Crown acquisition of any surplus lands while district managers were delegated authority to approve offer backs and sales, except for Maori land where head office approval was required.<sup>2095</sup> In terms of policy, the circular noted that it was the responsibility of the department to facilitate offer backs not to attempt to frustrate them. This meant, for example, that where there was some doubt over whether an exemption should apply, the former owners and successors were to be given the benefit of the doubt. At the same time offer backs would only apply to land where a private owner was recorded in the deeds index, under the land transfer Act, or under the Maori Land Court. Acquisitions for the purposes of settlement from Maori holding land under customary title were not included. Gifted land was subject to offer back.<sup>2096</sup>

With regards to the exemptions, the guidelines gave some useful examples but cases still needed to be considered individually. For example, the ‘impracticable’ exemption was likely

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<sup>2094</sup> Cabinet Office circular CO (88) 12 of 25 August 1988, copy on ABWN 7616 w5198 Lands 27/3 pt 1 b 2 ANZ

<sup>2095</sup> Lands circular 88/49 ABWN 7616 w 5198 Lands 27/3 pt 1 b2 ANZ

<sup>2096</sup> Lands circular 88/49 ABWN 7616 w 5198 Lands 27/3 pt 1 b2 ANZ

to be relevant where a formerly owning company was now wound up or dissolved. This might also be the case where owners and successors could not be traced after an extensive search, or where the size shape or location or current use precluded offering back or in some cases where land was landlocked. More recent Court judgments were also referred to as a warning over the interpretation of some words such as unfair or unreasonable. It was also noted that the Crown Law opinion on the Sylvia Park case warned of interpretations of ‘significant change’.<sup>2097</sup>

There was still conflict in 1988, however, between the Lands Department wish to ensure adequate implementation of offer back provisions and the attitudes of departments such as Treasury and Landcorp, who were much more focussed on disposing of land as rapidly as possible for the maximum possible proceeds and who tended to regard offer back and other protections as being implemented too slowly. For example, in May 1988 the Director General of Lands became aware that Landcorp, in an effort to promote the rapid sale of surplus government properties, was offering them for sale subject to section 40 clearances. Lands regarded this as a contravention of the requirement to settle offer backs before any action could be taken over disposal. It was also felt that this kind of offer subject to clearance unnecessarily complicated and influenced the offer back process. Landcorp was there asked to stop this practice.<sup>2098</sup>

Landcorp replied that it had legal advice indicating that those branches involved in this practice were able to do so. Landcorp understood that it had a responsibility to ensure surplus properties were disposed of at the earliest opportunity and this was what it was doing. Every potential buyer was made well aware of the section 40 requirements and as far as it was concerned it was acting in a ‘responsible and commercially realistic manner’.<sup>2099</sup> Lands won on this occasion, however, and by September 1988, informed Landcorp that after discussions it was agreed that under no circumstances would properties be marketed in any way until after confirmation that the section 40 process was completed.<sup>2100</sup>

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<sup>2097</sup> Lands circular 88/49 ABWN 7616 w 5198 Lands 27/3 pt 1 b2 ANZ

<sup>2098</sup> Acting Director General Lands to Chief Executive Landcorp ABWN 7616 w 5198 Lands 27/3 pt 1 b2 ANZ

<sup>2099</sup> Assistant General Manager Landcorp to Director general lands, 20 June 1988 ABWN 7616 w 5198 Lands 27/3 pt 1 b2 ANZ

<sup>2100</sup> Acting Director General lands to Chief Executive Land Corporation 15 September 1988, ABWN 7616 w 5198 Lands 27/3 pt 1 b2 ANZ

## 10.26 The High Court injunction, 1988

While Landcorp was obliged to restrain its sales practices over section 40 offer backs, it nevertheless continued to encourage clients to take opportunities that might promote disposal. In the case of Waikune Prison, the focus on disposal of the property appears to have led to the decision to remove or demolish the prison buildings to assist with disposal and to reduce costs in the meantime. While progress over disposal of the prison site was slow, the costs of maintenance and security had continued to rise for the Justice department. At first Justice officials had appeared confident that the sale of the complex would outweigh these costs. However, when the second Maori Affairs proposal appeared to be unsuccessful and sale seemed the only option, the difficulties and delays with sale appear to have caused a change of heart, especially as costs continued to mount. The Justice department was already aware that costs were running at over \$11,000 a month, with no guarantee that the complex could be sold as a commercial proposition. By August 1988, a breakdown of costs revealed that the total costs to date were now close to \$300,000 in the administration of the site since it had been made surplus.<sup>2101</sup> It is not clear why Justice did not make these financial difficulties clear to the Government at this time and attempt to seek some relief while disposal issues and relevant Treaty claims were resolved.

What seems to have happened is that, around August 1988, it was decided that while the final disposal might take some years, in the meantime Justice needed to take steps to reduce its costs and this might mean dealing separately with the prison buildings. As part of this, Landcorp as the agent for Justice met with Justice officials in a series of meetings in October-November at which Landcorp offered to discuss ways of cutting the continuing high costs to Justice as part of its service as agent for a valued client. In early November 1988, after meetings between Justice and Landcorp officials, proposals were discussed for saving costs by removing all relocatable buildings and either selling them 'as is' or transferring them to other prison sites for prison requirements. All other buildings were to be demolished, allowing the land to be grazed by Landcorp. This was intended to end the current high costs of maintaining and providing security for the buildings while also possibly gaining some small rental income from grazing.<sup>2102</sup> This would also comply with the underlying rural zoning for the land.

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<sup>2101</sup> Letter 15 August 1988, Landcorp to Justice with breakdown of costs of administering the prison property to date, ABVP 7404 w5218 box 76, 13/7/12/1 v 4 ANZ.

<sup>2102</sup> Memo Landcorp to Justice, 8 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

This was a major change in policy for Justice, which until then had always publicly declared its intention not to act until section 40 clearances were made and its desire to sell the prison complex, at least, as a going concern, although the farm and forestry land was to be offered to former owners. This change also appears to have been made in the clear knowledge that there was still considerable interest in the complex from Maori interests, with proposed uses supported by the Minister and department of Maori Affairs and the local council. Remarkably, the Justice department appears to have considered itself under no obligation to inform the Minister of Maori Affairs or interested parties of its change in policy or to provide them with an opportunity to find a way of addressing its concerns. There is no evidence on file of any consultation by Justice to this effect. Instead, there is evidence of intention to carry out the new policy in some haste.<sup>2103</sup> Landcorp, as agent for Justice, also showed no awareness of wider issues at this time, other than the need to work on behalf of the interests of its client.<sup>2104</sup>

In November 1988, the Secretary for Justice sought ministerial approval for the disposal of all Waikune Prison buildings, with the land then to be used for grazing.<sup>2105</sup> In support of this it was noted that caretaking/security requirements for the complex had to date cost Justice just under \$473,600. The difficulties with disposal were outlined, including the concerns of the local Council about the impact of disposal on its investment in the water and sewage supply for National Park township, zoning designations, the fact that section 40 provisions applied and some land might need to be offered back to former Maori owners, the difficulties with the oxidation ponds, and Maori land claims. These ‘impediments’ meant an early sale of the property was not realistic.<sup>2106</sup>

The memo went on to list the buildings on site and the proposed disposal. The buildings to be transferred to other prisons were the gymnasium, the social hall and some garages. The 23 houses were to be offered for tender for sale and removal. The remaining buildings were to be demolished. It was anticipated that this course of action would ‘stop the continued outgoing of funds for caretaking/security services’ while some revenue might then be generated by leasing the property for grazing.<sup>2107</sup> It was recommended that the Minister approve the

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<sup>2103</sup> Memo Landcorp to Justice, 8 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

<sup>2104</sup> For example, letter 15 August 1988, Landcorp to Justice, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

<sup>2105</sup> Memo Secretary for Justice to Minister of Justice, 14 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

<sup>2106</sup> Memo Secretary for Justice to Minister of Justice, 14 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

<sup>2107</sup> Memo Secretary for Justice to Minister of Justice, 14 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

recommendations to transfer the listed buildings to other prisons, the sale and removal of the 23 houses, the demolition of the remaining buildings and the subsequent lease of the land for grazing. This was signed as approved by Minister Woollaston on the same day, 14 November 1988.<sup>2108</sup>

Maori interest in the complex was described in entirely negative terms in the memo, with no acknowledgement of the continuing Whanganui Maori interest in constructive use of the facility to not only address offer back and Treaty interests, but also to provide training and development facilities for the wider community, including for Maori. There is also no acknowledgement that the proposals had assumed reimbursement to Justice for the complex at a considerably higher level than now appeared necessary, given the zoning difficulties, or the intention of such proposals to reimburse Justice for disposal costs. There is also no acknowledgement of the continuing interest of the Maori Affairs Minister or the local Council for a constructive use of the prison site.

The file correspondence of this time also fails to record any detailed Justice consideration of procedural or legal requirements concerning its decision to take separate action over the prison buildings. As described previously, under Cabinet procedures, once government land was declared surplus, it was the Lands Department responsibility to properly administer offer back procedures before any further disposal action was taken. The section 40 requirements still had to be implemented at this time and taking action on the buildings pending these decisions was therefore pushing right at the edge of legal requirements. Buildings were also generally considered part of 'land' for disposal purposes, as was confirmed by a later Crown legal opinion.<sup>2109</sup> The decision to treat the prison buildings as being separate from the land in this case was also pushing at the edge of what might have been considered prudent. As with the Landcorp decision to sell properties 'pending' section 40 clearances, this decision seems to have been taken with a focus more on pushing ahead disposals, than with a careful consideration of all requirements and issues surrounding disposal.

The rapid progression of the government assets sales process had also by this time provoked considerable Maori reaction, based on concerns that Maori interests were not being sufficiently safeguarded or taken account of. This included the New Zealand Maori Council

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<sup>2108</sup> Memo Secretary for Justice to Minister of Justice, 14 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

<sup>2109</sup> Crown Law opinion, 16 December 1988, ABWN 889, w5021/178, 25/355 pt 1 ANZ

case, which had acknowledged the need to act in good faith over land that might be required for Treaty claims. No evidence was found in the files available for this research, that at this time, Justice seriously considered the impact of the demolition or removal of the prison buildings on such requirements for good faith over Whanganui Maori interests. Instead, there appears to have been a very narrow focus on the continued costs being incurred with the prison disposal and the ‘right’ of the Justice department to deal with prison buildings.

Three days later, on 17 November 1988, officials sought approval to spend \$83,000 to meet the estimated cost of transporting buildings to other prisons, to cut off services and to demolish the remaining buildings. This funding was approved on the same day.<sup>2110</sup> It was also noted that five prison inmate gangs from Tongariro Prison were able to start demolition and removal work on the buildings from 21 November 1988, with all work expected to be completed by 22 December 1988.<sup>2111</sup> Demolition work does appear to have begun on 21 November 1988. This began with the cutting up and preparation of the buildings listed for removal. Demolition work was also begun on a number of the remaining buildings listed for demolition, including the single officers’ quarters, the administration block, the chapel, the cell blocks, the remaining garage blocks, the sawmill and the boiler house. In most cases, this work began with the removal of roofs and windows, exposing the buildings to the weather.<sup>2112</sup>

The demolition action immediately provoked expressions of concern and protest from a number of quarters. The Member of Parliament, Noel Scott, who had supported the use of the facility for outdoor education, inquired about the demolition, on hearing of it on the same day, 21 November. He was told that site services had been cut off, houses were to be sold and removed from the site, ‘buildings and equipment were being salvaged’ and the site was being cleared for grazing. The main reasons given to him for this action were the heavy costs of administration, zoning problems and difficulties with sale that could take 5 to 10 years to be resolved.<sup>2113</sup>

On the same day, 21 November, the Mayor of Taumarunui Borough Council also wrote to the Minister of Lands, expressing his ‘extreme disappointment’ at the decision to strip Waikune Prison of its buildings and the method by which this was carried out. He noted that the district

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<sup>2110</sup> Justice file notes, 17 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

<sup>2111</sup> Justice file notes, 17 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

<sup>2112</sup> Justice minute 22 November 1988 and judgment of Eichelbaum J in Te Aroha Ruru Waitai v Attorney General and others, December 1988 CP 891/88

<sup>2113</sup> Justice, file note of telephone conversation, 21 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

had always supported efforts to retain the assets and resources of the prison as a means of providing an improved employment and economic base for the area. Removing such an opportunity for development was ‘totally unacceptable’ and the council should at least have been consulted when the decision was made, prior to any demolition work or building removal. He felt the only conclusion seemed to be that the Justice Department wished to avoid the ‘obvious concerns’ that would have been expressed by the community. He viewed the actions and decisions over Waikune with ‘total dismay’ and recorded his ‘community’s disappointment’.<sup>2114</sup>

Koro Wetere also wrote to the Minister of Justice on 21 November 1988, noting that he had received information that Waikune Prison was being demolished, expressing dismay at the waste of a potentially useful facility and asking for an explanation of what was happening.<sup>2115</sup> The reply from the Minister of Justice was similar to the replies given to all expressions of concern at this time. It noted the impediments to disposal meaning an early sale was most unlikely, and explained that the removal and demolition of buildings was intended to end the high cost of security and caretaking, while some rental might be produced from grazing. It was also claimed that this would allow the land disposal to proceed in an orderly fashion.<sup>2116</sup>

There was also an immediate response from a number of Whanganui Maori and lawyers acting on their behalf. This began with urgent discussions between lawyers and Justice officials on the evening of 21 November and continued with a number of letters from the lawyers to a variety of Ministers on 22 and 23 November 1988. On 22 November 1988, the lawyer for the Whanganui Trust Board, Martin Dawson, referred to discussions of the previous evening and his client’s request for Justice to stop the demolition work for a day or two at least, to enable discussions about the future of the complex, before it was too late. He also acknowledged the reasons Justice had given in discussions for the demolition, including the difficulties of selling the land, the high costs of administering the site, the absence of any other proposal to obviate those costs, claims that the buildings did not form part of the land for disposal, and that it might now be too late to stop the work.<sup>2117</sup>

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<sup>2114</sup> Letter Mayor of Taumarunui Borough Council to Minister of Lands, 21 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

<sup>2115</sup> Letter Koro Wetere to Minister of Justice, 21 November 1988, ABVP 7404 w5218/76 , 13/7/12/1 v 6 ANZ

<sup>2116</sup> Letter Justice Minister to Wetere, 25 November 1988, ABVP 7404 w5218/76 , 13/7/12/1 v 6 ANZ

<sup>2117</sup> Letter Dawson to Deputy Secretary Justice, 22 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

Dawson noted that a Treaty claim regarding the Waimarino block had been before the Waitangi Tribunal for some time. His understanding was that a proposal had been put to Cabinet earlier in the year for a constructive use of the complex by the Whanganui Maori people. The Cabinet Committee had considered that anyone wanting the facility should pay for it and a figure in excess of \$2 million was mentioned. The Whanganui claimants could not afford this and were required to wait for the outcome of their claim. Meanwhile, the property was put up for sale. The Whanganui Trust Board had never been advised of any change of policy from selling the complex to demolishing the buildings and using the land for grazing. If they had been aware of the change in policy, he suggested the Trust Board would have renewed proposals for the constructive use of the buildings. They could also have suggested proposals that would have relieved Justice of the running costs it had become so concerned about and they still wanted to discuss this. Dawson stated that volunteers were ready and willing to assist before the Treaty claim was finally determined. He also noted that the buildings should not be removed while action was still being taken to meet public works offer back requirements. Dawson asked for urgent discussions on these matters and reiterated Trust Board willingness to meet Justice concerns about costs in any discussions of proposals.<sup>2118</sup>

On the same day, Dawson also wrote similar letters of concern to the Ministers of Justice, Maori Affairs and Lands asking them for assistance with the matter.<sup>2119</sup> Dawson wrote to the Minister of Justice again the next day, on 23 November 1988, noting that the Justice Department actions were cutting across rights over claims to the Waitangi Tribunal. There were also serious concerns about Landcorp actions with regard to the demolition. He again asked for a chance to discuss the matter and reach some kind of acceptable agreement.<sup>2120</sup> The Secretary for Justice wrote to Dawson on 23 November, setting out the difficulties for disposal and the decision to demolish or remove buildings because of continuing high costs. He assured Dawson that the department was happy to discuss the future of the property, but still wished to clear the property before it was sold and was under some urgency to do this.<sup>2121</sup>

In the meantime, on 22 November, the Opposition raised the matter in Parliament asking what action the government intended to urgently take to stop the demolition of prison facilities at

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<sup>2118</sup> Letter Dawson to Deputy Secretary Justice, 22 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

<sup>2119</sup> Letter Dawson to Minister of Justice, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

<sup>2120</sup> Letter Dawson to Minister of Justice, 23 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 4 ANZ

<sup>2121</sup> Secretary for Justice to Dawson, 23 November 1988, ABVP 7404 w5218/76, 13/7/12/1 v 6 ANZ

Waikune.<sup>2122</sup> The Minister of Justice, Palmer, replied that the government had no intention to impede the removal for sale of houses from the former Waikune Prison or the removal of other buildings for relocation at other Justice facilities, because a decision to close the prison had been made more than two years ago. The property had not been sold and it was decided to remove the buildings to avoid the heavy costs associated with maintenance and to allow the land to be used for other purposes pending disposal. It had been one of the most remote and expensive prisons to operate, it was not economic to continue with it and so it was closed.<sup>2123</sup> He made no mention at this stage of Whanganui Maori wishes to obtain the prison complex and the implications of this action for them.

The lawyers for the Whanganui River Maori Trust Board appeared convinced the government was not going to change this policy, and the next day, 24 November 1988, proceedings were filed seeking a Court injunction to restrain the Justice Department from carrying out any further demolition work on the site until further legal action could be taken. On the same day in a Chambers hearing, interim orders were made and an undertaking secured to stop all work while action proceeded. The next day, the order stopping work on one category of buildings (those for removal to other prisons) was lifted on the application of Dawson, who agreed Justice might deal with these as it intended. The injunction remained on the other buildings that Justice had intended to demolish. These were described as category 2 buildings, many of which were, by now, already partly demolished.

The main hearing seeking a stoppage of the work was held in the High Court on 14 December 1988.<sup>2124</sup> In his judgment, Justice Eichelbaum noted that many of the buildings in category two had already had their roofs, and in some cases, windows removed leaving them open to the weather. Some of the buildings intended for demolition (described as a new category four) including the common room/ablution blocks, kitchen and dining room and guardhouse blocks had not yet been so substantially altered and still had roofs. The buildings formed an essential part of the value or potential value of the complex to the complainants for the purposes they intended.<sup>2125</sup>

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<sup>2122</sup> *NZPD* 1988 vol 494 WF Birch question on behalf of the leader of the Opposition, to Minister of Justice, 22 November 1988, p 8181

<sup>2123</sup> *NZPD* 1988 vol 494 p 8181

<sup>2124</sup> *Waitai and Another v Attorney General*, 1988, CP 891/88

<sup>2125</sup> Judgment, Eichelbaum J, *Waitai and another v Attorney General*, 1988, CP 891/88

It was found that no convincing explanation had been put forward by the Justice Department for what on the face of it seemed to have been a sudden decision to demolish the buildings after they had stood unoccupied since 1986, or why it was necessary to begin work by opening a number of the buildings to the weather. The defendants' claim that the work had gone too far to be stopped and any delay now would incur significant losses through deterioration of materials was rejected as causing an injustice to the plaintiffs. It was noted that the plaintiffs had offered to provide security for remaining buildings and this should be taken into account. It was also found that there was a reasonable prospect that some of the buildings might still be of use and that they should be preserved in the meantime. It was found that the status quo should be preserved and an order was made stopping further work on the demolition and or removal of the buildings pending further orders of the Court. These buildings were known as those in category 2, including the single officers' quarters, the administration block, the chapel, the inmate cell blocks, the garage blocks, and boiler house; category 3, which included the 23 houses; and category 4, which included the common room or classroom/ablution blocks, the kitchen and dining room and the guardhouse blocks. The way was left open for the defendants to enter discussion with the plaintiffs over the offer of security and for leave to appeal, or to seek more detailed conditions. It was acknowledged that further legal action was likely but in light of the Court finding, the Department might consider that its proper course of action was to take necessary steps to avoid further deterioration of the buildings pending a substantive hearing.<sup>2126</sup>

### **10.27 Revised proposals for the interim use of Waikune Prison**

Following the injunction preventing further demolition or removal work for the Waikune Prison buildings, the Justice Department took steps to reconsider the whole handling of the Waikune Prison disposal and matters arising from this that needed to be addressed. It seems that it was already accepted that no final disposal could be made of whatever land was not required to be offered back to former owners, pending the determination of relevant claims before the Waitangi Tribunal. The Justice Department did now however, agree to take part in discussions over how the remaining prison complex and lands might best be used in the interim before final disposals were made. At the same time, the Department sought legal advice on the public works offer back requirements that might apply to the prison lands.

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<sup>2126</sup> Judgment, Eichelbaum J, Waitai and another v Attorney General, 1988, CP 891/88

In early 1989, the Justice Department took part in a series of meetings with Whanganui iwi representatives to discuss compromise proposals. This included reviving proposals for Whanganui iwi use of the complex as an interim solution pending a determination by the Waitangi Tribunal of relevant claims, or the outcome of more substantive negotiations.<sup>2127</sup> The Justice Department, through the Corrections Service, now appeared willing to discuss possible interim occupation and use of the remaining prison facilities pending the ultimate disposal of the land and possibly also some departmental contribution towards the preservation of the partly demolished buildings.<sup>2128</sup>

These discussions resulted in agreement in principle to new proposals that were included in a draft memo prepared for the Cabinet Social Equity Committee in April 1989. The agreed proposals were described as being centred on the concept of partnership under the treaty of Waitangi and representing a positive response to problems raised by the Waikune property. Pending determinations of the Tribunal, and government decisions on any recommendations and pending any ultimate disposal of the land, it was proposed that tribal authorities be given access to and use of the former prison land and the facilities that remained on it. The Department of Justice had also undertaken to contribute to the cost of preserving some of the buildings to a cost of \$100,000. Maori Affairs had also agreed to assist with this work. Arrangements for the work to be carried out had already been made between Justice, Maori Affairs and iwi authority representatives at a local level.<sup>2129</sup>

It was proposed that such access and use would be based on a contract with the government somewhat similar to a suspensory loan. In essence, the Whanganui Maori people would be guaranteed use of the assets for five years and an initial assessment of \$801,000 as assessed by Valuation New Zealand in March 1989, would be placed on the property. Any costs incurred by the Justice department in transferring the property would be added to this. The total cost would be reduce by one fifth a year on satisfactory operation of a whare wananga or learning institution at the complex. After five years the tribal authorities would have the option of purchasing the property at a token price. This reduction in cost would be used in mitigation of any subsequent successful claims by Whanganui Maori. The gradual reduction

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<sup>2127</sup> For example, letter Dawson to Crown Counsel, 22 December 1988, ABVP 7404 w5218 box 76, 13/7/12/1 v 5 ANZ

<sup>2128</sup> For example, draft memo from General Manager Corrections, to Minister of Justice, nd, January 1989? , ABVP 7404 w5218 box 76, 13/7/12/1 v 4 ANZ

<sup>2129</sup> Draft proposals for Cabinet Social Equity Committee, April 1989, ABWN 889 w5021 box 178, 25/355 pt 1 ANZ

in costs would also be in recognition of services provided by the wananga, which had been planned and developed in some detail for a number of years. This would also reflect the spirit of devolution of the provision of courses and facilities which would otherwise have been the responsibility of government agencies. The lowered price of the property would reflect the value of these services to the government and the community. The right to use and ultimately acquire the complex would place a clear obligation for maintenance of the property on tribal authorities. They would need to seek such water rights, town planning approvals, zoning changes and the like, as were required, and they would also be responsible for the physical upkeep of the buildings and grounds.<sup>2130</sup>

The proposal also noted that a steering committee would be established including Whanganui Maori representatives, and departmental and other relevant representatives, which would be responsible for planning the resourcing, usage, operations and management of the wananga. This steering committee would eventually be replaced by a management board responsible for running the facility. The proposal recognised, however, that section 40 requirements of the Public Works Act might influence this arrangement. Attempts were being made to clarify this through more detailed research.<sup>2131</sup>

This draft was referred to the Department of Lands for comment, given the role of the Chief Executive of Lands in the application of section 40 offer back provisions and the recognition that this process might have an impact on the agreement.<sup>2132</sup> In reply, the Lands Department outlined the statutory responsibilities of the Chief Executive of Lands with regard to the prison site. The Lands Department noted that it had identified the former owners and was now in the process of offering the land back to them.<sup>2133</sup> From documents on file, it seems this identification consisted of names of the owners in 4A1, 4A3 and 4A4 at the time the purchases were made in the 1960s, but this did not include at this stage the names of owners in 4A2 or the original Waimarino block.<sup>2134</sup> The Lands Department took the view that the draft proposal cut across its statutory responsibilities to offer back the land because it provided for not only an interim use but eventual disposal of the complex to Whanganui Maori. Lands also

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<sup>2130</sup> Draft proposals for Cabinet Social Equity Committee, April 1989, ABWN 889 w5021 box 178, 25/355 pt 1 ANZ

<sup>2131</sup> Draft proposals for Cabinet Social Equity Committee, April 1989, ABWN 889 w5021 box 178, 25/355 pt 1 ANZ

<sup>2132</sup> Letter Corrections to Department of Lands, 12 April 1989, ABWN 889 w5021 box 178, 25/355 pt 1 ANZ

<sup>2133</sup> Letter Acting Director General Lands to Corrections, 27 April 1989, ABWN 889 w5021 box 178, 25/355 pt 1 ANZ

<sup>2134</sup> Lists of names, 4A1, 4A3 and 4A4 on file ABWN 889 w5021 box 178, 25/355 pt 1 ANZ

believed the draft proposal could not go ahead until after the former owners had been offered the land, they had accepted or declined, and then after this, the Chief Executive had formally approved the proposal, as was also legally required.<sup>2135</sup>

The Lands Department noted that legally, the rights of the former owners arose once the site was no longer required for a prison. Therefore, it was of the view that those rights had to be satisfied before any alternative options for disposal were formulated for consideration. As a result, it believed the draft proposals as they now stood were not in accordance with those legal requirements. Instead, the Lands Department view was that, legally, the action now required was for the Chief Executive of Lands to make a formal approach to the former owners or their successors under section 40. If the former owners decided to repurchase, then the parties involved in preparing the proposals would need to negotiate with them. If they declined, then the Chief Executive still had to formally approve the draft proposals before they were submitted to Cabinet. It was suggested, however, that further discussions might be useful before any formal offers were made to the former owners.<sup>2136</sup> At this stage, the Lands Department made no mention of any exemptions to offer back requirements for the prison site. Nevertheless, it seems that by this time, the original approvals for exemptions had been subject to serious reconsideration and this too had caused further consideration and re-examination of these issues.

#### **10.28 Re-consideration of section 40 offer back exemptions, 1988-90**

The issue of possible exemptions for offer back requirements for Waikune Prison had been raised again after the successful injunction restraining the Justice Department from demolishing or removing most of the prison buildings. In December 1988, the Justice Department had sought a Crown Law opinion on matters arising from these legal proceedings. This opinion noted that it seemed that it was not the intention of the Department to finally dispose of the prison land (as opposed to the buildings) while claims were pending before the Waitangi Tribunal. However, there was still a mandatory obligation, through the Chief Executive of Lands, to offer back the land declared surplus under sections 40 and 41 of the Public Works Act, unless the land fell within the exceptions provided by the Act.<sup>2137</sup>

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<sup>2135</sup> Letter Acting Director General Lands to Corrections, 27 April 1989, ABWN 889 w5021 box 178, 25/355 pt 1 ANZ

<sup>2136</sup> Letter Acting Director General Lands to Corrections, 27 April 1989, ABWN 889 w5021 box 178, 25/355 pt 1 ANZ

<sup>2137</sup> Crown Law Opinion, 16 December 1988, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

With regard to the exceptions that might apply to the requirements for offer back, the legal opinion recommended a much more thorough investigation of the circumstances of acquisition than had previously been conducted, if all the circumstances contributing to application of exemptions were to be properly considered. The opinion also raised doubts as to whether the actual criteria relevant to determining exceptions to offer back had been correctly applied.<sup>2138</sup>

The opinion noted that some of the recommendations regarding exceptions had been based on incorrect information. For example, it had originally been claimed that most of the complex was on 4A5 but more recent information indicated that no more than three prison houses were located on that block.<sup>2139</sup> Additionally insufficient research appeared to have been conducted to be sure that the Waimarino Development Company was in fact dissolved and whether it was in fact impossible, or ‘impracticable’ to offer back to that company. It was also not clear that sufficient research had been conducted to enable the Chief Executive of Lands to decide if criteria such as ‘unreasonable’ or ‘unfair’ might apply in the case of offer backs. It was noted that it seemed that there had been some focus on how the land was acquired, whether by compulsion or not, but this kind of reliance in itself was insufficient as a number of Court cases over offer backs had now shown.<sup>2140</sup> The opinion also raised doubts as to whether the criteria for exemptions to offer back had been properly applied. It was acknowledged that it was up to the Chief Executive of Lands to form his own judgment regarding the exceptions. However, this decision making was open to review and there needed to be a sufficient basis for the decisions on a firm, factual foundation.<sup>2141</sup>

With regard to what was ‘impracticable, unreasonable or unfair’ it did seem as though it would be ‘impracticable’ to offer land back to a company in liquidation, if this was the case.<sup>2142</sup> However, it was not clear that the mere presence of buildings made an offer back ‘impracticable, unreasonable or unfair’. In any case, Justice had shown an intention to remove or demolish the prison buildings making this even more irrelevant.<sup>2143</sup> The same was true of the existence of the houses, although there could be some circumstance attached to the building or future use of the houses that might make it ‘unreasonable’ although not

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<sup>2138</sup> Crown Law Opinion, 16 December 1988, p 9, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2139</sup> Crown Law Opinion, 16 December 1988, p 8, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2140</sup> Crown Law Opinion, 16 December 1988, p 8, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2141</sup> Crown Law Opinion, 16 December 1988, p 14, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2142</sup> Crown Law Opinion, 16 December 1988, p 9, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2143</sup> Crown Law Opinion, 16 December 1988, p 10, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

‘impracticable’ for them to be offered back. Town Planning difficulties alone might not be sufficient, but if the Crown could show some loss through having to offer back to former owners the houses on site at a low value because of restrictions on their future use, compared to the price that might otherwise be obtained for the houses if they were sold for removal and further use elsewhere, ‘unreasonableness’ might apply. Nevertheless, further investigations were required for this. It was also noted that any decision on ‘unreasonableness’ or ‘unfairness’ would also have to take account of the Maori Council case.<sup>2144</sup> With regard to the section 40(4) exception concerning the size shape or situation of the land, the opinion noted it was likely that some of the smaller pieces of land might fall into this category, but again further investigation was required.<sup>2145</sup>

The exemption that had been relied on most in previous reports recommending exemption from offer back had been section 40(2)(b) regarding a ‘significant change in the character of the land’ providing that change was made for the purpose of, or in connection with, the work for which it was held. The opinion was particularly critical of the application of this exception. It was noted that in the first case, the definition of land in the Public Works Act appeared to provide for the usual definition of land, incorporating houses and buildings as part of ‘land’ and possibly, through common law, trees as part of ‘land’ as well.<sup>2146</sup> Previous reports making recommendations for exemption under this section had been ‘far from clear’ about what was meant by ‘significant change’.<sup>2147</sup> It did not seem that the mere presence of buildings or trees was of itself a significant change. The reports recommending exemption because of ‘significant change’ for 4A5 were not only inaccurate but did not appear to apply criteria correctly, because the mere presence of houses or buildings on 4A5 did not seem adequate to have it exempted because of significant change.<sup>2148</sup> Similarly, the reference to 4A2 having a sawmill and plantation of pine trees on it also did not seem in itself enough of a ‘significant change’.<sup>2149</sup> It was not even clear that some of the trees had not already been planted before the land was acquired.<sup>2150</sup>

The opinion also commented on when the value of the land was to be determined to establish a price for offer back, noting that the issue had arisen of whether it was still relevant that the

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<sup>2144</sup> Crown Law Opinion, 16 December 1988, p 10, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2145</sup> Crown Law Opinion, 16 December 1988, p 11, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2146</sup> Crown Law Opinion, 16 December 1988, p 12, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2147</sup> Crown Law Opinion, 16 December 1988, p 9, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2148</sup> Crown Law Opinion, 16 December 1988, p 8, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2149</sup> Crown Law Opinion, 16 December 1988, p 9, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2150</sup> Crown Law Opinion, 16 December 1988, p 13, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

site was still gazetted as a prison. However, the requirement seemed to be that the obligation arose when the prison was no longer required, not when the gazettal was lifted. It also seemed better not to try and make an offer with any conditions attached, as this was not specifically provided for in the relevant section of the Act.<sup>2151</sup> With regard to section 41, offering back land to former Maori owners, the opinion was that if the terms of section 41 were met, it prevailed over sections 40 and 42.<sup>2152</sup>

It was also noted that there might be grounds for challenging any offer back to former owners from whom the land was acquired, if there was a strong doubt that they were the true owners in terms of Treaty claims. In this case, it might be ‘unreasonable’ or ‘unfair’ to offer back land to former owners if it seemed likely the Waitangi Tribunal might find they were not the true owners. The opinion noted the need for more consideration of the relationship between Tribunal findings on claims and public works offer back obligations. It recommended that consideration could even be given to whether it might make sense to give the Waitangi Tribunal the power to make binding decisions as to the appropriate persons to whom section 40 applied.<sup>2153</sup> It was further recommended that in this case, while claims were pending, the Chief Executive Lands should make no decisions to offer land back except perhaps in the case of the land owned by the Waimarino Development Company. It was also recommended that whatever the procedure had been previously, before a decision was made not to offer back land, representations should be sought from former owners or successors unless after reasonable investigations this was ‘impracticable’. This would enable the Lands Department to make its intentions clear to these people.

The Crown legal opinion raised questions about the adequacy of investigations and applications of criteria regarding the application of section 40 exemptions. The actions of the Justice Department in partially demolishing and removing the prison buildings also caused the approving authority to reconsider the previous approvals for exemptions all of which had been requested on grounds of ‘significant change’. On 8 December 1988, it was noted that a number of previous approvals for exemptions now had to be reviewed. The approval of 27 January 1988, concerning the land on which most of the prison complex stood on what was originally Waimarino 1 just south of 4A5 had been made on the grounds of significant

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<sup>2151</sup> Crown Law Opinion, 16 December 1988, p 14, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2152</sup> Crown Law Opinion, 16 December 1988, p 16, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

<sup>2153</sup> Crown Law Opinion, 16 December 1988, p 17, ABWN 889, w5021 box 178, 25/355 pt 1 ANZ

change. This now had to be reviewed because Justice had authorised the removal of improvements from this land.<sup>2154</sup>

The approval of 10 July 1987, concerning 4A2, also on grounds of significant change, was also now under review because the significant building on the site, the sawmill, had been gutted of operating machinery. The approval of 27 January 1987, for exemption for 4A5, also on grounds of significant change because of the claimed location of the cell blocks, administration building, chapel, single mens' quarters, gymnasium, family homes and other prison buildings on this site was now known to be incorrect and therefore this approval also needed to be reviewed. In the opinion of officials, it now seemed that all the prison land might need to be offered back to the former owners.<sup>2155</sup>

As previously noted, as a result of these approvals, exemptions from offer back for most of this land had been gazetted in 1988. It is not clear what the effect of this revocation of approvals had for these gazette notices, including whether a gazette revocation was also required or whether the revocation of approval was sufficient notice. This issue does not seem to have been raised by officials at this time.

The Acting Director General of Lands confirmed to the Minister of Lands in early 1989 that for a variety of reasons, including a shift in legal opinion, the removal of some of the improvements, and a review of principles and practices associated with section 40, the earlier exemptions on grounds of significant change no longer seemed sustainable. A Crown Law opinion had also cautioned against making any decisions in terms of the Public Works Act concerning any formerly Maori land now part of the property while claims to the Waitangi Tribunal were pending. This highlighted the difficulty of an offer back made under the Public Works Act possibly resulting in the vesting of lands in persons other than those making a claim that also included this property. The prison property was in the hands of Landcorp for disposal but this was not being proceeded with because of claims lodged with the Tribunal. It was also noted that the Department of Lands had no prior knowledge of the recent demolition work carried out by the Department of Justice.<sup>2156</sup>

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<sup>2154</sup> Letter, District Manager to Acting Director General Lands, 9 December 1988, ABWN 889 w5021 box178, 25/355 pt 1 ANZ

<sup>2155</sup> Letter, District Manager to Acting Director General Lands, 9 December 1988, ABWN 889 w5021/178, 25/355 pt 1 ANZ

<sup>2156</sup> Letter Acting Director lands to Minister of Lands, 20 February 1989, ABWN 889 w5021/178, 25/355 pt 1 ANZ

The decision to consider offering the whole site back to former owners, took the whole investigation back to a consideration of who those former owners might be and whether it was really possible (or reasonable or fair) to offer back to them, something that had originally been avoided in the initial investigations. These more detailed investigations finally led to a more detailed consideration of the acquisition history of the prison and the circumstances of acquisition. This also led to more reconsideration of whether exemptions to offer back could apply, this time based on more accurate information. It still seems to have been accepted however, that the strictly legal process as outlined by lands had to be gone through, without necessarily consulting or negotiating with those interested in the land, to try and reach some agreement acceptable to all.

With more adequate investigations, Justice eventually proposed by October 1989, that the main complex area could be exempt on the grounds of significant change because of the development of the main prison site. It appears this was still felt to apply even with the demolition and removal of some buildings. It was suggested that the small land area that was part 4A5 containing prison houses could also be exempted from offer back on the grounds of an offer being 'impracticable' (the Company had been dissolved) and significant change. The rest of 4A5 could be exempt as 'impracticable' (the Company having been dissolved). All the rest of the land, could be offered back to the former owners or their successors and if they declined, to Whanganui iwi. It could also be leased to iwi in the meantime while the offer backs were finally arranged.<sup>2157</sup>

These proposed exemptions were finally based on much more adequate and detailed research. They acknowledged that the original owners of the Waimarino 1 block might also have section 40 rights, given the wording of the section, although the effort required to track the successors of the original around 1000 owners from 1887 might be considered 'unreasonable' when the land involved was relatively lowly valued. This research finally also attempted to trace the history of various sections involved in road and rail disposals and acquisitions, noting that some might well fall into the size and shape exception as well. The 'significant change' criteria also now appeared to have been considered far more carefully than had been the case previously. This included consideration of a Crown Law opinion on what was known as the Sylvia Park case, where it was found that the mere presence of buildings might not in

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<sup>2157</sup> Justice proposals re section 40 exemptions, October 1989, ABVP 7404 w5218/76, 13/7/12/1 v 7 ANZ

themselves constitute 'significant change'.<sup>2158</sup> The Corrections Department also began to commission extensive research into the former owners and successors of the four sections to be offered back.

By late 1989, however, pressure was still growing from government agencies interested in promoting disposals, including Treasury and various State Owned Enterprises, that the Lands Department was acting too slowly with section 40 clearances to the detriment of the government asset sales programme. In response to these views, Treasury apparently supported changes to have the offer back functions removed or delegated from Lands to various government agencies.<sup>2159</sup> Maori were also expressing concern by this time that the government was also considering selling surplus land directly and not through State Owned Enterprises to avoid the protection mechanism for Treaty of Waitangi claims in the State Owned Enterprise Act described earlier.<sup>2160</sup> This was followed by further government restructuring whereby, by 1990, the offer back functions were transferred to the Chief Executive of what was now the Department of Survey and Land Information (Dosli). Treasury continued to pressure the new Dosli to act more quickly on section 40 clearances, suggesting that Dosli could delegate its authority to the chief executives of State Owned Enterprises for section 40 disposals. Treasury also suggested that a more coordinated approach was required for surplus land under Maori claim.<sup>2161</sup> The Chief Executive of Dosli acknowledged the necessity to expedite section 40 clearances and agreed to work closely with agencies over them, while reminding Treasury that accountability for such clearances still rested with the Dosli chief executive.<sup>2162</sup>

Corrections sent a detailed submission of its findings concerning Crown acquisitions for Waikune Prison, under cover of a letter of 12 October 1989, to the Chief Executive of Dosli in an effort to promote rapid approvals for proposed section 40 exemptions for the prison site. While this information was accepted, the Chief Executive made it clear that by law the final decision was his.

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<sup>2158</sup> Justice proposals re section 40 exemptions, October 1989, ABVP 7404 w5218/76, 13/7/12/1 v 7 ANZ

<sup>2159</sup> Letter 10 May 1989 Acting Director General Lands to Minister of Lands, ABWN 7616 w5198 Lands 27/3 pt 1 box 2 ANZ

<sup>2160</sup> Correspondence 1988-1989 and letter 10 May 1989 Acting Director General Lands to Minister of Lands, ABWN 7616 w5198 Lands 27/3 pt 1 box 2 ANZ .

<sup>2161</sup> Treasury to Dosli 6 March 1990 ABWN 7616 w 5198 lands 27/3 pt 2 b 2 ANZ

<sup>2162</sup> Dosli to Treasury 29 March 1990 ABWN 7616 w 5198 lands 27/3 pt 2 b 2 ANZ

The Department of Survey and Land Information on taking over responsibility for overseeing section 40 applications made further attempts to rationalise and ensure consistency over offer backs. The section 40 requirements were to continue to be applied in the context of the Cabinet instruction on the disposal of government land (CO(88)12) previously described and another later Cabinet instruction on the protection of waahi tapu sites prior to the disposal of land except for residential commercial or industrial properties (CO(89)13). They were also to take account of relevant legislative and contractual provisions applying to section 40 requirements. The Department of Survey and Land Information (DOSLI) was now responsible for overseeing the offer back process for government agencies while the chief executive of DOSLI now had statutory responsibility for section 40 offer backs.

The matter of Waikune Prison offer backs was held up with further government restructuring, however, and in March 1990, Justice complained again that the matter was being delayed too long.<sup>2163</sup> After further pressure from a number of interest groups as well as Corrections, a new report on section 40 exemptions was approved in June 1990. This was amended yet again in 1991 when it was discovered that some sections may have been omitted. These included some land that appeared to have been allocated to the Department of Conservation when it was created in 1987. These were apparently the areas of marginal strip created on the transfer of National Park land. It was considered that these strips should not be considered part of the surplus land for disposal. Some other sections really part of the original prison complex and now considered to have numerous former owners and successors were also recommended as being included under the exempted land. This included part section 3 and part section 4, block IV Manganui SD originally proclaimed in 1921 and section 2 block 1 Ruapehu Survey District, transferred from National park and originally part of Waimarino 1. This was also recommended exempt as part of the core prison land. This left the four original purchased areas of 4A1A to 4A4 which were still recommended to be offered back. This was approved by the Commissioner of Crown Lands on 4 February 1992.<sup>2164</sup>

By May 1991 Dosli had decided that the wording of the 1981 legislation regarding ‘successors’ should be more carefully interpreted. This meant ‘successor’ would be limited to ‘the person entitled under the will (or intestacy) of the former owner of the land’. It was noted

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<sup>2163</sup> Letter Group manager Corrections to Chief Executive lands, 5 March 1990, ABWN 7616 w5021 b 920, lands 27/3/2/1 pt 1 ANZ

<sup>2164</sup> Internal memo 23 December 1991 and approval of Commissioner of Crown Lands 4 February 1992, ABWN 7616 w5012, 27/3/2/1 box 921 ANZ

that this did not include other descendants, grandchildren or great grandchildren, if they were not so entitled under the will. If the former owner had died, it was necessary to peruse the will to find the person entitled and no one else. When a person died intestate, officials could consider who the executor may have left the land to. No other person was entitled to be considered for offer back and the Act did not require successors to the successors to be considered.<sup>2165</sup>

This new decision was likely to have a significant impact for Maori concerned with offer backs in historic cases (including even areas of the prison) where former owners and their immediate beneficiaries were no longer likely to be alive. In the case of Waikune Prison, however, it seems that as work on successors had already begun, meetings with those who had been identified as general successors would still be held. Once full lists were compiled, it was expected that each individual or their representatives could be notified and negotiated with either individually or collectively. They would then have the usual 40 days to decline or accept the offer back at the price offered.<sup>2166</sup>

### **10.29 Waikune Prison offer backs, 1992**

In May 1992, a meeting was set for all those former owners and successors to the four sections of Waikune Prison (4A1A, 4A2, 4A3, 4A4) that researchers had been able to identify through Maori Land Court records and through notifying meetings in local newspapers. These were the sections of the prison that were not considered exempt from the section 40 offer back. The May meeting of these former owners and successors formed a steering committee to represent those with interests in the offer back. It was given the usual 40 days to accept or decline the offer. After discussions, the meeting asked for an extension of time for further consideration and this was further extended on request until 10 August 1992.<sup>2167</sup> On that date, the steering committee wrote to the Minister of Justice that a meeting had been held to discuss the offer back at Raetihi Marae on 5 August 1992. That meeting decided that while it would dearly like to have the land returned, especially the area once known at Ngatokorua Pa, they

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<sup>2165</sup> DOSLI internal memo 9 May 1991 ABWN 7616 w5198 27/3 pt 3 ANZ

<sup>2166</sup> Memo District Solicitor to Commissioner of Crown Lands, 26 July 1991, ABWN 7616 w5012, 27/3/2/1 box 921 ANZ

<sup>2167</sup> Copies of correspondence re offer back 1992, on OTS file PF 1382 pt 2, held at OTS.

did not have the financial resources to buy the land back at the price offered, of \$333,034.00. They also felt that this price was far too high and should have been closer to \$200,000.<sup>2168</sup>

The Steering Committee went on to suggest an alternative. The meeting was aware that negotiations had begun between the Treaty of Waitangi Policy Unit (predecessor to the Office of Treaty Settlements) and Waimarino claimants in 1991, and that part of the settlement could well be Waikune Prison. The meeting suggested that the government sell back the site for \$1.00 on condition that the site was immediately offered to the group who wanted to use the prison as a wananga. Over the next twenty years the wananga would pay the government 1/20<sup>th</sup> the cost of the prison until it was entirely paid for and would have to pay no rent to the successors. When it was paid off the successors would then assume ownership.<sup>2169</sup>

In response, officials advised that, legally, the counter offer meant that the Crown could decide to accept or decline it and then the statutory section 40 requirements would be ended. It was known at this stage that there was discretion in special cases to negotiate a lower than market price but this does not seem to have been seriously considered by officials and nor is it clear the meeting was aware of this. The Department of Justice then instructed that the counter offer be declined. However, Justice did ask that it was explained to the steering committee that the land would be withheld from sale pending discussions on the settlement of the Waimarino claim, which was currently being negotiated.<sup>2170</sup> It was intended to offer the prison property to the Waimarino claimants as a possible settlement, but if they did not accept then Justice intended to instruct Crown lands to take further steps to dispose of the prison property.<sup>2171</sup> This effectively signalled the end of any officially recognised offer back requirements for Waikune Prison. From this time, attention turned to disposal of the prison site now cleared of any section 40 offer back considerations.

### **10.30 A new legal title for the Waikune Prison site**

After the long and protracted investigations and considerations of all the separate titles involved with the Waikune Prison land, the Justice Department appears to have taken the opportunity once the land was free of section 40 considerations to rearrange and simplify the

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<sup>2168</sup> Copy of letter from Waikune Lands Offer back Steering Committee to Minister of Justice 10 August 1992 on OTS file PF 1382 pt 2, held at OTS

<sup>2169</sup> Copy of letter from Waikune Lands Offer back Steering Committee to Minister of Justice 10 August 1992 on OTS file PF 1382 pt 2, held at OTS

<sup>2170</sup> Copy of letter Secretary for Justice to Crown lands 2 September 1992 on OTS file PF 1382 pt 2, held at OTS.

<sup>2171</sup> Copy of letter Justice 4 September 1992 OTS file PF 1382 pt 2, held at OTS

land title for disposal purposes. The previous gazette notices proclaiming various sections to be Crown land for disposal were withdrawn by subsequent notice in 1994 setting the land apart again for Justice purposes.<sup>2172</sup> The Justice Department also gained a new title for the whole site to simplify it as much as possible, while also taking into account legal and planning requirements such as section size and allowed uses.<sup>2173</sup>

The new title to the prison lands was issued on 14 November 1995 as CT 46C/925.<sup>2174</sup> This new title covered the whole prison site of some 499.8400 hectares, in four new sections numbered 1 to 4, as on SO plan 37436 (and an aggregation of all the land in gazette notice 6 October 1994). This was then corrected and amended by CT 46C/926, which took account of the marginal strips still existing along the Waimarino Stream as being excluded from title.<sup>2175</sup> (see map 11 of this report). In the meantime, Corrections continued to negotiate with the Trust Board over the demolition or removal of some buildings as they clearly became unsafe.

### **10. 31 Crown protection mechanisms for surplus government land, 1990s**

As noted, by 1991 the Treaty of Waitangi Policy Unit (Towpu) on behalf of the Crown had become involved in negotiations over the Waikune Prison site. By the early 1990s, the Crown had also developed new protection mechanisms by which the Crown could consult with Maori when Crown agencies wished to sell surplus land.<sup>2176</sup> There were a number of these mechanisms for various circumstances, including landbanking for use in Treaty claims, memorials on State Owned Enterprise, Crown forestry land and education land transferred to tertiary institutions, the Crown Settlement Portfolio (for areas affected by confiscations under the NZ Settlements Act 1863) and the Sites of Significance process administered by Te Puni Kokori (Ministry of Maori Development). As well as regional landbanks, claim specific landbanks were also established in some areas, including Whanganui.<sup>2177</sup> Maori had to apply to have surplus land included in landbanks. The applications are assessed by an officials committee, which is required to consider a number of issues. These include the reasons given for the significance of the site, the reasons justifying the cost of holding a property in a

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<sup>2172</sup> *NZ Gazette* 1994, 6 October 1994, p 3028, notice dated 30 September 1994

<sup>2173</sup> OTS memo 17 February 1998, OTS PF 1382 pt 1, held at OTS

<sup>2174</sup> Copy of CT 46C/925 on OTS file PF 1382 pt 1 held at OTS

<sup>2175</sup> Copies of title documents on OTS PF 1382 pt 1 held at OTS

<sup>2176</sup> Office of Treaty Settlements, *Protection of Maori Interests in Surplus Crown-owned Land*

<sup>2177</sup> Office of Treaty Settlements, *Protection of Maori Interests in Surplus Crown-owned Land* p 5

landbank, the financial limits or caps for the claim area and whether negotiations on settlement are in progress or likely to begin.<sup>2178</sup>

By 1996, Land Information New Zealand (Linz) had also taken over responsibility for the disposal of surplus government lands on further government restructuring. The current Linz guidelines for disposal of surplus land have been outlined in detail in other reports.<sup>2179</sup> They are also likely to be described in more detail in the forthcoming Cleaver report on Public Works Takings in the Whanganui district. In brief, disposals of surplus government land are now managed by accredited suppliers, either internal Linz employees or external service providers, who must obtain background information from the ‘vendor agency’ disposing of the land. The supplier must then carry out a land status check and land valuation in most cases. The accredited supplier must also ensure compliance with statutory provisions giving former owners a right of re-purchase (sections 40-41 of Public Works Act 1981 in most cases). These provisions must be considered before any mechanisms for the protection of Maori interests are applied. The suppliers must also undertake a ‘thorough investigation’ into the circumstances surrounding the acquisition of land by the Crown. Where it is suspected the land may have been owned by Maori immediately prior to its acquisition, a diligent search of Maori Land Court records is required and all results must be reported. The guidelines also provide examples for criteria in applying exemptions to offer back and where the price might be recommended as lower than market value. Linz also requires that the disposal process is subject to audit with a clear audit trail of all key decisions and actions. Accredited suppliers are also required to notify the Department of Conservation for clearance before the land goes through any other process, including Maori protection mechanisms. The new guidelines also take more account of the definition of ‘successors’ with regard to Maori land, as including all persons confirmed by the Maori Land Court as being ‘beneficially entitled to succeed’. In the absence of a will, the rules in the Te Ture Whenua Act are to be followed.<sup>2180</sup> A review of the whole operation of the Public Works Act 1981 has also been carried out under land Information New Zealand management and recommendations, which may address some outstanding issues and concerns are currently before the Government for consideration.<sup>2181</sup>

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<sup>2178</sup> Office of Treaty Settlements, *Protection of Maori Interests in Surplus Crown-owned Land* pp 8-9

<sup>2179</sup> See, for example, Marr, Cleaver and Schuster, ‘The Taking of Maori Land for Public Works in the Wairarapa ki Tararua district 1880-2000’, chapter 9, 2002

<sup>2180</sup> Linz, Accredited Supplier standards, especially, ‘Statutory Right of Repurchase’ (Standard 4), ‘Disposal of Gifted Land’ (Standard 24) and ‘Disposal of Land’ (standard 3)

<sup>2181</sup> See also Linz, *Review of the Public Works Act; summary of submissions*, 2001, and *Review of the Public Works Act; Issues and Options, public discussion paper*, 2000

Once surplus land has been through this initial disposal process, it is considered subject to Maori protection mechanisms. These are the landbanking process through the mechanism for the Protection of Maori Interests Process administered by the Office of Treaty Settlements (OTS) and the Sites of Significance Process administered by Te Puni Kokori (TPK). Accredited suppliers must provide written evidence that OTS and TPK requirements under these protection mechanisms have been met before going further in the disposal process. Accredited suppliers must also submit details of surplus Crown lands to OTS to advertise, enabling applications to be made under the mechanisms. A schedule of surplus Crown properties is regularly advertised in Sunday papers to enable properties to be recommended for Treaty settlement purposes. These processes attempt to protect land that may be the subject of claims or of interest to Maori (such as waahi tapu) before it is transferred out of Crown ownership.

### **10.32 Land banking and lease of the Waikune Prison site, 1992**

By 1991 this system of protection mechanism was being developed and Towpu and later OTS were therefore concerned to seek Maori opinion as to whether the Waikune Prison site was required by Whanganui Maori for landbanking protection, now that section 40 requirements no longer applied. Negotiations over the possible landbanking of the site continued through the 1990s and through the restructuring of Towpu into the Office of Treaty Settlements (OTS). The Cabinet also approved the establishment of a Whanganui landbank in 1994 by CAB(94) M31/15 with a cap of \$3 million. With some sites already acquired for the Whanganui landbank, the Waikune Prison site threatened to overrun this cap.<sup>2182</sup> The current valuation of the land, improvements and forest trees for the prison site was by now just under \$2.2 million.<sup>2183</sup> Interestingly, this was now less than the costs expended on the disposal and administration of the site, which by mid-1996 had risen to just under \$2.5 million.<sup>2184</sup> Most of the valuation for the prison site (around \$1.2 million) was now comprised of the forestry value of the site.

In 1998, the Office of Treaty Settlements prepared a new proposal, whereby the Waikune Forest would be transferred from Corrections to Treasury. The Office of Treaty Settlements

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<sup>2182</sup> Correspondence between Linz OTS and the Whanganui River Maori Trust Board 1996-97, OTS file PF 1382 pt 1 held at OTS

<sup>2183</sup> OTS memo 17 February 1998, OTS PF 1382 pt 1 held at OTS

<sup>2184</sup> Internal OTS memo 30 June 1997, OTS PF 1382 pt 1 held at OTS

would purchase the Waikune site land, including the land under the forest. This would move the properties off the Corrections balance sheet, provide for more efficient financial management and would leave the land and the trees available for future Treaty settlements.<sup>2185</sup> This would also require the raising of the Whanganui landbank financial cap to \$6 million, the further cleanup of the now deteriorating buildings on site and the lifting of the interim injunction by the Whanganui River Maori Trust Board to enable this to happen.<sup>2186</sup> In August 1998, Cabinet agreed to this proposal (CAB (98) M27/3E (3)).

Discussions continued for some years between OTS, Corrections, the accredited Linz agent and the Trust Board about the details of the proposal and what the implications might be. The Office of Treaty Settlements eventually proposed in 2000, that it would purchase the site for \$268,000 (plus gst) to place it in the landbank. The forestry rights meanwhile would be transferred to the Crown to be managed by Crown Forest Management. The forest would not be landbanked but would be available for future settlements. The land under the forest and the rest of the site would be placed in the landbank. The Board could lease the prison site not under forest, but would be required to keep it tidy and safe. Any clean up could include the removal or demolition of unwanted or unsafe buildings. The Board would be required to lift the 1988 injunction to enable this to go ahead.<sup>2187</sup>

The Trust Board made some counter proposals for the site during this time including sale offers which were declined. In April 2000, the Trust Board agreed to the prison site being included in the Whanganui landbank and to Corrections disposing of 23 of the 26 houses from the site to avoid deterioration and loss of value. The remaining houses were to be renovated. In September an agreement in principle was reached between the Trust Board, the Office of Treaty Settlements and the Department of Corrections to have the site landbanked at an agreed value, and then leased to the Trust Board. By November 2000, the site had been cleared of all unwanted and unsafe buildings and the security contract was ended. The Trust Board agreed to become responsible for maintaining the leased part of the site and agreed to take the property as part of any settlement at the landbank value.<sup>2188</sup> Discussions continued on the details of the proposed lease.

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<sup>2185</sup> OTS briefing paper, 2 April 1998, OTS PF 1382 pt 1 held at OTS

<sup>2186</sup> OTS Cabinet proposal 1998 OTS PF 1382 pt 1 held at OTS

<sup>2187</sup> Letter OTS to Whanganui River Maori Trust Board, 17 May 2000, OTS PF 1382 pt 1 held at OTS

<sup>2188</sup> Correspondence concerning agreement, 2000, OTS PF 1382 pt 1 held at OTS

The forestry right for the Waikune forest was transferred to the Crown by agreement for the period from 11 December 2000 to 30 June 2035, over 144.2 hectares of the site.<sup>2189</sup> Management of this was later taken over by the Ministry of Agriculture and Forestry on the demise of Crown Forest Management. After further discussions, in August 2002, the Office of Treaty Settlements made a formal offer for landbanking the prison site, including the land under the forest, for an agreed purchase price of \$268,000 (plus gst).<sup>2190</sup> This would include the whole of the new title CT 46C/925 subject to the forestry right. It would also be understood that any settlement using the landbanked site would take account of the site at the value at which it was landbanked. In return, the 1988 injunction over the site would be lifted and the caveat placed on the title removed. The site would also be available for settlement unless otherwise sold by private treaty to the Whanganui River Maori Trust Board. The inclusion of the site in the Whanganui landbank was approved by the Minister on 3 September 2002. This offer was accepted by the Whanganui River Maori Trust Board on 21 September 2002.<sup>2191</sup>

The agreement for OTS to purchase the site in CT 46C/925 (499.84 hectares) for \$268,000 (plus gst) was dated 15 October 2002, with the formal settlement arranged to take place on 9 November 2002. The property was to be landbanked under Ministerial approval of 3 September 2002 and Trust Board agreement of August 2002. A lease to the Trust Board of the main prison complex and some surrounding land (as indicated on the lease) for a small annual rental was also arranged from 9 November 2002. The Trust Board was to take over responsibility for the security, water supply, energy requirements and other outgoings for the land under lease. The Office of Treaty Settlements also appointed the property management firm OPUS to manage the portion of the site outside the Trust lease and to oversee the administration of the Trust Board lease.

By 2003, some seventeen years after Waikune Prison was first declared surplus, the Department of Corrections was finally able to withdraw from any involvement in the Waikune Prison site. The site land had also been landbanked for future Treaty settlements with assurances the forest trees would also be available for any future settlement.

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<sup>2189</sup> OTS correspondence 2001, OTS PF 1382 pt 2 held at OTS

<sup>2190</sup> OTS formal offer 30 August 2002, OTS PF 1382 pt 2 held at OTS

<sup>2191</sup> Approval and offer documents 2002, OTS PF 1382 pt 2, held at OTS

### 10.33 Conclusion

The creation and disposal of Waikune Prison highlights a number of issues of concern to Whanganui Maori over pressures on remaining land for public works purposes and the difficulties encountered with the disposal of surplus government land. The prison was initially created as a temporary road camp, raising issues of how the use of prison labour impacted on promised employment opportunities for Maori in the Waimarino district. The taking of land for various public purposes had already placed considerable pressure on Waimarino 4 non-seller reserve, including the isolation of an urupa between the main road and rail lines. Although the prison camp was not located on reserve land, the close proximity of the prison to the reserve placed pressure on resources and eventually on land in the Waimarino 4 reserve. This was exacerbated by the expansion of the nearby Tongariro National Park and the view that Maori land was easier to acquire than other Crown land for prison purposes.

The temporary nature of Waikune Prison camp contributed to ad hoc and often informal land uses throughout the life of the prison. On a number of occasions the prison was nearly closed and the nearby location of what was perceived as more easily acquired largely Maori land was a factor in its continued existence. In most cases, the larger prison land acquisitions were made as purchases, although the system of purchasing of Maori land at the time raises issues of the pressure government agencies were able to place on Maori to sell their land. Many smaller changes in prison land title were also made as a result of road and rail realignments. From the 1960s, the prison also exchanged land with Tongariro National Park.

When the decision was made to finally close Waikune Prison in 1986, the prison land consisted of a large number of parcels of land, often with a complicated acquisition history. Some of the prison facilities, such as the sewerage system, had also been developed on an informal basis without legal transfers of title. At the time the land was declared surplus the offer back provisions of the Public Works Act 1981 applied, while the land was also subject to a number of Treaty claims. This meant there were two, not necessarily conflicting, sources of Whanganui Maori interest in the prison site. These were those who could be considered former owners or successors of owners in Maori land that was acquired for the prison, who were entitled under the 1981 Act to be offered first purchase rights on the site. There were also those who were interested in the site as part of a possible settlement of Whanganui Treaty claims. This was particularly while the site appeared to be a going concern with buildings and associated facilities for possible use as a wananga and training centre. The wider regional

community also appeared supportive of retaining the complex as a going concern to provide training and employment opportunities in the area.

The attempts to dispose of the prison site over the next 16 years highlight a number of issues concerning the offer back process for Maori, as well as issues over the protection of surplus government land for possible claim settlements. One of the issues with the early attempts to implement offer back protections was the conflict created between the need to address these interests adequately and the government pressure to dispose of government assets and surplus land as rapidly as possible. This placed considerable pressure on those required to implement offer back provisions to undertake them quickly, even for complicated sites such as Waikune that had developed on an ad hoc basis over many years with a number of complicated and overlaying acquisitions from Maori. The result in the Waikune case was to try and force all land possible within exemptions to offer backs to avoid the need for more thorough research. This was later found to be inadequate and also raised issues about the protection of the rights of former owners and successors in such circumstances. The government focus at this time was very much on maximising revenue and proceeds from disposals, without significant parallel requirements to take account of the interests of affected communities, including Whanganui Maori. Maori forced the government to widen this narrow focus through a series of Court and other actions but this happened in a piecemeal fashion over a number of years. In the meantime, the focus on the necessity to save costs and maximise revenue from surplus lands appears to have contributed to the Justice decision to begin demolishing and removing the Waikune complex buildings, without consultation with the wider community and interests groups including Whanganui Maori.

The offer back process for the disposal of surplus government land, as reflected in the Waikune Prison case, also raises a number of general issues. The 1981 provisions, while providing for offer back to former owners or successors of land held for a public work, also gave a significant amount of discretion to government agencies in implementing the provisions and in allowing exemptions to offer backs, as well as over whether to offer land back at less than market value in some cases. There is no requirement in the 1981 Act to consult with Maori over this, or to take Maori Treaty interests into account in such decision making, while most protection mechanisms only come into operation after this process has been gone through. The discretion is further enhanced by the vague wording of many of the relevant provisions concerning offer back and exemptions, such as what is a 'significant' change and what can be considered 'unreasonable' or 'unfair'.

There were also no requirements in the 1981 provisions, or in guidelines developed by responsible agencies, requiring account to be taken of the circumstances of Maori land. This raised the likelihood of exemptions impacting more significantly on Maori land and therefore excluding relatively more Maori interests. For example, the guidelines that definitions of ‘unreasonableness’ might include cases of numerous owners, might have a relatively small application to general land but were likely to apply much more widely in the case of Maori land, including for Waikune. The requirement to offer back to individual owners and successors also failed to recognise the collective hapu and community interests Maori might still wish to retain in land, especially when there were no provisions for land to be alternatively offered back to collective groups, if individuals were unable or unwilling to take up offers. This was even when the government individualisation of title and undermining of collective rights is in itself the subject of numbers of Treaty claims.

The requirements to satisfy section 40 offer back requirements before taking any other actions over disposal also fails to take account of the possibility that the same land might be subject to both offer back to some Maori interests and subject to claim by other Maori interests who might also question the propriety of the original determination of ownership, as was the case with the Waikune site. These different types of interests are not necessarily incompatible, and in the Waikune case the former owners and successors seemed willing to cooperate with other groups interested in using the site for Treaty settlements. However, the requirement to offer back first before any other action can be taken appears to have the potential to exacerbate conflicts, when negotiations taking account of all interests and attempting to find a compromise between them might be more productive. In the Waikune case, the insistence on implementing offer backs before considering any other options, although following legal requirements, also appears to have contributed to delays with attempts to protect the site for claims.

The Waikune Prison disposal also highlights issues concerning the general protection of government land declared surplus for possible use in the settlement of Treaty claims. The initial disposal efforts seemed to echo in some respects the government decisions over the wider Waimarino block just on a century earlier. From 1886, the government of the day had seemed willing to rapidly push ahead the title investigation and then the purchase of the Waimarino block, in the interests of achieving maximum benefits from expected economic developments. In the process, the government had seemed willing to undermine assurances and promises made to Whanganui Maori to protect their interests. Just on a century later, in

1986, the government of the day also seemed willing to promote the rapid disposal of the Waikune Prison site for maximum financial gain and for the expected gains from pushing ahead with economic reforms, to the detriment of existing protections for Whanganui Maori through offer back provisions and the Treaty claim process.

The eventual protection of the site for possible settlement of Whanganui Treaty claims was a very protracted and costly process for both claimants and the Crown. After almost 17 years, the site was finally protected under mechanisms developed in the 1990s to identify and protect surplus government land for possible use for Treaty settlements. In the meantime, the prison complex suffered damage and deterioration and is now much less than the working complex Whanganui claimants originally hoped to obtain, with consequent implications for future use and revenue generation. Even though the use of the facility as a wananga was one of the few uses that might have been possible under planning restrictions, the Justice Department insistence on obtaining a more market-oriented price to the exclusion of other considerations led to protracted delays, administration and other costs that eventually outstripped the original value of the complex, and opened the Department to censure by Court judgement.

Over this period, the Crown was obliged to take more account of Maori interests in the disposal process and eventually developed much more rigorous and effective mechanisms for the protection of Maori interests in surplus government land. By 1992, the Crown also eventually brokered an acceptable compromise through the Office of Treaty Settlements whereby the prison land and forest trees are now protected for future possible use in Treaty settlements. In 2004, as this chapter is being written, negotiations on any settlement are still not complete and the Waitangi Tribunal is still to begin hearings on Whanganui land claims including Waimarino issues.

## Chapter 11 Conclusion

The Waimarino block was largely an artificial creation for Native Land Court purposes and included all or part of a number of traditional districts, including Tuhua lands south of the upper Whanganui River, the Manganui a te Ao district and the open Waimarino plains west of Ruapehu. The summit of Ruapehu and a number of waterways were used as natural boundaries of the block, including the upper Whanganui River along much of the northern and western boundaries as far south as its confluence with the Manganui a te Ao. This was even though traditionally, waterways marked the centres rather than the edges of settlement. The area within the Waimarino block was very large, originally estimated at almost half a million acres.

Traditionally, the lands contained within what became the Waimarino block were not, as officials later liked to imply, an isolated, sparsely populated tribal enclave, of little value to their owners before development. Instead, the varied resources of the area appear to have supported significant populations, and the area was also of wider importance because of the number of important travel and trade routes that ran through it. These were largely made up of significant waterways, such as the Whanganui and Manganui o te Ao Rivers, as well as the open Waimarino plains that offered easy travelling west of the volcanic peaks. These routes provided the main transport links of the time between various districts of the North Island. The importance of these routes is also reflected in the intersecting and overlapping interests into the area of a number of iwi federations, including upper Whanganui iwi, Ngati Maniapoto, Ngati Tuwharetoa and Ngati Raukawa. The lands continued to have strategic importance through the early stages of European settlement and during and immediately after the New Zealand wars. In the period after the wars, their strategic importance was also recognised by the Government as a possible entry point from the south for undermining and limiting the influence of the Kingitanga and the integrity of their territory behind the outhern aukati. By the early 1880s, they were also of strategic importance as a possible route for the Main Trunk railway.

The Government began an extensive programme of purchasing Maori land in the Whanganui district in the 1870s, to support policies of increased Pakeha settlement and public works developments. This purchasing was extended into the upper Whanganui district, partly to assist in undermining Kingitanga influence and the southern aukati. Land purchasing by the 1870s, required the Native Land Court to investigate customary Maori ownership of land and

transform it into a form of freehold title, before such land could be confirmed sold. Maori land could also be purchased by either private or government agents, although by the later 1870s, the Government had passed legislative measures enabling it to protect its interests and restrict private purchasing in proclaimed blocks. The tactics used by government and private agents at this time were very similar, and generally involved the payment of advances to selected reputed owners before title investigation and the later manipulation of the Land Court system to ensure those receiving the advances were confirmed as the owners entitled to sell.

This 1870s system of Maori land purchasing caused difficulties for both the Government and Whanganui Maori communities. Many Whanganui Maori communities appeared favourable towards the Land Court system initially, but grew increasingly critical of it as it became clear how easily it could be manipulated to facilitate purchases outside community control and undermine customary systems of management and authority over land. There was also concern about the impact on communities of the system of paying secretive advances, the damaging costs of the Court system and the way purchasing and the Court appeared to marginalise Maori communities from the benefits of settlement. By the late 1870s, Maori communities were increasingly seeking reforms that might better accommodate their concerns and allow for a more rational and carefully managed form of land settlement and development. Maori opposition had also begun to severely limit purchasing, especially in the upper Whanganui district and particularly at the point of survey for Native Land Court hearings.

By the early 1880s, the Government was also becoming critical of the land purchase system, not just because it was causing so much direct Maori opposition and obstruction, but because in a time of economic recession the system of making advances over many different blocks without much apparent focus was seen as too risky and wasteful. It was also believed much of the clogging up of the Land Court and associated delays were at least partly due to tensions and litigation encouraged by the system of advance payments. The Government needed to gain much more Maori cooperation if it was to be able to engage in land purchasing in a more rapid and focussed manner.

The possibility of developing a major new public work, the Main Trunk railway through the North Island, appears to have been a major catalyst for important changes in Government policy concerning Maori land in the early 1880s. The Government considered the possible Main Trunk railway development to be of critical importance, both economically as it seemed to offer a way out of economic recession by providing a reliable transport link between main

centres and it was also expected to provide a major boost to policies of opening up and settling the North Island interior and exploiting its resources, and also as a result of this, making the North Island more secure against possible Maori hostility and undermining the Kingitanga. However, the railway would run in a long narrow route through a wide variety of hapu and iwi interests, and through at least some Kingitanga lands. Even the borderland communities of the Kingitanga, such as in the upper Whanganui district, were known to be opposed to the current system of land purchase and the Land Court, and they had shown their ability to successfully obstruct and delay survey work. The current system of widely scattered purchasing was also too slow and too unfocussed for pushing a railway through, while compulsory measures could hardly be enforced in the interior.

The Government appears to have decided instead, that the most practical solution to achieving a rapid preparation and construction of the railway was to negotiate directly with the Maori communities involved, including with Kingitanga iwi and hapu of the Rohe Potae. A significant section of the leadership of these iwi and hapu, including sections of upper Whanganui leadership, also appear to have seen in the Government desire for a railway, a very favourable opportunity to push for concessions and reforms that would meet their concerns.

These negotiations, or what became known as the Rohe Potae 'compact', took place over the years 1882 to 1885. They involved direct negotiations and consultation between government Ministers and representatives of an iwi alliance made up of significant sections of Kingitanga-supporting iwi and hapu of the Rohe Potae and border areas, including sections of upper Whanganui communities. These negotiations took place in a series of stages, closely linked to the stages required to prepare for the construction of the railway, from initial explorations, through surveys and selection of the preferred route and the final agreement to build the railway along the selected central route. At each stage, the alliance representatives made it clear that they were willing to make concessions over the railway, but that progress would not be made without their cooperation and this required corresponding concessions to their concerns from the Government. At the same time, continued alliance cooperation in 'smoothing' the way for the railway allowed progress to be made much more quickly than otherwise seemed possible.

In turn, the Government appeared willing to treat alliance concerns seriously and to address them in a series of reforms, while also appearing to be committed to continuing consultations and negotiations over matters of general concern to the alliance, which were stated clearly in

an 1883 petition to Parliament from the 'four tribes' of Whanganui, Ngati Maniapoto, Ngati Tuwharetoa and Ngata Raukawa, joined shortly afterwards by Ngati Hikairo of Kawhia. The Government responded with claims of legislative reform over purchasing, the Land Court and the recognition of Native committees. The Government also addressed alliance concerns to have their external boundary legally recognised and protected by advising them to make an application for survey of the outside boundary on the understanding that this would protect the district until promised reforms were agreed and implemented. This external boundary only included what were then regarded as clearly customary lands in the Aotea Rohe Potae, still untouched by the Land Court or other dealing with Europeans, although they were recognised to include the interests of a number of iwi and hapu.

These negotiations and concessions also impressed numbers of Maori communities generally in the North Island, many of whom shared similar concerns. This was particularly true of Wahanui's visit to Parliament in 1884, which was followed closely by Maori communities. This seems to have convinced the Government to begin a wider programme of consultation with Maori communities generally over policies concerning their lands, including proposed legislative reforms. This campaign was also seen as a way of undermining support for the Kingitanga, while presenting government policies as forward looking, credible and trustworthy. This wider campaign began at about the same time as the Rohe Potae alliance agreed in principle, in February 1885, that the Government could go ahead and build the railway along the selected central route. In the first instance, the agreement enabled the Government to have land up to one chain wide along the route, the land to be paid for and fenced on both sides. Any additional land required was to be negotiated for separately.

This agreement also marked the beginning of a government withdrawal from even limited recognition of the Rohe Potae alliance and many of the understandings reached as part of the negotiations, in favour of a renewed focus on dealing separately with individual iwi and hapu. This was even while the Government still relied on alliance goodwill and support to continue preparations for the railway and although it had gained significant advantage from being able to negotiate with a district-wide alliance over the railway. As apart of this, the Government used the application it had persuaded the alliance to make, to encourage tensions within the district and fears that the applications was really a Ngati Maniapoto attempt to claim all lands within the Rohe Potae boundary. This was designed to encourage separate applications to 'invite' the Land Court and effectively overturn the external boundary. One of these undermining applications eventually led to the creation and investigation of title of the

Waimarino block and with this the penetration of the Rohe Potae external boundary from the southern upper Whanganui lands. The Government also used the agreement for an external boundary and railway surveys, to implement a range of other triangulation and topographical surveys in the district that would provide useful information for future Land Court investigations. These Government actions and the relatively ineffective nature of many of the claimed reforms at this time, raise issues of government good faith and fair dealing over the Rohe Potae negotiations, including with those upper Whanganui communities who took part in the negotiations.

Issues of good faith also arise from the wider government campaign to win over Maori communities generally during this time, including in the wider Whanganui district. In conflict with assurances being made to Maori communities over government policies and proposed legislative reforms during 1885 and early 1886, the Government appears to have decided to adopt a policy of extensive purchasing of Maori land in what was designated the railway area from as early as 1884. This railway area was also protected from private dealing in land and purchasing was to begin before the promised reforms were in place, allowing the Government to use tactics it claimed to have rejected, while still enabling it to take advantage of community trust and cooperation as a result of its assurances. The apparent cynicism of this policy is perhaps best summed up by Ballance in his explanation to Parliament that it was first necessary to establish a 'feeling of confidence' among Maori before extensive purchasing could begin. What were to become Waimarino block lands were of strategic importance in these government policies, as they not only straddled large areas of the central railway route but they were also located on the southern borders of the Rohe Potae. The rapid creation, investigation and purchase of the Waimarino block lands were directly linked to these policies.

A large number of applications to the Land Court were made in 1885 as a result of efforts to protect interests in the face of apparently inevitable Land Court activity along in the railway area. The two applications of major strategic importance to the Government were the Tauponuiatia application, which penetrated into the external boundary from the east, and the Waimarino application which followed a few months afterwards in December 1885 and included Tuhua lands in the upper Whanganui already included within the Rohe Potae external boundary. The Land Court hearing for the large Waimarino block was notified very shortly after the application was received, for early 1886. The sketch survey for the block was also completed within a very short time, raising issues of completeness and Maori

understandings of what was being included. A number of other applications were also made for lands within Waimarino at this time, but were treated as subsidiary to the main application. The land purchase commissioner Butler also appears to have persuaded many of these applicants to allow themselves to be included in the large overall claim, presumably on the understanding their interests would still be protected. Butler's activities in preparing for the purchase of Waimarino at this time are not well documented, but his reports on his activities in nearby blocks indicate that he recognised the importance of managing applications from an early stage in the interests of facilitating later purchase.

The title investigation for the very large Waimarino block in March 1886, including what was estimated at over 450,000 acres of land and known to be subject to a variety of hapu and iwi interests, took under four days, and was notable for its managed appearance. The Court minutes of the case are very brief and also have the appearance of urgency. The notable lack of objections to the main claim also meant that very little evidence of occupation and interests was recorded. The final list of just over 1000 owners, many of them children, is also notable for its brevity, given the estimated population on this very large block at the time, particularly along the Manganui a te Ao, upper Whanganui and Retaruke waterways.

Government preparations for purchasing in Waimarino, already evident even before the investigation, appear to have been stepped up once the investigation was in progress and immediately afterwards. These are likely to have been helped considerably by a hui held at Aramoho shortly after the investigation hearing, which Ballance attended, and at which he continued the Government campaign to assure Whanganui Maori of the wisdom of trusting Government promises as an alternative to what he claimed was the backward and isolationist policies of the Kingitanga. In spite of his claimed commitment to consultation, Ballance failed to inform the hui of the new Government policies of extensive land purchasing in Waimarino and nearby blocks before the promised reforms were even implemented. Nevertheless, it seems likely this hui would have been very important in helping persuade many of the communities with interests in Waimarino that they could cooperate with Butler, trusting government promises of protection, fair dealing and careful joint management to ensure fair participation in expected benefits, while protecting land they wanted to retain.

Like the Waimarino title investigation, the Crown purchase of Waimarino was conducted within a relatively short time. Although he began making payments on the block before this, Butler received authority to begin purchasing on 10 April 1886. He purchased a significant amount of important interests just a few days later, over Easter 1886. Within six months, by

August 1886, Butler claimed to have purchased the majority interests in the block and the Crown applied for a hearing to partition its claimed award. Just on a year from when purchasing began, in March-April 1887, the hearing for the Crown award as a result of purchasing in Waimarino took place.

Butler began the purchase with a meeting that seemed to reflect owner wishes for more open dealing. The purchase deed also seemed to include provision for consultation over reserves. However, within a short time Butler began to indulge in many of the 1870s purchase tactics that had been so strongly criticised by Maori communities and which the Government had appeared to reject. These included more secretive individual dealing, the collection of signatures at Land Court hearings, the manipulation of trustees for children, the making of special agreements with selected individuals and the flooding of the local economy with a variety of payments for services and expenses, many of which were not clearly distinguished from payments for interests.

An important part of the purchase deal was also the promise of reserves for sellers, which appeared to meet owner concerns to be able to sell some selected land and retain other areas, but which eventually appeared to be designed to protect Crown rather than Maori interests. The purchase price set for the interests in Waimarino was also regarded as ‘cheap’ even at the time, raising issues of how far the Government was committed to promises that Maori would be able to participate more fairly in the benefits of land development and to what extent the Government used its monopoly over the railway area to enforce low prices, rather than to protect Maori as claimed.

Even though, the Crown had protected itself from private competition, it also conducted the purchase with a great deal of urgency. In many cases, this urgency appeared to undermine some of the few protections available to Maori, raising the issue of how much such urgency was a deliberate tactic designed to prevent owners from being able to undertake careful deliberations and raise effective opposition, while deliberately avoiding the few protections available to them. The purchasing was also imposed over the whole block in the face of opposition and expressions of concern from the Tuhua people who appear to have been significantly disadvantaged by their genuine belief that the Rohe Potae negotiation understandings of a protected external Rohe Potae boundary would be respected.

While the purchase was being conducted through most of 1886 to early 1887, the ‘proper’ survey for the block was being completed at the same time. The failure to complete the survey

before the purchase was also completed is likely to have disadvantaged Waimarino communities in knowing what places and boundaries were involved while the purchase was made and in being able to invoke protections such as restrictions on alienation. This is particularly true of the Tuhua people who apparently relied on the proper survey correcting the 'error' with their Rohe Potae boundary.

Nevertheless, the completion of a 'proper' survey for such a large block was bound to be time consuming and it seems it was only completed in time for the 1887 hearing under considerable pressure. This pressure resulted in very little field work on the ground and a heavy reliance on compass work, surveys for other purposes and general larger scale triangulation work. Maori concern about the implications of the survey also appears to have resulted in very little information for the survey coming from Maori communities, including over place names. The correspondence concerning the survey plan for Waimarino shows no evidence of concern for the protection of Maori interests. Instead, it seems clear that surveyors clearly understood they were to assist with land purchasing and the Crown interest in this. Survey officials also seemed to feel no requirement to respect the Rohe Potae boundary survey, while taking a great deal of care to ensure Waimarino boundaries matched with other Land Court boundaries.

The Crown partition case went ahead over late March to early April 1887, shortly after it was notified. Although owners had sought partitions to define their interests on the ground in Waimarino almost a year earlier, their applications were not notified until the same time, and the lack of notification was used by the Land Court to refuse to hear them. This manipulation of the Land Court process enabled the purchase to go ahead without the 'interference' of owner partitions, while the Court partition went ahead according to Crown preferences. When the partitions were eventually notified all the applicants asked to have their applications dismissed in an effort to prevent the Crown case. The leadership also sought a meeting with Ballance to negotiate a fairer solution to the Crown claims and owner concerns. However, the Court case was allowed to go ahead anyway, with the Chief Judge of the Land Court also sitting on the case in apparent anticipation of opposition from both sellers and non-sellers in the block. This raises issues of apparent collusion between the Government and the Land Court to promote the purchase and seller disillusionment with the purchase once the implications of 'cooperating' with Butler became clear.

Butler appears to have also closely managed the partition case in order to promote awards that would favour the Crown as much as possible. At the beginning of the case he encountered

some problems with witnesses over their refusal to provide reliable evidence. Although the Court noted the unreliability of witness evidence, instead of throwing the Crown case out, it attacked Waimarino Maori for 'conspiracy' instead. Butler finally managed to persuade Te Rangihuatau to give valuable evidence for the Crown, although a significant amount of this was submitted by statutory declaration rather than by appearance in Court. This may have been considered technically legal on the advice of the Chief Judge who was also sitting, but it was a significant departure from the usual insistence of the Court that it would only accept evidence in person from witnesses. The Land Court also seemed to breach standards of objectivity and protection of interests, when it criticised non-sellers for conspiracy and told them they would be to blame if they were left with just the 'precipices and pinnacles'.

The Court relied largely on Butler's calculations to make its awards to non-sellers, even though these were based on a mix of old and new estimates of the acreage of the block, in the process giving the Crown the entire advantage of the extra estimated acreage. As a result the non-sellers were awarded 41,000 acres and the 'residue' was awarded to the Crown. This was also subject to the purchase deed provision for seller reserves. The responsibility for the allocation of seller reserves was also left to Butler, giving him a significant advantage in protecting the interest of the Crown including the protection of valuable resources such as timber and the 'freeing up' of large areas outside the reserves for settlement purposes. This also enabled his interpretation of the deed regarding seller reserves to largely prevail, regardless of apparent deed assurances of consultation. In effect both the seller and non-seller reserves were very rough representations of interests. Butler also regarded the seller reserves as government 'concessions' in which there were no obligations to meet seller views or concerns. The creation and allocation of reserves in Waimarino raises serious questions of adequacy, fair dealing and good faith, especially when the cooperation of sellers, largely based on their understandings over reserves, was vital to the whole purchase. It also raises issues of the integrity of Government promises made at hui such as Aramoho just as the purchase was beginning.

Later Whanganui Maori protests and concerns about the Waimarino investigation and purchase raise further issues of Whanganui Maori understanding of the purchase and reserves and government fair dealing over issues such as landlessness as a result of the investigation and purchase. The Government attitude to these protests and those who made them, seems to have been to ignore or downplay them as much as possible rather than taking them seriously. In the expression used by a senior land purchase official, Sheridan, it seems to have been

hoped that the protests and those who made them might simply ‘disappear’. Although in the case of Te Kere, the Government eventually felt obliged to make small extra grants of land, the granting of land to rectify obvious problems with the purchase was avoided as much as possible in case it might open the ‘flood gates’. This also raises issues of Government good faith when concerns were raised. The protests of this time reveal that even the most cooperative chiefs such as Te Rangihuatau had quite different understandings of the purchase and its implications and especially of the reserves than was insisted on by Butler. This raises the whole issue of how ‘willing’ the sellers were in Waimarino.

In spite of the significant concern and distress caused to Whanganui communities by the purchase process imposed in Waimarino, the case of the Waikune Prison disposal in the mid-1980s, almost exactly a century after the purchase, raises issues of to what extent the promised benefits of development were made available to even those owners in Waimarino who did manage to retain land, and what effective protections were available for the continued retention of this remaining land. It also raises issues of to what degree the government of the day in the mid-1980s when the prison land was made surplus, like its predecessor of a century before, placed priority on the rapid disposal of the Waikune site for maximum financial gain and for the expected gains of pushing through economic reforms, at the expense of protections for Whanganui Maori through the legislative offer back for public works and the Treaty claim process.

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ABWN 8910 w 5278 box 22 Certificates of title –Wanganui	1884-1886
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ABWN 889 w5021 b 178 25/355 pt 1 Waikune Prison land	1972-90
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ABWN 7613 w5099, b 12 Linz 7/6 SOEs and Maori land	1987-95
ABWN 8090 w 5274 box 629 R.35.W Crown grants register Wellington	1884-1925
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MA1, box 164	1914/2284 Kirikiriroa	1911-17
MA 1, 1924/202	Waimarino purchase file vol 1 (box 508) and vol 2 (box 509)	1886-1924
MA w 2459 box 27	Waimarino 4A2, 4A3, 4A4 Crown purchase Waikune prison	1954-67
MA1, 5/10/68	Waimarino 4 – timber cutting rights	1909-25
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MA series 2	Correspondence registers 2/21- 2/22	1884-87
MA series 13, 1[d]	Waikato Maniapoto King Country (sp file 90)	1908-13
MA series 13, no 14, b 22	Kemps Land Trust (sp file 118)	1880-81
MA series 13/ 43 (a) b 75	King Country (sp file 61)	1883-85
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MA series 13/50 (a) b 83	Murimotu and Rangipo (sp file 80)	1873-82
MA series 13/78 b 99	Rohe Potae (sp file 89)	1885
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MA series 23/13	Native committees	1880-1890
MA series 25/1	register of service	1863-85
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MA series 25/4	Appointments to Native Land Court	1874-1890
MA series 25/13	superannuation records	1907-14
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MA series 30/3	Native Minister outwards letterbook	1885
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MA-MLP series 1/7	correspondence	1880
MA-MLP series 1/8	correspondence	1880
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MA-MLP series 1/10	correspondence	1881
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MA-MLP series 1/12	correspondence	1882
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MA-MLP series 4/2	outwards memoranda	1881-83
MA-MLP series 4/3	outwards memoranda	1883-92
MA-MLP 7/3	ledger	1874-1907
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