

CHAPTER 9

WHANGANUI

9.1 Principal Data

9.1.1 Estimated total land area for the district

The estimated total land area for district 9 (Whanganui) is 1,338,074 acres (although the Whanganui Maori rohe, including what was later known as the Waimarino block, was approximately 1.77 million acres in 1840).

9.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 9 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 91 percent in 1860, 48 percent in 1890, 40 percent in 1910, and 20 percent in 1936 (or 115.6 acres per head of largely mountainous land according to the 1936 population figures provided below).

9.1.3 Principal modes of land alienation

The main modes of land alienation in district 9 were:

- the New Zealand Company's purchase (completed by Crown purchase in 1848);
- purchases under the Native Land Acts; and
- public works and scenic purposes takings.

9.1.4 Population

The population of district 9 was approximately 4000 to 5000 in 1840 (estimated figure), 1051 in 1891 (census data), and 2312 in 1936 (census data).

9.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district stretch inland in a northerly direction from the coast near Maxwell to the Whanganui River. In the Whanganui National Park, the boundary changes direction across to Mount Ruapehu and the Kaimanawa

Range. From there, it travels south-west, following sections of the Turakina and Whangaehu Rivers, back to the coast.

The Whanganui district essentially comprises the catchment area of the river and its major tributaries, as well as some of the more open plains to the north and east. Both the Whanganui River and Mount Ruapehu are regarded by Whanganui Maori as sacred tupuna (ancestors), to whom they look for identity and right of occupancy. The river was a valuable source of eels and fish, with the tidal estuary providing both shallow water and sloping banks where catches could be unloaded. More generally, the river was a source of life and sustenance for the Whanganui hapu in a holistic sense, providing not only fish, birds, and transport but also spiritual dimensions intrinsic to Maori life. The river was traditionally navigable to Maori from the sea to the very upper reaches, providing Whanganui and other Maori with a valuable mode of transport. The land surrounding the river, which was dominated by gorges, encouraged pockets of settlement, with the lower reaches of the river supporting cultivations and the coastal areas providing important seasonal food resources. Fertile land along the various reaches of the river also supported cultivations. While relations between Whanganui Maori and iwi from further afield were complex, rights of access ensured that the river mouth was used seasonally by a number of tribes. The more northerly and eastern Murimotu–Rangipo area of the district was characterised by tussock grasslands, later much sought after by run-holders for grazing.

9.3 Main Tribal Groupings

Whanganui was settled by the descendants of Tamakehu and his three children: Hinengakau, Tama-upoko, and Tupoho. The upper reaches of the river, north of Manganui-o-te-Ao, were settled by descendants of Hinengakau (Tamakehu's daughter); the middle reaches from Manganui-o-te-Ao to Matahiwi were settled by the descendants of Tama-upoko (Tamakehu's eldest son). The claims of these two groups stretch across the Waimarino and Tuhua districts to Murimotu and Mount Ruapehu. Finally, the lower reaches of the river down to the coast were settled by descendants of Tupoho (Tamakehu's youngest son). The confederation of these people refer to themselves as Te Ati Haunui-a-Paparangi.

The history of the Whanganui people is uncomplicated by conquest or dispossession, and Whanganui hapu are connected under an 'iwi umbrella',¹ while at the same time demonstrating a certain amount of independence from each other. Whanganui Maori trace their lineage to neighbouring iwi, with whom old alliances were maintained and new ones were formed through intermarriage.

The loose conglomeration of hapu that made up the Whanganui iwi were closely linked by marriage and the common use of river resources, which did not restrict hapu to a particular rohe. For example, movement down river to use seasonal

1. S Cross and B Bargh, *The Whanganui District*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), April 1996, p 7

Figure 16: District 9 (Whanganui)

resources at the river mouth was an important aspect of entitlement, which complicated ownership rights along the coast. While demonstrating interaction, groups within the iwi and hapu structures also maintained some independence from each other, with evidence of some animosity between upper and lower river hapu over the control of river traffic. In addition to intra-tribal relations, Whanganui iwi demonstrated strong ties with neighbouring tribes. For example, common ancestry between Whanganui, Ngati Tuwharetoa, and Ngati Maniapoto to the north meant that Whanganui Maori helped Tuwharetoa in times of conflict, and vice versa. Similarly, connections are evident between Whanganui Maori and Maori from Taranaki (such as Nga Rauru to the north-west, with whom they shared ancestry), as well as Maori to the south of Whanganui, such as Ngati Apa. Groups occupying the Ohakune area are also affiliated with Whanganui Maori. Apparently, a group known as Ngati Rangi (a pre-fleet people) moved up river to Tuhirangi, later splitting up and moving to Ngamotu a Taka (to the back of Rangipo) and Huriwaka (near the Waiouru Army Camp). Another group, Ngati Uenuku, pushed its way up river and spread out to Makotuku (now Raetihi) and the Waimarino Plains.

9.4 Principal Modes of Land Alienation

9.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

In November 1839, New Zealand Company agents transacted a deed with three chiefs belonging to the Whanganui tribes for ‘all those Lands Islands, Tenements, Woods, Bays, Harbours, Rivers, Streams and Creeks . . . from Manewatu to Patea and inland . . . to the mountain of Tonga Ridi’.² Goods valued at £700 were distributed as payment. Commissioner Spain investigated this purchase in 1843, and he awarded the company 40,000 acres of the land identified in the original deed and ordered that Maori be paid £1000 in addition to the original payment of goods. Some Maori continued to object and refused the payment. Following protest from Maori regarding the reserves allocated to them and the method of payment, a further deed was negotiated and signed by around 200 Maori on 28 May 1848. The deed was for 86,200 acres, with 15 reserves estimated at 5450 acres. The area was increased somewhat, apparently with Maori consent, when the back boundary was settled in 1850, Maori being happy (in the absence of a surveyor) to see the line run along prominent natural features, notably the Whangaehu River. The average additional payment by McLean to each iwi (21 claimant iwi in all) was £50.

9.4.2 Pre-1865 Crown purchases

In July 1863, the Waitotara–Okehu block (which for the most part falls outside this district) was purchased by the Crown from Nga Rauru in exchange for a £500

2. Copy of the deed of sale, nzc 3/8, no 60, p 387 (cited in Cross and Bargh, p 9)

down-payment (which had been paid earlier in May 1859) and a further £2000 in July 1863. Seven reserves totalling 6052 acres were listed in the deed.

In October 1863, the Okui eel fisheries, which had been reserved within the 1848 Whanganui deed, were relinquished by Ngapairangi chiefs for £35. The deed specifically identified the:

rights title and interest in the Eel Weirs and Manga Fisheries situated in the streams in the Okui district, ie in the Matarawa, Kaukatia, Puwharawhara, Matararohe, Mangamouku, Mangamutu, Mataongaonga streams and their tributaries.³

The deed makes no mention of land.

9.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 9.

9.4.4 Confiscations

The original Taranaki confiscation boundary (proclaimed in September 1865) encompassed part of the Whanganui district west of the Whanganui River and south of a line running from Mount Taranaki to Parikino (on the Whanganui River). However, the area between the Waitotara and Whanganui rivers was later abandoned by proclamation in January 1867, when the resident hapu in that area was identified an ally of the Crown.⁴

9.4.5 Purchases under the Native Lands Act (Crown and private as indicated)

(1) 1865–90

It appears that land purchases in the Whanganui district from 1865 to 1874 were largely negligible, owing partly perhaps to the isolation of the area but also to a deliberate strategy by Maori leaders not to sell land.⁵ Settlers were moving stock to the Murimotu grasslands during this time, however, and rent or ‘grass-money’ paid to various chiefs was leading to quarrels.

In January 1868, the Parikino block (acreage unknown), which was located between the Whanganui and Mangawhero Rivers, was sold to the Crown by the chiefs and people of Ngapoutama, Ngatituera, Ngatihinearo, Ngatihine, Ngatituhekerangi, Ngatitukorero, Ngatihinga, Ngatihou, and Ngatipuru. According to the deed, the transaction included the block’s trees, minerals, waters, large streams, lakes, small streams, and ‘everything belonging to that land whether on the surface

3. H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Wellington, Government Printer, 1878, deed 79 (cited in Cross and Bargh, p 24)

4. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 124

5. For further discussion, see A Ward, ‘Whanganui ki Maniapoto’, report commissioned by the Waitangi Tribunal for Wai 48, 1992, pp 20–23; Cross and Bargh, pp 24–31

or under the surface'.⁶ Two reserves of 1000 acres each were set aside, as well as three smaller reserves, comprising approximately 60 acres, which included cultivations and kahikatea bush.

In 1875, the principal land purchase officer at Whanganui reported that in the past year he had completed the purchase of 17 blocks (amounting to 46,284 acres) at an average price of five shillings per acre for flat land and 1s 6d for hilly land. He also reported that reserves had been made at not less than 50 acres per man, woman, and child, in accordance with the requirements of the Native Land Act 1873.⁷

On 15 March 1876, the Retaruke block was purchased by the Crown from Te Mamaku and Ngati Haua, with two reserves left for Maori of 185 and 500 acres. The Kirikau block was also sold to the Crown in 1876 by Hoani Paiaka.

In 1881, some 38,000 acres were acquired by the Crown for about £17,000 (some of the blocks straddled the Whanganui–King Country district boundary or abutted the Whanganui River on the King Country side). The blocks purchased included Karewarewa 1 and 2 (3679 acres combined) for £1705; Te Parapara (915 acres) for £438; Atuahae (4152 acres) for £1754; Puketotara 2 (5178 acres) for £2756; Umu-more (842 acres) for £513; Rangitaua North 1, North 3, West, and South (together 22,261 acres) for £8990; Turuamouku (214 acres) for £173; and Huikumu (1204 acres) for £597.

It is also worth noting the passing of the Native Land Alienation Restriction Act 1884, which reasserted the Crown right of pre-emption over certain lands, including the northern half of the Whanganui district.⁸

In 1886 and 1887, the Crown acquired from upper Whanganui Maori the Waimarino block of almost half a million acres (located along the main trunk railway from north of Ohakune to Taumarunui). The price paid was two shillings an acre; £1192 was paid before 31 March 1881 and £40,182 after. Some 50,000 acres were reserved for the vendors.

It is difficult to identify any one point at which the control of the Whanganui River became vested in the Crown. Incremental moves by the Crown for greater control of the river are evident from at least the 1880s, when the Government began clearing and deepening the river to allow for steamboat travel. In 1882, the Whanganui River Council started taking gravel from the river. In 1891, the Whanganui River Trust Board was established to develop travel on the river. In 1892, the board began to levy tolls on cargo on the river, and after 1893, it began to remove gravel from the river. In 1903, the beds of all navigable rivers were vested in the Crown (and assumed to have always been so vested) under the Coal Mine Act Amendment Act 1903.

6. Turton, deed 80 (cited in Cross and Bargh, p 24)

7. Booth to under-secretary, 22 July 1875, nlp 75/316, ma-mlp n4

8. Cross and Bargh, pp 56–58

(2) 1891–1910

Purchasing from 1891 to 1910 was largely a response to the opening up of the Rohe Potae (see ch 8) and the development of the main trunk railway line. Block purchasing tended to follow the proposed railway line.

According to the Stout–Ngata commission, from 1881 to 1907 the Crown purchased 1,273,000 acres within the Whanganui rohe (some of which may not be within the Rangahaua Whanui district) at a cost of £273,340.⁹ A large portion of this land (130,000 acres) had come from the Taumatamahoe block (155,300 acres in total), while 44,514 acres were acquired from the Whakaihuwaka, Te Tuhi, and Ahuahu blocks. Further up river, the Crown purchased 22,529 acres of the Maraekowhai block (54,000 acres) and 14,807 acres of the Whitianga block (26,399 acres). To the east, in the Waimarino block (which extends into the King Country district), the Crown was awarded 378,081 acres, while reserves amounted to 33,115 acres for sellers and 41,000 acres for non-sellers. Crown purchases in the lands adjacent to the railway and lying in the basins of the Mangawhero, Turakina, and Whangaehu Rivers totalled 192,013 acres.

Other Crown purchases included the Raunui block (1610 acres), bought for £966 by May 1893; the Ngarukehu block (1120 acres), bought in June 1896; the Raketa-pauma block, bought in June 1899 for £2600; the Raetihi block (4085 acres), bought for £840; 22,000 acres of the Rangiwaia block bought in 1896, with a further 6000 acres by the end of 1899; and the Murimotu 2A, 3A, 4A, and 5A blocks (29,404 acres combined), bought for £4666 during 1900.

By 1910, land remaining in Maori ownership amounted to 40 percent of the original district.

(3) Post-1910

Whanganui fell within the districts of the Aotea Maori Land Board (which also included Taranaki and parts of the King Country) and the Ikaroa Maori Land Board (which also incorporated much of the Wellington region). Annual returns of alienations through the land boards did not specify block names, and an exhaustive search of files would be necessary to establish which of the board's alienations fell within this district. The maps reproduced on pages vi to x, however, indicate that alienations under the Native Land Act 1909 in this district amounted to approximately 258,749 acres between 1910 and 1939.

9.4.6 Examples of public works takings

Generally speaking, takings in the Whanganui district were made for the purpose of constructing railroads and roads, and scenic reserves along the river, with some takings made more specifically for the purpose of defence and for State forests, as well as for the Tongariro National Park. Compensation was payable according to the prevailing conditions of the Public Works Act. It tended to be low, although

9. AJHR, 1907, g-1A, pp 15–16 (cited in Cross and Bargh, p 71)

Bennion gives £1 per acre for Whanganui lands.¹⁰ This is thought to have been a relatively high rate, possibly because of resistance by Whanganui hapu to the taking of the land. For a general discussion of public works policy and law, see volume ii, chapter 11. The discussion below gives examples only of the kind of takings made.

In all, some 5000 acres of Maori land are estimated to have been compulsorily acquired for scenery preservation purposes along the Whanganui River from 1908 to 1920, including 1000 acres in 1911, about 3800 acres in 1912, and 1000 acres in 1913. Later, between 1924 and 1928, at least 500 acres from various small blocks (such as a 30-acre native reserve at Puketotara) were acquired for scenery preservation purposes.¹¹ The Maori owners could ill afford to lose these apparently small amounts from their already tiny land-holdings.

In 1887, a deed of gift was signed by Te Heuheu Tukino of Ngati Tuwharetoa to effect the transfer of 6508 acres for a national park surrounding Mounts Ruapehu, Ngaruhoe, and Tongariro.

This arrangement was expanded by the Tongariro National Park Act 1894. Under this Act, 62,300 acres were acquired for the national park, which included land in the East and West Taupo and Whanganui Counties. According to the Liberal Government's view, some of this very considerable increase was acquired by agreement with 'the natives' (23,510 acres according to Lands Minister McKenzie, 33,000 acres according to James Carroll, the member for East Wairoa), some was already Crown land (15,380 acres), and the balance was compulsorily acquired.¹² Compensation was proposed by McKenzie, but further research is necessary to determine whether it was paid and, if it was, to whom it was paid and how much was paid.

9.5 Outcomes for Main Tribes in the Area

In 1907, the Stout–Ngata commissioners 'liberally estimated' that Maori retained about 500,000 acres in the 'Whanganui District' out of an original Maori estate of nearly 1,773,000 acres (noting that the Rangahaua Whanui district encompasses only 1.2 million acres of that area). This amounted to an average interest per head of 250 acres, but according to the commissioners, the reality was somewhat different, interests varying from 30 or 40 acres to 3000 or 4000 acres per head. Much of the land was steep and difficult to farm.

By the 1930s, sales of Maori land to the Crown, sales through the Aotea Maori Land Board, and acquisitions for the preservation of scenery had resulted in the alienation of a further 250,000 acres, leaving Maori with approximately 250,000 acres or about 15 to 20 percent of the Rangahaua Whanui Whanganui district

10. T Bennion, 'The Aotea Maori Land Board and Scenery Preservation', supplement to the Whanganui River report, 15 April 1994 (Wai 167 rod, doc a19(f)), p 12

11. For a further discussion of scenery preservation and public works takings in the Whanganui region, see Bennion, p 12.

12. NZPD, vol 79, p 309

(excluding the Taurewa and Rangitoto–Tuhua lands). Maori in the Waimarino and upper Whanganui areas were left with very little land, while others south and west of Ohakune to the Whanganui River retained significant areas of land, though most of it was in steep country.¹³

9.6 Examples of Treaty Issues Arising

9.6.1 New Zealand Company purchases

Ian Wards has suggested that the ‘chiefs’ who signed the deed in 1839 (on the British vessel *Tory*, anchored off Waikanae) had neither the rank nor the authority to enter into such transactions.¹⁴ Furthermore, Cross argues that Colonel William Wakefield, the company’s principal agent, and E J Wakefield made very inadequate attempts to ascertain that they were dealing with the correct parties when purchasing the land at Whanganui in March 1840.¹⁵ As evidence of the careless and inequitable distribution of the payment, Cross notes E J Wakefield’s description of the distribution of goods on board the *Tory* as ‘Seven hundred naked savages . . . twisted and entangled . . . like a swarm of bees over the line of goods’. Wakefield also commented that when some Maori tried to return the goods to him because they were not satisfied with their share, he advised them that ‘the bargain was now concluded and they must now arrange the division in their own way’.¹⁶ Cross notes that ‘It is an issue for consideration whether Wakefield held the primary responsibility for the equitable division of the sale goods’.¹⁷

Surveying of the Whanganui district began in December 1840, and in September 1841, Colonel Wakefield made the first selections under a provisional waiver of Crown pre-emption by Hobson, as a consequence of the company’s agreement of November 1840 with the British Government.

Commissioner Spain began investigating the company’s purchase at Whanganui on 13 April 1843. He found that two of the principal chiefs of the area had not been present at the signing of the deed and that both of them denied ever consenting to the sale or receiving part of the payment. Other Maori denied receiving any payment for the land, despite the fact that they had agreed to the sale. Further questioning of Maori chiefs revealed to Spain that ‘different Maori had different ideas of what was happening [at the signing of the deed] and nearly as many were opposed to the sale as were in favour of it’.¹⁸

13. Cross and Bargh, p 113

14. I Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832–1852*, Wellington, Government Printer, 1968, p 303 (cited in Cross and Bargh, p 9)

15. Cross and Bargh, p 9

16. E J Wakefield, *Adventure in New Zealand from 1839 to 1844 with Some Account of the Beginning of the British Colonization of the Islands*, London, John Murray, 1845, p 289 (cited in Cross and Bargh, p 10)

17. Cross and Bargh, p 10

18. R Tonk, ‘The First New Zealand Land Commissions, 1840–1845’, MA thesis, University of Canterbury, 1986, p 194 (cited in Cross and Bargh, p 13)

Cross notes that, on the basis of his findings, Spain's final report criticised Wakefield and his methods of purchasing such a large and valuable tract of land.¹⁹ Despite this, Spain judged that a 'partial sale' had taken place and decided that 'a payment should be awarded to those natives who had thus been excluded in the first instance, to make the purchase complete'.²⁰ Spain accordingly awarded the company 40,000 acres of land and advised that Maori should be paid £1000 in addition to the original payment of £700 in trade goods. Maori were also to have reserved to them:

All the paha, burying-places and grounds actually in cultivation . . . all the native reserves equal to one tenth of the 40,000 acres hereby awarded to the said Company . . . and also . . . St Mary's Lake and all the native eel-cuts and right of fishing upon the lakes St Mary, Medina, Dutch Lagoon and Widgeon Lake.²¹

No mention was made of rights to the river and its resources.

Many Whanganui Maori declined to accept the additional 'compensation' payments offered by Clarke after Spain's investigation of 1844. Some continued to resist the occupation of the settlers and Symond's allocation of reserves in 1846. Nevertheless, when McLean came to the district in 1848, he still stated his purpose to be the making of a further payment of £1000 'compensation' in respect of an existing purchase, rather than a full renegotiation. Moreover, he negotiated for the full extent of the company's survey plan, about double the 40,000 acres awarded to the company by Spain. This procedure (common to the company's Cook Strait settlements) would appear to have the Crown supporting a purchase that was not a true purchase at all. Nevertheless, leading Whanganui chiefs had indicated a willingness to accept a sale and Pakeha settlement, provided agreement could be reached about reserves. McLean's negotiations were very meticulous – far more so than at any other time in his career. He visited every interested hapu and kainga. The making of reserves was precise and the deed of purchase long and explicit. Although at times he resisted Maori demands for particular pieces of land (in the interests of getting good land for settlers), the various Maori vendors were, in the end, apparently genuinely satisfied with the arrangement. In the opinion of surveyor Wills, Maori had 600 or 700 acres less of reserves than Symonds had intended in 1846, although they had gained in the quality of land and had generally reserved the places they desired, including important eel weirs near the settlement. The purchase was 86,200 acres, in McLean's estimate, with reserves of 5450 acres.²²

In his report to the Colonial Secretary of 4 November 1850, McLean recorded the 'satisfactory completion of the inland Whanganui boundary extending to the Whangaehu river'. McLean went on:

19. Cross and Bargh, p 14

20. BPP, vol 5, p 96 (cited in Cross and Bargh, p 15)

21. Ibid, pp 90–91 (cited in Cross and Bargh, p 15)

22. J Luiten, 'Whanganui ki Porirua', report commissioned by the Waitangi Tribunal, 1992, pp 9–13

I am glad to state that the delay [for want of a surveyor] has not been productive of any misunderstanding with the Natives. The Natives sanctioned the running of the line along the most prominent natural features of the country, conceding without further remuneration a considerable enlargement of the purchase.²³

It is not quite clear whether the enlargement McLean refers to is an enlargement from the 1848 purchase as sketched and estimated or an enlargement from Spain's original 40,000-acre award. In any case, Maori agreement to the inland boundary seems clear.

Although Maori seemed content and did not question the arrangement, the Crown (under Grey's governorship) had departed from earlier proposals to reserve a tenth of purchases (whether in Maori occupation or in Crown hands) as an endowment for Maori purposes or some combination of these.

9.6.2 Maori attempts at iwi-based control of Whanganui lands

Maori attempts in the 1840s at iwi-based control of Whanganui lands was based on the conception the hapu had of themselves as having a whakapapa base along the length of the river and its tributaries and on their conception that the various hapu were, in this sense, a confederation. The question arises in Whanganui, as it had in Waikato earlier and in the Te Arawa rohe concurrently, of supra-hapu organisations forming to try to control land alienations by individual hapu leaders.

In 1877, following a series of meetings among Maori in 1871 and 1872, a 'quasi-parliament house' called Te Paku-o-te-Rangi was erected at Putiki as a place where the Whanganui tribes could meet to discuss those matters that commonly affected them, and to investigate, record, and secure, according to Maori custom, the subdivision of all land under Maori ownership.²⁴ At the same time as Maori were attempting to unite in order to slow the alienation of their lands in Whanganui, the Crown's continued practice of making advance payments on land before it had passed through the Native Land Court was frustrating Maori efforts. It appears that by the 1870s it had become standard practice for purchase agents to make advance payments to Maori for blocks of land that had attracted the attention of private purchasers, despite the fact that the owners of the blocks had not yet been identified by the Native Land Court. These owners were always individual Maori who favoured the sale and leasing of Maori land and who continued to apply for certain lands to go through the Native Land Court.

The Crown in fact recognised the Arawa runanganui and cooperated with it, initially at least, in defining the manner in which the district developed. The issue arises as to whether the Crown should have given similar recognition and support to comparable efforts, such as those in Whanganui. Maori rights in land were held at various levels, and the Maori conceptualisation of 'iwi' was not meaningless but did refer to a certain level of rangatiratanga (even though the hapu was more

23. McLean to Colonial Secretary, 4 November 1850, AJHR, 1861, c-1, p 255

24. Woon to Native Minister, 25 August 1877, Wanganui ma 2/1 (cited in Cross and Bargh, p 46)

commonly the focus of the control of land rights). Furthermore, the efforts of Kemp and other Whanganui chiefs in the 1870s were palpable evidence of Maori efforts at regional level self-determination. By the Treaty principle of reasonable duty of care, the Crown should therefore have at least discussed with Kemp and his colleagues the mounting concern of Maori, rather than simply encouraging James Booth in the practice of buying individual interests before they had passed through the court.

In the 1880s, Kemp established a 'trust' in a further attempt to secure remaining Maori land from Government purchase and lease. His efforts were triggered in part by his concern about surveys in Murimotu. The duties of the trust, which encompassed about 1.75 million acres of Maori land between Whanganui and Mount Ruapehu, were to pass the land through the Native Land Court in order to ratify tribal agreements and obtain a legal title for it; to set aside inalienable reserves for the Maori owners; to make and contribute to the making of roads and the opening up of the country; and to take all desirable means to effect, on the trust's terms, the settlement of the lands by Pakeha settlers. The trust also endeavoured to discourage the practice of the Government advancing money to individual right-holders of land, a practice which was responsible for the purchase of vast amounts of Whanganui land at the time. The trust was short-lived, however, because the purchase of individual interests eroded the status of organisations like the trust that attempted to straddle tribal lines. By 1879, the purchase of hundreds of thousands of acres of the interior had been secured to the Government through the practice of advances on land. While this practice was not illegal, it undoubtedly undercut the rangatiratanga of hapu, let alone the supra-hapu structures, and can be viewed as a Treaty breach.

In 1883, Ngati Maniapoto, Ngati Raukawa, Ngati Tuwharetoa, and Whanganui Maori petitioned the Government expressing a 'plea for a more equitable system of land administration in which Maori had more control of their own affairs'.²⁵ The Government followed up some of these wishes in legislation in 1883 and 1884 (in the Native Committees Act 1883²⁶ and the Native Land Laws Amendment Act 1884, which made advance payments illegal). In addition, it also passed the Native Land Alienation Restriction Act 1884, which effectively reasserted the Crown's right of pre-emption under article 2 of the Treaty of Waitangi. The pre-emption clause was hotly debated in the House when the Bill was introduced. Some members felt that Maori had a right to the highest bid for their land, while Sir George Grey explained that:

When we entered New Zealand . . . we undertook that every Native should be preserved in the possession of their property held at the time . . . In return for that, they should grant the Crown the right of pre-emption.²⁷

25. The Waitangi Tribunal has recently found that the Native Committees Act 1883 gave Maori 'no effective power to administer their lands': Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brooker's Ltd, 1993, p 96.

26. Ibid, p 306

27. NZPD, vol 50, p 479 (cited in Cross and Bargh, p 58)

He expressed the concern that:

If we gave over to the committees the power of selling the land exactly as they liked, they might possibly send an agent to England, and the whole of this valuable land might be sold in the markets of England . . . and I think we should place a restriction on that kind of sale.²⁸

Although there was some consultation with lower Whanganui Maori (who were anxious about the activity of speculators), the large area of land affected by the Act (4.5 million acres) and the low prices paid by the Crown (relative to offers by the private purchasers) were challenged by the Maori members of the House and by Maori subsequently, and were strongly criticised in the 1891 Commission on the Native Land Laws (and in the report of Commissioner James Carroll).

Whanganui Maori also expressed concern over the size of the districts of the native committees. In particular, Paori Kuramate, the chairman of the Whanganui Native Committee under the 1883 Act, pushed for a committee that would be confined to the Whanganui district. This was a proposal that Ballance supported, and he undertook to subdivide the huge district (which included Whanganui) under the 1883 Act, insisting, however, that the main role of the committees would be in assisting the Native Land Court and that central dealings with land would be through a board, which would cover a much larger area and be chaired by a Government-appointed commissioner. The proposal came to nothing.

In 1900, only in Whanganui and on the east coast did the Maori leadership have sufficient confidence in the new process to voluntarily vest their lands in a Maori land council, which were established under the Maori Land Councils Act 1900. Approximately 100,000 acres in the Whanganui district (57,455 acres of that being the Ohutu block) were vested in the Aotea Maori Land Council for leasing. An amendment to the 1900 Act in 1903 required the council to pay compensation to lessees for any improvements made to the land at the expiration of the lease. Maori landowners argued that they were effectively subsidising the settlement of Pakeha on their lands. Where land already vested in the council was affected by this amendment, the lease terms were significantly changed after the event. It is not clear how much Whanganui vested land was affected.

9.6.3 The main trunk railway line

The acquisition of land for the main trunk railway line involved negotiations in respect of land for the actual track itself and for stations and sidings and for land on either side of the railway, which was to be resold to settlers to repay the 1883 railways loan and to provide a community who would use the railway and make it viable. Both matters were the subject of complex negotiations with Maori. In the event, a strip of land for the track (ranging from two to four chains wide) was taken compulsorily in order to give the Government clear title and to allow the payment

28. NZPD, vol 50, p 479

of compensation under the Public Works Act. In respect of the large purchases in the district, there is considerable evidence of bad faith on the part of the Government. After Bryce's and Ballance's initial talk of leasehold and purchase through the native committee on strict conditions, Ballance and subsequent Ministers preferred to purchase hapu interests. Ballance also misled Maori by making statements such as: 'Land which is worth not more than five shillings an acres will be worth five pounds an acre when the railway runs through the land.'²⁹ In fact, Maori did not receive this sort of price for their land until the 1920s.

9.6.4 The Waimarino block

In September 1885, Rangihuatau of Ngati Maringi and 15 others applied to the Native Land Court for the Waimarino block (the top portion of which falls into the King Country district), claiming rights to the land. In March 1886, the claim was heard and the court awarded 454,189 of the 490,000 acres to the 1006 claimants on Rangihuatau's list. In March 1887, a land purchase officer called Butler applied for a subdivision of the land. Topia Turoa, who was not on the original list of owners but who claimed an interest in the land, opposed the list of shareholders and requested time to discuss the matter with Butler before the subdivision. Other Maori also requested an adjournment in order to make an application for a rehearing. The court stated that the claim had been duly gazetted and notices had been sent to everyone involved and it was therefore not prepared to overturn the original investigation and award revised title.³⁰ By such strict rules, claimants likely to have interests in the block were effectively denied recognition of those interests.³¹ Other owners, such as Te Kere and those he represented, were omitted from the title because they had refused on principle to participate in the court process. Despite knowing that other interested Maori were attending hearings of Whanganui land held at the same time at other courts, the court also refused to adjourn in order to hear more evidence.

Instead, the court heard the evidence of Rangihuatau, who made a statutory declaration as to the various hapu boundaries. The declaration was received in evidence by the court. Although some extra names were added to the list of owners, the combination of the deeds of sale collected by Butler and Rangihuatau's statutory declaration were sufficient for the court to set aside the protests of hundreds who were deliberately or accidentally absent from the proceedings. Given the prior dealings in the land and the requirement that witnesses present their case in court or be cut out of the title, it is questionable at best whether the Waimarino purchase can be considered to have had the willing and witting consent of all the owners, as required under the rangatiratanga guarantee of the Treaty.³²

29. AJHR, 1885, g-1, pp 4, 63 (cited in Cross and Bargh)

30. Typescript of the Native Land Court, 13 Whanganui, doc 8B, p 31

31. Ward, p 70

32. P Hamer, 'The Crown Purchase of the Waimarino Block', report commissioned by the Treaty of Waitangi Policy Unit, August 1992, p 20

No proper survey of the massive Waimarino block was conducted, and only an uncertified sketch was available. Furthermore, despite the original agreement giving some 50,000 acres of reserves to the vendors, the reserves (which were not surveyed until 1895) finally encompassed only 34,634 acres. The court refused to become involved in the setting of reserves, instead leaving this matter to the discretion of the land purchase agents. It has been suggested that the reserves were set aside by agents 'without meaningful consultation as to their location'.³³ In failing to take responsibility for the establishment of adequate reserves for Maori, the Crown was breaching its Treaty obligation to protect actively the interests of Whanganui Maori.

The claims of those who had been left off the deed have been rejected by the Government, with a few exceptions. For example, in 1887, Te Kere appealed to the Native Affairs Committee against the sale of the Waimarino block without his consent. While the committee noted in 1888 that it had no recommendation to make, in 1901 approximately 1500 acres in Tawata Valley was awarded to Te Kere's whanau in recognition of his grievance. In 1914, Rangi Whakahoutu and eight other Maori petitioned Parliament, claiming that their land, known as the Kirikiriroa block, was wrongly included in the boundaries of the Waimarino purchase by the Crown and should be returned to them. The Under-Secretary of Native Affairs replied that, according to his records, there was no obligation to return the land to Maori. Three years later, the petitioners were advised of this opinion when they again petitioned Parliament. Later petitions by other groups relating to this purchase involved requests by Maori who claimed they were 'landless' for land to be granted to them, and others requested payment for land taken for public purposes. While a response to many of these petitions was not forthcoming, in one instance Chief Judge Jones of the Native Land Court found that petitioners Tamihana and Kupe had been 'wrongfully excluded from the sale'. Because several partitions and sales of the land had since occurred, however, the owners would be required to accept 'adjustments'. In this manner, the Maori landowners had to pay for a mistake made by the court and no compensation was payable.

9.6.5 The Stout–Ngata commission

Despite Whanganui Maori stating to the Stout–Ngata commission that they wished to retain sufficient lands (in terms of quality and quantity) to sustain themselves immediately and in the foreseeable future, the Native Land Act Amendment Act 1907 subsequently required as much land to be sold as was leased. This was in excess of what Whanganui Maori wished to offer.

33. Ibid

9.6.6 The Whanganui River and other compulsory takings for scenery preservation purposes

The Whanganui River Trust Act 1891 established a separate authority for the Whanganui River in order to make use of the river as a major arterial route once a full-time steamer service was established. The purpose of the Act was to conserve the scenery and protect the navigation of the river, thus enabling the trust to remove obstructions from the river (including Maori eel weirs), erect jetties, and impose tolls. Some exceptions were later made for Maori rights in these provisions at the insistence of James Carroll, the member for Eastern Maori, but there was no consultation with Whanganui Maori in the drafting or debating of the Act or subsequent amendments, which also overrode Maori protections. For example, in 1910, an amendment to the Scenery Preservation Act 1903 authorised the Native Secretary to compulsorily acquire Maori lands for scenery purposes. The 5000 acres taken in this manner was land that had largely been reserved from earlier sales, and it was taken with compensation averaging £1 per acre paid to Maori.

In 1914, petitions came before the Maori Affairs Select Committee in relation to land taken for scenery preservation purposes asking either that there be an investigation into lands taken or that compensation be paid for lands taken or the lands be returned. According to the statements of Maori made before the Whanganui Reserves Commission in 1916, the Crown had taken good farmland in excess of what was required for scenic purposes, had cut off access to Maori land behind the river, had taken burial caves and other wahi tapu and cultivation areas, and had failed to consult with Maori owners.

Maori resistance to the Crown encroaching on their rights to the Whanganui River from the 1880s led to some debate within the Government about the relationship between the ownership of adjacent land and river rights. This debate was overruled, however, by the passing of the Coal-mines Act Amendment Act 1903, which gave ownership of the navigable rivers to the Crown. Despite this, Maori protests regarding the extraction of gravel from the river continued. Maori initiated court proceedings over the ownership of the river, and in 1938, the Native Land Court ruled that, under Maori custom and usage, Maori had been the owners of the river in 1840. The decision regarding the ownership rights in 1938 (the time of the hearing) was delayed until 1947, at which point it was decided that, having sold the land adjacent to the river (although much of it had been subject to compulsory takings), Maori had also sold their rights to the riverbed. Following further protest, a commission of inquiry again considered the matter in 1950. This commission found that Whanganui hapu had owned the river in 1840 and that Maori should be compensated for gravel removed from the river since then. The Crown was found to have rights of ownership to tidal waters only, which in the case of the Whanganui River was the riverbed up to Roarikia. The Crown rejected this finding and appealed to the Court of Appeal in 1952. This court rejected the Crown's contention that the Whanganui River Trust Act 1891 overrode Maori customary rights to the riverbed. At a rehearing in 1958, however, the Maori Appellate Court found that, in selling their land either side of the river, Maori had also sold their riverbed. In 1962,

the Court of Appeal then reheard the case (taking the Maori Appellate Court's judgment into account) and ruled against Maori, saying that there had never been separate rights under Maori custom to the whole length of the Whanganui riverbed and that each land block carried with it the rights to the adjacent riverbed to the centre of the river. Despite the ruling, Maori continued to protest the Crown's right to the river and the gravel in the river (valued at between \$8 million and \$20 million). The matter of the ownership of the Whanganui River is currently a matter for consideration by the Waitangi Tribunal and a report is pending.

The land around the upper Whanganui River appears to have been most extensively taken for scenery preservation purposes, with little regard for the dwindling amount of Maori land in that area. From 1904 to 1924, over 4000 acres of Maori freehold land were taken along the river banks under public works and scenery preservation legislation. Most of the land was taken in 1911 and 1912. Maori protest about these takings was largely ignored. The minutes of the Scenery Preservation Board meetings contained no discussion of the merits of areas proposed for preservation nor the weight given to Maori concerns.³⁴

9.6.7 Native townships

In 1930, it was observed that certain land taken without compensation at Pipiriki in 1897 under the Native Townships Act 1895 had never been used for township purposes, having instead been rented to private enterprise, with the Department of Lands and Survey retaining the rental payments. When the Aotea Maori Land Board demanded that the beneficial owners be entitled to the payments, the department refused, saying that the land was administered under the Public Reserves, Domains, and National Parks Act 1928 (just one of the many Acts pertaining to Maori land at the time, which made for confusing management of land).

9.6.8 Post-1910 sales

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

34. Bennion, pp 13-14

9.7 Additional Reading

The following are recommended for additional reading:

- Tom Bennion, 'The Aotea Maori Land Board and Scenery Preservation', supplement to the Whanganui River report, 15 April 1994 (Wai 167 rod, doc a19(f));
Suzanne Cross and Brian Bargh, *The Whanganui District*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996;
Jane Luiten, 'Whanganui ki Porirua', report commissioned by the Waitangi Tribunal, 1992;
Alan Ward, 'Whanganui ki Maniapoto', report commissioned by the Waitangi Tribunal for Wai 48, March 1992; and
Ian Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832–1852*, Wellington, Government Printer, 1968.