

CHAPTER 13

THE NORTHERN SOUTH ISLAND

13.1 Principal Data

13.1.1 Estimated total land area for the district

The estimated total land area for district 13 (the northern South Island) is 3,359,886 acres.

13.1.2 Percentage of land in Maori ownership

Maps prepared for the 1940 *Historical Atlas* project (now held at the Alexander Turnbull Library and reproduced at the start of this volume) indicate that the total percentage of land in Maori ownership in district 13 at 1910 was approximately 3 percent (or 153.6 acres per head according to the census data provided below). Some of this land, which had been granted under the Landless Natives Act 1906, was largely uncultivable.

13.1.3 Main modes of land alienation

The principal modes of land alienation in district 13 were:

- New Zealand Company purchases; and
- Crown pre-emption purchases.

13.1.4 Population

The population of district 13 was approximately 1500 to 1700 in 1840 (estimated figure), 440 in 1891 (estimated from census figures), and 690 in 1936 (also estimated from census figures).

13.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district stretch from Kahurangi Point on the west coast in a south-easterly direction through the North West Nelson Forest Park to the Cobb Reservoir, before heading south to the Nelson Lakes. From these lakes, the

boundary runs north-east and follows the Awatere River to its mouth on Cook Strait.

This district is largely mountainous in nature, and settlement has been concentrated around the coast and the heads of the sounds, which run in from Cook Strait and have historically provided sheltered harbours and waterways for Maori and settlers alike. The temperate climate in the pockets of land at sea level has allowed successful horticulture and viticulture industries to develop in recent years.

13.3 Main Tribal Groups

The report from which the following account of Maori occupation at the top of the South Island is drawn does not claim to be comprehensive, nor does it attempt to judge between the 'take' of tribes with an interest in the area. It does, however, introduce all the tribes who had an interest in the district in 1840, and it describes their patterns of occupation and the claims that they put forward to be right-holders in 1840.

The first Maori occupants in the Wairau and Kaikoura districts were from the Waitaha tribe, while Queen Charlotte Sound was settled in the fifteenth and sixteenth centuries by Ngai Tara Pounamu. Evidence also suggests that Ngati Kuia were in residence at Te Hoiere (Pelorus Sound) at this time, in conjunction with a small population of Ngai Tara. Ngai Tara also possibly occupied Tasman Bay, while Golden Bay and the west coast were occupied by the migrant Whanganui tribe Ngati Wairangi.

In the sixteenth century, Ngai Tara settlement intensified, and Ngati Mamoe and Ngati Tumatakokiri from the North Island arrived and settled in the Nelson district, probably expelling Ngati Wairangi from Golden Bay and Te Tai Poutini (the top of the West Coast). Also arriving at this time were the forerunners of later Ngai Tahu and Rangitane settlements. By 1700, Rangitane claimed the whole of Queen Charlotte Sound and the Wairau, and Ngati Kuia had pushed Ngai Tara out of Te Hoiere altogether. By 1750, a 'Kurahaupo' alliance of Ngati Apa, Ngati Kuia, and Rangitane Maori had established itself, largely displacing Tumatakokiri's occupancy of the Marlborough Sounds by 1810.¹

In the 1820s, Tainui tribes from the Kawhia coast (Ngati Rarua, Ngati Toa, and Ngati Koata) and Taranaki tribes (Ngati Tama and Te Atiawa) carried out a series of invasions at the top of the South Island. By 1832, these tribes claimed to have conquered Te Tau Ihu (the top of the South Island), as well as a large part of the Kaikoura and Te Tai Poutini coasts. In particular, the nature and extent of Ngati Toa's right-holding in the Te Tau Ihu region generally, which was based on conquest but was not always followed by occupation, has been described as a 'thorny problem' requiring closer investigation.

By about 1840, tribal groupings were situated in the district as follows:

1. G A Phillipson, *The Northern South Island*, Waitangi Tribunal Rangahaua Whanui series (working paper: first release), pt 1, 1995, p 18

Figure 22: District 13 (the northern South Island)

- Te Tai Poutini had been occupied by a collection of Ngai Tahu and Ngati Rarua–Ngati Tama Maori up until the mid-1830s. While their relationship is unclear, it has been described as something of a ‘balance’ involving intermarriage. This balance was upset, however, in 1836 when Ngai Tahu regained some independence (although the matters of old boundaries with Tumatakokiri and their relations with Ngati Apa in the area still require clarification).
- Golden Bay was, generally speaking, shared between three iwi in 1840. Te Atiawa and Ngati Tama lived in the Aorere district, while Ngati Rarua and Ngati Tama were resident in the Takaka and Te Tai Tapu areas. Tasman Bay, on the other hand, reflected an extremely complex evolution of rights. Briefly, however, Ngati Tama were predominant in the east of Tasman Bay in the Wakapuaka district, while Ngati Rarua and Te Atiawa were located in the Riwaka and Motueka districts and controlled western Tasman Bay. Ngati Koata also retained some connection with the land at Wakapuaka and Whakatu after they had withdrawn from these areas in the 1830s.
- Rangitoto (D’Urville Island) was inhabited by Ngati Koata, who also occupied Croixelles Harbour (Whangarae) and the French Pass (Te Aumiti). Ngati Toa were present in Te Hoiere at this time and in close relations with Ngati Koata.
- Totaranui (Queen Charlotte Sound) was claimed by Te Atiawa (on either side of Cook Strait) by right of conquest and continuous occupation. Ngati Toa also had rights in this area, especially near Port Underwood. These tribal groupings shared occupation at Te Awaiti whaling site.
- Wairau and Karauripe were mainly occupied by Ngati Toa, in conjunction with Ngati Rarua. Te Atiawa were also resident at Waitohi, the harbour access to the Wairau district. As a result of shifting fortunes in the wars of the 1820s and 1830s, both Ngati Toa and Ngai Tahu claimed the coast between Blenheim and Kaikoura. This issue, and their respective rights on the West Coast, have recently been before the courts.
- The Kurahaupo iwi (Ngati Apa, Ngati Kuia, and Rangitane) were largely killed or enslaved from 1827 to 1832, although for those who remained, the occupation of their takiwa continued without a break. Rangitane remained in the Wairau Gorge, while Ngati Apa continued to occupy the West Coast. The Crown, in purchase activities in these areas, subsequently acknowledged some land rights of the Kurahaupo iwi in the northern South Island.

13.4 Principal Modes of Land Alienation

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

In 1839, the New Zealand Company claimed to have purchased all of the South Island northward of 43 degrees latitude by virtue of its ‘Kapiti deed’, signed with Ngati Toa chiefs, and the ‘Queen Charlotte Sound deed’, signed with Te Atiawa chiefs (seen by Wakefield in each case as the ‘overlord’ chiefs). In November 1840,

as part of the company's agreement with the British Government, these extravagant claims were abandoned in favour of the 'Pennington award' of some 600,000 acres, based on four acres for each pound spent in the New Zealand settlements. (This was later increased to about 1.3 million acres.) Of this, about 221,100 acres were to be in the Nelson area. Subsequent 'payments upon settling', valued at £980, were made to resident groups by the company. Further compensation of £800 was made to resident groups under Commissioner Spain's award in 1844, the company receiving title to 151,000 acres in Tasman and Golden Bays. One-tenth (15,100 acres) was supposed to be reserved for Maori, together with settlements and cultivations. The company's grant was later increased by Governor Grey, and further payments were made in the 1850s in satisfaction of some of the unextinguished rights in Golden Bay.

13.4.2 Crown purchases before 1865

In 1847, all Ngati Toa rights to an area of about three million acres from Cloudy Bay to Kaiapoi were purchased by the Crown in the Wairau purchase. Two reserves were specified, and the deed had only three signatories.

From 1848 to 1850, the area from Waikawa to the northern boundary of the Wairau purchase was acquired by the Crown from Te Atiawa in the Waitohi purchase.

From 1853 to 1856, in the Waipounamu purchases, rights over some eight million acres were purchased by the Crown, north and west of the 1848 Kemp purchase and the Wairau purchase and including Pelorus and Queen Charlotte Sounds, the Wairau reserves of 1847, Tasman and Golden Bays outside the company purchases, and the West Coast south to Arahura. Negotiations began with Ngati Toa in Wellington and were continued in a series of 13 further purchase agreements with resident and nonresident right-holders, for a total payment of £6787 and several small reserves.

In 1859, in the Kaikoura purchase, the interests of Ngai Tahu between White Bluffs (Parinui o Whiti) and the Waiua River were purchased by the Crown.

In 1860, in the Arahura purchase, the interests of Ngai Tahu in the Poutini coast and of Ngati Apa at Kawatiri, except for reserves, were also acquired by the Crown.

13.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 13.

13.4.4 Confiscations

There were no confiscations in district 13.

13.4.5 Purchases under the Native Land Acts (Crown and private as indicated)

An 88,000-acre reserve at Taitapu was the subject of a gold strike in 1862, and local tribes, notably Ngati Rarua, agreed to terms defined by Assistant Native Secretary James Mackay that regulated the field and paid miners' licence fees to Maori. Pursuant to this agreement and to the Gold Fields Act 1866, Taitapu was, by proclamation of the Nelson provincial superintendent, included in the Golden Bay goldfields. Because of doubts over the validity of this proclamation, it was further proclaimed by the Governor in 1873 under the Gold Fields Act Amendment Act 1868. This resulted in long leases to mining companies. In 1883, the reserve was awarded to Ngati Rarua by the Native Land Court; it was sold the following year to a Wellington syndicate for £10,000 with no reserves.

In 1883, the Native Land Court awarded the approximately 40,000-acre Rangitoto block to Ngati Koata. Titles were under restriction and most of the island was alienated by lease. In the twentieth century, restrictions were gradually removed and the freehold acquired by private purchasers. In 1979, 5000 acres remained as Maori freehold land.

13.4.6 Public works takings

In this, as in all other districts, takings of Maori land by central and local government for public purposes regularly occurred. In the northern South Island, these takings were usually small, but they were significant in the context of the minimal reserves made from the big Crown purchases. Details of particular takings were not available for this report, but for a general discussion of public works policy and law, see volume ii, chapter 11.

13.5 Outcomes for Main Tribes in the Area

Out of a district comprising some 3.4 million acres, the customary right-holders of Te Tau Ihu were left by 1865 with about 7000 acres of reserves (which were unevenly distributed between the various tribes), plus Taitapu and Rangitoto (subsequently sold).² On an acres-per-head basis, their holdings were little better than those of Ngai Tahu; many were subsequently deemed to qualify for the (negligible) awards under the South Island Landless Natives Act 1906 (and associated commissions of inquiry). In short, the situation of the people of this district was virtually the same as that of Ngai Tahu, in that their rohe and mahinga kai were mostly gone or, in the case of the foreshore, shared with the settlers. A population possibly not a great deal smaller than Ngai Tahu in 1840 had suffered comparable losses and marginalisation. Many were obliged to leave the district in search of work, and the

2. See 'Report of the Commissioner of Native Reserves', 6 December 1865, in G A Phillipson, *The Northern South Island*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), pt 2, 1996, app i

once strong communities resident in the bays and sounds withered and in some cases disappeared. The principal ‘overlord’ tribe, Ngati Toa, lost virtually all its interests in the district.

13.6 Examples of Treaty Issues Arising

13.6.1 New Zealand Company purchases and related agreements

The 1839 company purchases derived substantially from Colonel Wakefield’s deed signed with Ngati Toa chiefs of Kapiti in 1839, which purported to sell the title to about 20 million acres between north Taranaki and latitude 43 degrees south. Ngati Toa clearly did not understand the deed in those terms, and except for Te Atiawa in Queen Charlotte Sound, resident groups in Te Tau Ihu had not been consulted at all. These proceedings fell short of the requirements of the company’s own instructions to Colonel Wakefield and of Normanby’s instructions to Hobson. Yet the Crown accepted the deed not as wholly invalid but as signifying a ‘partial purchase’ (in Spain’s terms), and it allowed the company to select four acres for each pound sterling spent on colonisation. The company’s additional ‘payments upon settling’ to Maori resident in Golden and Tasman Bays avoided negating the Kapiti deed and circumvented the Crown’s pre-emption, which had been established in January 1840.

Wakefield’s ‘payments upon settling’ amounted to £980, but they involved no new deals, no formal cession of rights, and no recorded definitions of what was being given up and what was being retained. Payment was also to be in the form of company ‘tenths’ reserved for Maori benefit, but the full quotient of tenths was never made and the evidence clearly indicates that Maori did not understand the tenths arrangement.

Spain’s refusal of Ngati Toa’s request to forbid the company survey of the disputed Wairau Valley and the willingness of magistrates to issue warrants for the arrest of Ngati Toa chiefs for their non-violent obstruction, contributed to the tragic events there in June 1843.

Spain’s additional £800 of ‘compensation’ payments, arbitrated in 1844 and paid mainly to Maori still refusing to vacate contested land in favour of the settlers, was based on inadequate inquiries and was, on several occasions, accepted with great reluctance and under considerable pressure from Spain and sub-protector George Clarke junior. This pressure included assertions that the 1839 to 1842 purchase was deemed valid anyway and the money would be banked and spent on their behalf. Local resident groups effectively were denied the option to refrain from sale altogether or to secure prices higher than those prevailing in 1839 to 1841. In particular, the Motupipi people of Golden Bay refused Spain’s award and £290 compensation in 1844, and they conceded only in 1846 when it was apparent that the Government regarded the purchase as a *fait accompli*.

There is considerable evidence that some promised reserves (additional to tenths) were not made and that areas Maori requested to be exempted from sale were included in Spain's award.

The boundaries of all purchases made between 1839 and 1846 were very vague and continued to cause difficulties for years afterwards.

13.6.2 Crown purchases before 1865

The 1847 Wairau purchase was made when Te Rauparaha and other Ngati Toa leaders were in custody and Te Rangihaeata was in refuge. Only three major Ngati Toa chiefs signed the deed of sale. Governor Grey seems to have accepted Spain's 1845 finding that Ngati Toa alone were the 'owners' of the Wairau, ignoring C W Ligar's 1847 evidence of resident Ngati Rarua and Rangitane groups, who were not separately consulted. The Government did not oversee the distribution of the purchase money, and it continued to pay instalments to the three signatories even when it was aware that the funds were not being distributed. A substantial reserve of 117,248 acres was made in the Port Underwood area, Grey explaining that extensive hunting and gathering zones were necessary until Maori farming practices had evolved;³ yet these reserves were bought by the Crown within six years. There is considerable evidence that pressure was brought to bear on the Ngati Toa chiefs to sell the Wairau. The purchase from Ngati Toa as far south as Kaiapoi compromised Ngai Tahu, who had interests southward of White Bluffs. (Ngai Tahu interests were acquired by the Crown in the north Canterbury purchase of 1857 and the Kaikoura purchase of 1858.)

The initial purchases of Te Waipounamu (1853–56) was a 'blanket purchase' by Governor Grey and Donald McLean in Wellington with Rawiri Puaha and other Ngati Toa chiefs in August 1853, intended to extinguish all rights in an eight million-acre zone north and west of the Kemp purchase of 1848 and the Wairau purchase. Of the agreed £5000 purchase price, £2000 was paid in the first instance, the balance to be paid and reserves made at a hui with other groups 'conjointly' owning the land with Ngati Toa, to be held at Nelson in January 1854.

Payment also included scrip worth £50 given to each of 15 principal chiefs to buy land at 10 shillings an acre in the Nelson province, but they encountered obstacles from the provincial authorities in exercising their right and it appears that seven of the 15 were unable to do so.

The Governor also offered grants of 200 acres to 12 of the 15 chiefs who received scrip and to each of 26 other chiefs, to be selected within the purchase area and held under individual title. The grants were not made and became a major grievance. A proposal to allocate the land in 1874 also ran up against potential opposition from the province. In the 1880s, a payment of £5200 was awarded by Parliament in lieu, the form of the payment not being entirely to the wishes of the then Ngati Toa leaders (most of the original intended grantees having died).

3. Grey to Earl Grey, 7 April 1847, BPP, 1847–48, p 16

Instead of convening the promised January 1854 meeting in Nelson, McLean made several purchases in Taranaki from Te Atiawa for their interests in Te Wai Pounamu. In November 1854, he briefly visited Nelson but only to sign a deed with the Ngati Hinetuhi hapu of Te Atiawa for their interests in named locations in Queen Charlotte Sound and unilaterally to order surveyors to mark off reserves in the sounds, on the basis of the purchase from Ngati Toa. The surveyors could not get agreement on reserves with resident tribes in the sounds or with resident Ngati Toa at Wairau.

In December 1854, while attending a large tangi at Porirua, McLean paid a further £2000 of the purchase price, still mainly to Ngati Toa chiefs, in exchange for the abandonment of the proposed Nelson hui and an agreement by the chiefs to visit Te Tau Ihu with McLean and persuade resident groups to accept the purchase. This action angered the resident groups, who saw it as a breach of faith and an abandonment of the August 1853 agreement. They took the view that they still had the right to refuse to sell, while officials argued that the land had been sold and it only remained for the balance of the purchase money to be paid and the reserves designated. It is clear that the resident right-holders were placed under great pressure from the earlier purchase agreements with the non-residents.

In November 1855, at Nelson, McLean finally signed further deeds with Ngati Tama and Ngati Rarua chiefs for all their interests in Golden Bay not already sold. Riwai Turangapeke of Ngati Rarua denied the right of the Wellington chiefs to sell the Taitapu block, north of west Whanganui, and it was reserved, though with unclear boundaries.

McLean also argued that Wakapuaka was included in the purchase by virtue of the signature of the Ngati Tama chief Te Wahapiro on the 1853 deed. But Wi Katene Te Manu and the Ngati Tama residents of Wakapuaka objected, and McLean agreed to reserve it (about 18,000 acres). But though he sketched it on his map, he made no mention of it in the 1855 deed, and Ngati Tama refused to sign or to accept payment.

In 1855, McLean instructed John Tinline to purchase from the Golden Bay tribes (Ngati Tama, Ngati Rarua, and Te Atiawa) the remaining 'claims of a general nature by right of conquest over various portions of this Island'⁴ within the old company purchase, notably at Separation Point. Against local Maori assertions that their lands were unsold and that they were therefore free to make new sales at current prices, Tinline was instructed to uphold the Spain award (and thus the 1839 company purchase behind it). While particular claims of local resident groups were to be met, they were to be regarded as subdivisions of tribes who had already sold the land. Tinline was therefore to offer low payments equivalent to a share of the 1844 compensation. On meeting Tinline at Motupipi and also at Te Parapara, the claimants insisted that a new purchase was involved, and they wanted much larger payments. Tinline would not give way, and no agreement was reached.

4. McLean to Tinline, 12 November 1855 (cited in Phillipson, pt 1, p 165)

McLean returned to the area in 1856, and on 7 March the Ngati Tama and Ngati Rarua chiefs finally signed for a payment of £100 for 'all the places for which we did not receive payment in any former deed of sale' (that is, in satisfaction of Spain's compensation money not distributed to them in 1844 to 1846).⁵ The local groups were finally capitulating, against their clearly expressed preferences as to the price and the size of reserves, to what was presented consistently by the Government as a *fait accompli*.

In 1873, a runanga of Ngati Rarua, Ngati Tama, and Te Atiawa declared that their sale to the company in 1839 and to the Government in 1855 had included the coastal area but not the mountains and rivers of the interior and adjacent plains. It was not practicable to have walked the boundaries of the interior in 1855, and McLean relied upon a sketch map accompanying the deed, which gives only two interior place names (Rotoiti and Rotoroa). The vagueness of the deed descriptions and of the map, together with the fact that McLean did subsequently negotiate again for specific places, gives rise to the possibility that Maori participants may not have grasped the significance of the general blanket purchase: namely, that all their rights in the island were alienated except for specified reserves. The fact that settlers did not penetrate the interior for a good number of years, during which time Maori were still hunting in it, may have sustained the impression for some Maori that they retained rights to the interior. Against their claim, however, is the absence of protest before 1873 and the swift dismissal of the claim by Alexander Mackay, the commissioner of reserves in the South Island, a man who had not hesitated to speak up before and since on behalf of South Island Maori against the general run of official opinion.

In January 1856, in completing negotiations with Rangitane, McLean undertook to make 'good large reserves' as well as a payment of £100. But he left it ambiguous as to whether the reserves were for Rangitane alone or whether they were to be shared with Ngati Toa and Ngati Rarua. There is a discrepancy between McLean's diary entry, which referred to an intended reserve at Port Underwood (estimated by McLean at about '4000 acres of good land', but actually about 13,400 acres within the described boundaries), and the actual reserves he ordered at the Nelson office – 770 acres plus a small fishing reserve. It was not till 1862 that serious attempts were made to rectify the discrepancy, and then, the land having passed to the provincial government and been leased, Maori ended up with about 10,000 acres less than was promised at the 1856 hui. Phillipson comments:

This type of problem with reserves was not uncommon, and there were boundary disputes over the Tai Tapu, Wakapuaka and Whangamoia Reserves, none of which were surveyed or had their boundaries marked until long after 1856.⁶

Between 6 and 9 February 1856, McLean met with Te Atiawa at Waikawa reserve and offered them £500 for their interests in Queen Charlotte Sound. The

5. Richmond and McLean to Private Secretary, 25 June 1856 (cited in Phillipson, pt 1, p 167)

6. Mackay 1, pp 321–325, 333–334 (cited in Phillipson, pt 1, p 178)

reserve initially described in McLean's journal contained about 13,400 acres, but McLean later reported that he had made two small reserves: a 770-acre reserve on the bank of the Wairau River and a fishing reserve.⁷ The Tory Channel chiefs asked for £6600 and the Puketapu for £3800, but McLean insisted that the land, already in the Waipounamu purchase deed, was very poor and refused to pay any more.

In the Kaituna Valley, McLean agreed with Ngati Kuia to make about 700 acres of reserves (50 acres were Crown granted to the principal chief Hura Kopapa) and to grant them the right to continue using their cultivations on the right bank of the Kaituna and at Motueka until the land was required for settlement. Ninety-three members of Ngati Kuia and Rangitane signed away their remaining interests for £100 on 16 February 1856.

On 5 March 1856, McLean signed deeds at Nelson with Ngati Koata chiefs for 'all our lands in this Island' for £100 except for reserves previously negotiated but not yet surveyed, and an additional 100 acres at Whangamoia (a bone of contention with Ngati Tama, who were not consulted about it in 1856).

In 1859, during the Kaikoura purchase, McLean authorised payment to Kaikoura Ngai Tahu of around £150 and reserves of 10 to 100 acres per family or individual. The tribe sought £5000 and a reserve of 100,000 acres and finally accepted £300 and 5558 acres of reserves when James Mackay threatened to break off negotiations. The possible interests of Rangitane in the area covered by the deed were not considered. Rangitane now claim that they had interests as far south as the Waiau River that were not previously extinguished by earlier agreements. The Rangitane claim was heard and rejected by the Maori Appellate Court in 1990. The concept of sharp tribal boundaries (as distinct layers of intersecting rights), however, remains problematic in this district, as in all others.

Of the 6724 acres of occupation reserves made in the Arahura purchase in 1860, mainly for Ngai Tahu, 424 acres were made for Ngati Apa at Kawatiri. Although their numbers may have been small, it is highly unlikely that this would have been enough land for local Ngati Apa to have entered the commercial economy. Questions have been raised by Kurahaupo Trust claimants as to whether the interests of Ngati Rarua, Ngati Tama, and Te Atiawa were adequately considered in the allocation of interests in the Arahura reserves. Also, Ngati Apa interests in Golden Bay have been neither considered nor extinguished by the Crown.

Phillipson asks pertinent questions of the Crown purchases as follows:

- (a) *Who did the Crown negotiate with, and did it treat with all (or any) of the correct right-holders? Did the Crown treat with the whole community? with a large group of chiefs? with a small group of chiefs? with residents? with absentees? with people who had never lived on the land or visited it for resource-use? with non-resident chiefs claiming paramountcy over their neighbours? with conquerors? with conquered? with both?*
- (b) *And in respect to all of these potential vendors, with whom did the Crown negotiate first? That is to say, did the Crown get the consent of non-residents*

7. McLean to Colonial Secretary, 7 April 1856, in Mackay 1, p 302 (cited in Phillipson, pt 1, p 176)

first, and present the purchase as a *fait accompli* to residents, who were told that they were merely entitled to compensation)? to whom did it give the majority of the payment? how were the payments divided between vendors and did the Crown supervise or control such arrangements? on top of the formal price and reserves, were separate arrangements made with key chiefs as ‘inducements’?

- (c) *What was contained in the formal agreement (the deed)?* Were there other, informal or verbal agreements? Were the written deeds translated accurately? Were their contents explained adequately to Maori? Was there a clearly defined sale of a clearly defined district? Was there a map? Was the map accurate and did Maori demonstrate an understanding of it? Did the parties walk the boundaries of the sale or of the reserves or of both?
- (d) *Did the Crown extinguish all customary interests, and were the phrases about the ‘surrender of all rights everywhere’ a genuine reflection of the transaction as understood by Maori?* And in particular, did the Crown actually bargain for specific and discrete districts, in contravention of the wording of the deeds? Did it fail to extinguish the rights of Ngati Apa? And was there a ‘hole in the middle’ of the blanket purchases?
- (e) *Reserve issues.* In terms of the sale negotiations, were reserves adequately described in the deed? accurately placed on the map? were the boundaries specified, and if so, were they marked off correctly? were reserves surveyed at the time or marked off much later, and were the original vendors and Crown agents present to ensure that the arrangements were properly carried out?
- (f) *Issues of consent.* Were the parties willing? were they constrained, and if so, by what? were the consequences of the permanent alienation clear, and did the Crown deal fairly in terms of ensuring that Maori were fully aware of the economic value of land and minerals? Were the vendors allowed to keep as much land as they wanted to, whether as reserves or unsold land? did the Crown agree to make reserves where the vendors wanted them?
- (g) *Price in terms of money.* Did the Crown pay a fair price? (This is a vexed issue, but some reliance may be placed on the comments of Crown agents at the time and later that the prices were frequently nominal in terms of the real value of the land and its resources.)
- (h) *Price in terms of ‘secure titles’.* The Crown maintained that part of the benefit of land sales was that Maori would get secure Crown grants for their reserves. Did this happen, and was the allocation of grants carried out fairly?
- (i) *Undertakings.* Did the Crown fulfil all the undertakings made to Maori during purchase negotiations?⁸

13.6.3 Alienations under the Native Land Acts

James Mackay’s Taitapu reserve agreement of 1862 with the Ngati Rarua chiefs, while being in essence a genuine attempt to protect Maori from the consequences of the gold discoveries and give them a share of the revenue, probably required the chiefs to sign away more authority than was necessary to the Crown. (The Crown was then able to make future arrangements without further consultation.) Subsequent proclamations under the Gold Fields Acts were an exercise of *kawanatanga*

8. Phillipson, pt 2, pp 60–61

that placed the land more firmly beyond Maori control; it is not clear on the available evidence whether Maori right-holders were consulted. The adequacy of the share of goldfields revenue to Maori is also at issue (see also volume ii, chapter 10). So also is the question of whether other groups besides Ngati Rarua (whose interests had been recognised in previous arrangements) should also have been recognised by the Native Land Court prior to the sale of the block.

Questions have also arisen as to whether the Native Land Court decisions regarding Rangitoto adequately reflected custom or the wishes of the right-holders or both. The procedures of the Native Land Court are discussed in volume ii, chapter 7. The removal of restrictions on the titles awarded by the court, which led to the alienation of the freehold of most of the island, is another national issue that is considered below in volume ii, chapter 8.

A number of more general Treaty issues also arise. First, there was a lack of investigation of right-holding before purchases. All major purchases, from the 1839 company purchases to the Kaikoura purchase of 1859, had proceeded without any comprehensive prior investigation of customary right-holding. The company, then the Government, relied on the incomplete and often superficial reports of officials at different times and places, prior to a series of part-purchases. General hui at which complex overlapping interests were discussed were rare and confined only to sections of the right-holders. Doubts exist to this day as to whether the interests of Rangitane (on the east coast) and Ngati Apa (on the west coast) were adequately recognised. The purchases privileged the situation of Ngati Toa as conquerors, and though the rights of resident groups were subsequently recognised, this was in the form of a series of 'mopping up' purchases, which left them no opportunity to reject the original blanket purchases as such.

Secondly, there is the question of the adequacy of reserves. The above deficiencies might not have been so serious had adequate reserves been made or lands been left in Maori freehold title with restrictions confining alienability to renewable leases. But they were not. Some statements by Crown agents, such as Grey's statement of 7 April 1847, clearly recognised that Maori needed large acreages on which to practise their traditional hunting and gathering economy or on which to enter the new pastoral economy. Yet reserves were not made for this purpose, or if they were, they were purchased within a few years. In the Arahura purchase of 1860, occupation reserves of 6000 acres, school and church endowment reserves, and 2000 acres for survey costs were a rare and late part-acknowledgement of Maori needs. McLean and other officials made known their preference for eliminating customary tenure and obliging Maori as individuals to buy general land. But, apart from individual grants promised, though not always made, to some of the chiefs, partly as an inducement to them to sell the remainder of their tribal patrimony, Maori were not in fact facilitated in the acquisition of general land. Increasingly, as land continued to be purchased and Maori numbers increased, Maori simply became landless or nearly so. Many Maori in Te Tau Ihu were listed among those qualifying for grants under the South Island Landless Natives Act 1906. But

the history of those grants is also a travesty, which resulted in very little quality land being added to Maori holdings.⁹

The Nelson ‘tenths’, and a number of other reserves in the area, were administered by the commissioners of native reserves and then by the Public or Maori Trustee. The quality of that administration varied considerably over the years, and some of the reserves were alienated. Although well-intentioned, and providing some revenue for the educational and other needs of local Maori, the paternalistic administration gave Maori little experience or responsibility in the administration of land reserved for their benefit.

Phillipson draws the following conclusions (among others) in respect of reserves:

- (a) the Crown did not ensure that the New Zealand Company’s scheme for making reserves was properly carried out;
- (b) Maori never received their full tenths awards, and in fact the Government permitted a drastic shortfall in the tenths to occur (partly by direct action, partly by inaction);
- (c) the question of who was entitled to the benefit of the tenths may never have been satisfactorily settled;
- (d) the Crown did not make all the reserves that it promised to during the Crown purchases, nor did it ensure that those reserves that were made were consistent with verbal or incompletely recorded agreements (or both) with Maori;
- (e) the Crown did not ensure that enough (and appropriate) land was reserved for Maori to continue their traditional economic practices if they chose to do so;
- (f) from the impressionistic evidence of Alexander Mackay and others, and from the plight of ‘landless natives’ by the 1880s, it would appear that the Crown did not ensure that enough (and appropriate) land was reserved to meet the ‘present and future needs’ of Maori; and
- (g) only two really large reserves were ever made, the Wairau reserve of 1847 and the Taitapu reserve of 1856, and the Crown did not ensure that Maori were able to exploit these reserves to their fullest extent or to retain them permanently in their possession.

In addition to these issues, there are a number of important questions about reserves that this report was not able to answer. Further research is necessary on:

- (a) the administration of the tenths and other reserves that came under the Native Reserves Acts;
- (b) the full details of how reserves were finalised after a complicated process of adjustment and swaps, especially in Golden Bay;

9. See AJHR, 1905, g-2; 1914, g-2

- (c) the process by which Maori obtained legal title to their reserves, especially James Mackay's allocation of Crown grants in the 1860s and the landmark decisions of the Native Land Court in the 1880s and 1890s;
- (d) the extent to which Maori retained the smaller reserves in their possession;
- (e) the allocation and suitability of the landless natives reserves and the degree to which they actually alleviated landlessness; and
- (f) the use and retention of land on Rangitoto by Ngati Koata and Ngati Kuia.

Finally, there is the matter of the adequacy of consideration. The sums paid for Maori rights over vast areas of land were, like those paid for the Ngai Tahu purchases, remarkably low. In most cases, they bore little relationship to either the income that Maori were already starting to get from rents by the time of the north Canterbury purchase or the resale prices that the Government or private purchasers received almost immediately.

The question of a fair price for unsurveyed, undeveloped, and unregistered lands is a complex one. But on almost any measure, most of the payments made for the very large areas in Te Tau Ihu, much of it containing valuable forests, harbours, and, in some cases, minerals, could justifiably be described as nominal. The true consideration payable was, of course, represented by the company and Crown negotiators, as the increased value given to the vendors' remaining lands, and to the benefits of association with settler communities and with the Crown. In this context, the adequacy of reserves, both for Maori occupation and for commercial development, as well as reserves held in trust to yield revenue for education, medical care, and other benefits, becomes crucial. In fact, reserved lands were not provided in anything like sufficient quantity. Although the trust administration of trust reserves in Nelson and Marlborough was better than in most districts, yielding some revenue for the benefit of the local Maori communities, in general Maori of the northern South Island rapidly became marginalised in much the same way and in the same period as Ngai Tahu. By the 1870s, Maori in this district lost almost all their land in a very short period, without adequate recompense, without their full and free consent to many of the most basic details of the transactions, and without adequate provision for them either to maintain their traditional economy or to engage in a meaningful sense with the emerging settler economy. This is an evident failure on the part of the Crown to honour explicit or implicit undertakings made to Maori during the assertion of British sovereignty and the purchase of land in the northern South Island.

13.7 Additional Reading

The following are recommended for additional reading:

A Mackay, A Compendium of Official Documents Relative to Native Affairs in the South Island, two volumes, Wellington, 1873;

- J H Barne, *History of Taitapu Estate*, New Zealand Forest Service, December 1986;
- M J and H A Mitchell, submission to the Waitangi Tribunal on behalf of claimants (Wai 102 rod, docs a2, a3, a5, a6(a)–(c), a7, a16 (a)–(b));
- R Allan, *Nelson: A History of Early Settlement*, Wellington, 1965; and
- O Baldwin, *Story of New Zealand's French Pass and d'Urville Island*, Plimmeton, volume 1, 1979; volume 3, 1983.