

## CHAPTER 6

# CROWN PURCHASES, 1866–73

### 6.1 INTRODUCTION

Purchases by the Crown during 1866–73 occupy what could be described as an interregnum between two Native Land Purchase agencies. The Crown abolished McLean's NLP Department in 1865. Even though the 1870 and 1873 Immigration and Public Works Acts provided £700,000 to finance purchases, the Crown failed to set up a special agency for this purpose until October 1873.<sup>1</sup> The result of the absence of a single agency devoted to promoting and coordinating Crown purchases can be seen in the accompanying table which shows only 31 purchases during this period.<sup>2</sup>

The approach of this chapter differs from that followed in the pre-1865 old land claim and Crown purchase chapters. Lack of sufficient documentary evidence has prevented the detailed examination of the issues of representation, boundaries, equivalents, and outcomes. Instead, the issues raised by the 1865–73 Crown purchases are peculiar to that period. They are:

- (a) the lack of satisfactory documentation;
- (b) negotiation anomalies;
- (c) the adequacy of reserves; and
- (d) Crown protective responsibilities.

### 6.2 CROWN PURCHASE CATEGORIES

In contrast to the pre-1865 purchase era when the Crown acquired almost 1.6 million acres in the Auckland district, its 1866–73 acquisitions totalled less than 250,000 acres. Even this figure is an inflated one. The Crown originally negotiated the 1867 Waiuku purchase of 68,000 acres in 1864. For that reason, this discussion treats Waiuku as a renegotiated pre-1865 purchase. The figure may also appear to have been inflated by the inclusion of 12 provincial purchases which together account for a greater area than direct Crown purchases. Reasons for including these purchases in the total is explained in the section dealing with provincial purchases.

---

1. Notes on land purchase, not dated, MA/MLP 1/2 74/346; 'Statement of Native Minister re Land Purchases in North Island', 10 August 1875, H H Turton (comp), *An Epitome of Official Documents relative to Native Affairs and Land Purchases in the North Island of New Zealand*, Wellington, 1883, C220–223

2. 1866–73 Crown purchase table attached.

The relatively small number of purchases during 1866–73 allows a detailed examination of these purchases in four separate categories:

- (a) those preceded by private purchases;
- (b) provincial purchases;
- (c) renegotiated pre-1865 purchases; and
- (d) Native Land Court facilitated purchases.

### **6.2.1 Purchases preceded by private purchases**

When Governor Grey proclaimed the end of pre-emption on 1 April 1865, he inaugurated an era in which general government, provincial, and private agents were simultaneously negotiating the purchase of Maori land. While no historian has ever determined the extent of post-1865 private purchases, in the Auckland district at least two private purchases passed into Crown hands.

Since Maori disputed ownership of the Pungaere area during Land Claims Commissioner Bell's 1857–58 hearings, the 1872 Crown purchase there provides an example of related private and public activities both before and after 1865. Before 1865 Te Whiu and Ngai Tawake (both Nga Puhi hapu) disputed ownership of the areas surrounding James Kemp's Waipapa grant. Te Whiu claimed Puketotara on the south side, Ngai Tawake claimed Pungaere on its north side, but Bell claimed both as Crown surplus land (see fig 6). Despite Bell's insistence that Pungaere was Crown land, Mangonui Huirua and Wi Kaire successfully claimed ownership of the 7000 acres in the Native Land Court.<sup>3</sup> Almost as soon as they obtained their Crown grant, Huirua and Kaire sold the entire area to John Charles McCormick of Auckland for £300.<sup>4</sup> The haste which attended this sale may have been due to the awareness of the principals that the Crown might reclaim the area as surplus land at any time.<sup>5</sup>

---

3. NLC certificate of title, 16 October 1868, DOSLI ref 921. Prior to 1873, the NLC issued certificates of title as well as recommending the issuance of Crown grants. Neither were registered in what came to be known as the Torrens system.

4. Deed of conveyance, 25 May 1869, Auc 466 A1, DOSLI, Heaphy House Wellington

5. The Pungaere Crown grant to Huirua and Kaire, though issued in 1868, was not registered in Wellington until 23 July 1869, by which time the land had already been sold: Crown grant, 16 October 1868, Auc 466 B1.

When the Crown agents approached McCormick in 1872 and offered to purchase the area for £718, they must have rued the day that they let Pungaere slip through their fingers.<sup>6</sup> When Maori took the area to the Native Land Court, the Crown may have expected Judge Maning to throw the claim out. Since the Crown failed to survey surplus land excluded from old land claim plans in the Auckland district prior to the 1890s, Maning apparently upheld the Maori claim because the best available maps didn't show the area as Crown land.<sup>7</sup> The fact that Maning's record of the Pungaere hearing has not survived means that much of the case has to be left to conjecture. Since little documentary evidence survives in the Native Land Purchase files about either the 1869 or the 1872 purchases, we are also left to conjecture about surrounding circumstances, although some evidence suggests Maori sold Pungaere to pay survey costs (see below).

According to NLP files, Robert Vaile (apparently acting as an agent for McCormick) offered Pungaere at two shillings an acre to the province in mid 1872.<sup>8</sup> The superintendent, Thomas Gillies, then recommended that the general government purchase the block. He believed that about a third of it would be available for immediate settlement.<sup>9</sup> The general government's Auckland agent, Daniel Pollen, complied with this request using Immigration and Public Works funds to finance the transaction.<sup>10</sup>

Patupukapuka, a 21-acre area near Mangonui, appears to be a second example of a Crown purchase preceded by a private purchase. When Pororua Wharekauri brought the area before the Native Land Court in 1867, he stated that he had already 'exchanged' it with James Berghan, a well-known settler. Although Pororua wished Judge W B White to order title in favour of Berghan, the Native Land Court had no power to do so.<sup>11</sup> Eventually, the Native Land Court issued a certificate of title to Pororua. This document survives as the only evidence that the Crown purchased Patupukapuka. The certificate, unaccompanied by any sort of deed, occupies its own file amidst the original Crown purchase deeds. Presumably, the Crown inherited this document from either Pororua or Berghan after paying either or both for the land.<sup>12</sup>

---

6. Deed of conveyance, 17 September 1872, Auc 466C. The wording of the 1869 and 1872 deeds is almost identical. Apparently the well-known Auckland legal firm of Whitaker and Russell drafted both documents.

7. The best available map was probably Auckland roll plan 16, which was a compilation of Crown purchases and old land claims (see fig 16).

8. Robert Vaile to Gillies, 22 June 1872, MA/MLP 1/1 73/10

9. Gillies to Colonial Secretary, 26 June 1872, MA/MLP 1/1 73/10

10. Pollen to Under-Secretary of Public Works, 4 November 1872, MA/MLP 1/1 73/10

11. White initially ordered title for both Pororua and Berghan, but this was also contrary to statute: Patupukapuka hearing, 7 March 1867, Northern minute book, vol 1, fol 25.

12. CT, 7 March 1867, Auc 5657, DOSLI, Heaphy House Wellington

## **6.2.2 Provincial purchases**

After 1865, provincial purchase agents moved into the void created by the abolition of the NLP Department. In some cases, such as the Hoteo purchase, provincial agents completed the work begun by the Native Land Purchase Department. In other cases, such as Tureikura and Te Onekura, custody of provincial purchases passed to the general government after the abolition of the provincial system in 1876. Then there are also provincial purchases which have been almost impossible to document because a fire in 1872 apparently destroyed the evidence.

The Crown advanced Maori £330 in prepayments for Hoteo in the 41,400 acre area between Port Albert and Awaroa (today's Helensville), during 1862–63. Since the Crown failed to complete the purchase prior to the establishment of the Native Land Court, the Court determined Maori title to Hoteo in 1867.<sup>13</sup> The area that passed through the Native Land Court excluded two riverbank reserves, and two coastal areas. Such exclusions make it perfectly obvious that Maori went through the Native Land Court as a prelude to completing the alienation process begun prior to 1865.

---

13. CT, 16 February 1867, DOSLI, ref 4932. See Paul Hamer's references to this block in chapter 7.

*Crown Purchases, 1866–73*

Provincial agents completed the Hoteo purchase, according to Alemann, on 12 December 1868.<sup>14</sup> Presumably the Auckland Provincial Building fire of November 1872 destroyed the purchase documentation, because the general government did not place any evidence of the Hoteo purchase in its deed files. Apparently, the Crown assumed that the provincial government completed the purchase properly before conveying it to the general government in 1876.

Some provincial purchase deeds evidently survived the 1872 fire. Central deed files include an 1871 conveyance of the 1969 acre Tureikura block in the Te Puna area of the Bay of Islands.<sup>15</sup> Strangely, the Native Land Court granted this area to a single individual, Hone Taotahi, in 1867. He then mortgaged the property to E M Mackecknie in 1870, before selling it to provincial agents the following year.<sup>16</sup> Again, the paucity of documentation makes it impossible to conclude much about the nature of these transactions.

The smaller 323-acre Te Onekura purchase near Helensville is even less well documented than the Tureikura purchase. The only direct evidence of the purchase is an endorsement on the 1871 Crown Grant to Maori stating ‘Transfer No 188 . . . to [Provincial Superintendent] Thomas B Gillies 20 October 1873’.<sup>17</sup> Although we know the names of the principals and the extent of the area (from the plan inscribed on the grant), we know neither the purchase price, nor any other information about the circumstances surrounding the transaction. Such lack of satisfactory documentation may not have created legal difficulties at Tureikura and Te Onekura, but they did in other provincial purchases.

A 1950 royal commission investigation into the undocumented Opouturi purchase near Kaitaia raised serious questions about the Crown’s discharge of its legal obligations. The investigation arose out of Maori petitions to Parliament in 1923 and 1948 denying the validity of the Crown’s ownership of the 250-acre area. The commission (chaired by Judge Dalglish) found that Opouturi was one of at least a dozen areas where the original provincial deed had apparently been destroyed in the 1872 fire.<sup>18</sup> To establish that the Crown had indeed acquired legal ownership of Opouturi, the commission had to rely upon an 1872 letter listing duties on recent conveyances.<sup>19</sup> While Vincent Meredith, as ‘counsel assisting the commission’, argued successfully that such indirect evidence proved the validity of the Crown’s claim, Hall Skelton, representing Maori, exploited the doubts created by lack of direct evidence. He alleged that Government ‘manipulations’ of the incomplete

---

14. Alemann, Ngati Whatua transactions, p 71

15. Deed, 10 November 1871, Auc 1740C, DOSLI

16. Very seldom would the NLC award an area exceeding 1000 acres to a single individual: Crown grant, 1 April 1867; mortgage document, 15 May 1870, Auc 1740A, 1740B

17. Crown grant, 23 November 1871, Auc 1028, DOSLI

18. Commission report, 4 December 1950, MA 98/5, pp 13–16, 33–34. H M Christie and R Ormsby completed the commission’s membership.

19. Ibid, H H Lusk to Colonial Secretary, 6 November 1872, pp 10–12

record suggested illegal action.<sup>20</sup> Even though the commission upheld the Crown's position, it recommended the payment of compensation to Maori.<sup>21</sup>

### **6.2.3 Renegotiated pre-1865 purchases**

Although the General Government lacked a department responsible for Crown purchases between 1866 and 1870, some pre-1865 purchases had to be renegotiated during these years. At West Waiuku, from the south head of the entrance to Manukau Harbour to the Waikato River mouth, and on Waiheke Island, the effects of confiscation and multiple Maori interests required renegotiation. At Waiuku, confiscation upset pre-1865 reserve provisions, and at Waiheke Ngati Maru interests, which had been overlooked, demanded recognition.

The Husbands–Riddell report indicates the labyrinth of multiple Crown purchases affecting the West Waiuku area prior to 1865. At least nine Crown purchases and five old land claims littered this 68,000-acre area. To further complicate matters, the Crown confiscated the southern two-thirds of the area (including native reserves) in 1865.<sup>22</sup>

The 1864 Waiuku no 2 purchase negotiated with Ngati Te Ata created 15 reserves, totalling 5153 acres, and 15 wahi tapu, totalling 1253 acres. The deed specified that these areas were reserved only for those tribes 'as have not been engaged in rebellion' ('mo te iwi, ara mo matou kihai i uru ki te whawhai').<sup>23</sup> Although Ngati Te Ata generally 'remained loyal to the Crown in both word and deed', according to Husbands and Riddell, the Crown confiscated about two-thirds of their 1864 reserves.<sup>24</sup> In an attempt to remedy this inexplicable injustice, Parliament passed the Friendly Natives' Contracts Confirmation Act 1866 which restored the confiscated reserves to Maori.<sup>25</sup> Civil Commissioner James Mackay then persuaded Ngati Te Ata to sign a new deed in which the Crown agreed to complete a schedule of payments begun in 1864.<sup>26</sup>

---

20. Proceedings, 11 July 1950, MA 98/1, p G1

21. Commission report, 4 December 1950, MA 98/5, p 35. The Crown evidently paid Maori £75: Under-Secretary for Maori Affairs to Secretary of Internal Affairs, 12 November 1951, MA 5/13/213.

22. Paul Husbands and Kate Riddell, *The Alienation of South Auckland Lands*, Waitangi Tribunal Research Series, 1993, no 9, pp 12, 24–25, 43–44

23. Deed, 2 November 1864, TCD, vol 1, pp 350–353

24. Husbands and Riddell, p 43

25. 'Report of Commissioner of Native Reserves', 29 May 1874, *Epitome*, D88

26. Deed, 1 January 1867, TCD, vol 1, pp 355–358. The 1864 and 1867 deeds were virtually identical, although a larger number of Maori signed in 1867.

*Auckland*

That, however, was not the end of the story. Charles Heaphy, as Commissioner of Native Reserves, reported that the Crown conveyed the Waiuku reserves to certain chiefs as trustees on behalf of their hapu. According to Heaphy, they:

contracted for the actual sale of some of the reserves, and let others in an irregular manner . . . They have also sold the valuable timber, to the material injury of the land, and lesser claimants complain that this is done without their concurrence or participation.<sup>27</sup>

---

27. Heaphy report, 29 May 1874, *Epitome*, D88

To remedy this, in 1874, John White, a freelancing ‘Native Agent’, proposed individual partitions of each reserve with the Crown paying the survey costs. Heaphy reported that Maori consented to this arrangement, formalised with the 1876 Waiuku Native Grants Act. Maori may have preferred individualisation to being at the mercy of unaccountable trustees.<sup>28</sup>

Waiuku reserve arrangements affected only Ngati Te Ata, the dominant resident iwi. At Waiheke, the Crown was prepared to purchase the interests of Ngati Maru, apparently a largely non-resident iwi. It did so, while guaranteeing the continued rights of Ngati Paoa in a deed of 1867.<sup>29</sup> The plan inscribed on this deed identifies a 2100-acre Ngati Paoa reserve, and larger areas of native land which the Native Land Court presumably granted individuals of Ngati Paoa descent.<sup>30</sup>

While 18 Ngati Maru individuals signed the 1867 deed in return for £300, two years later a further 31 individuals received £150. The deed stated that Ngati Maru ‘parted with all the[ir] claims and interests’ (‘Kua oti atu o matou paanga . . . me nga take katoa’) at Waiheke.<sup>31</sup>

The 1867 and 1869 Ngati Maru/Waiheke purchases resemble the 1864 and 1867 Ngati Te Ata/Waiuku purchases in that they appear to be tidying up exercises. In both cases they followed a welter of confusing pre-1865 transactions. At Waiheke at least three Crown purchases and 12 old land claims preceded the 1867 and 1869 purchases.<sup>32</sup> The Waitangi Tribunal’s report on the Waiheke Island Claim records

---

28. ‘Report of the Commissioner of Native Reserves’ (the Heaphy report), 30 June 1875, AJHR, 1875, G-5, pp 1–2; Waiuku Native Grants Act 1876

29. Deed, 18 October 1867, TCD, vol 1, pp 306–307

30. Maori land titles list 1865–85, DOSLI, Heaphy House Wellington. Unfortunately, this is not a complete list of Native Land Court awards. Noticeably absent are many areas privately purchased from Maori before 1870, listed in ‘Return of [Native] Lands . . . Sold’, MA-MT 1/1B, no 157

31. Deed, 7 December 1869, TCD, vol 1, p 307

32. All three pre-1865 Crown purchases were negotiated with Ngati Paoa: deeds 18 May; 12, 28 June 1858, TCD, vol 1, pp 293, 302, 304; *ibid*, receipt, 10 July 1854, p 736. Commissioner Bell listed a total of 2482 Crown-granted acres at

*Auckland*

that the pre-1865 Crown purchases negotiated with Ngati Paoa alienated approximately three-quarters of the island. The Tribunal accepted the subsequent Native Land Court title determinations in Ngati Paoa's favour as indicating that they were the proper people for the Crown to be dealing with. None the less, the Tribunal reported that Ngati Maru's position:

may deserve further study . . . It is clear that Ngati Paoa and Ngati Maru are most closely related tribes, enjoying a common ancestor . . . and that for a time they lived together on Waiheke . . . [After 1865] Ngati Maru continued to insist that they had not relinquished a share in the land.<sup>33</sup>

The 1867 and 1869 purchases, therefore, appear to represent the Crown's attempt to ensure that Ngati Maru did not continue to claim Waiheke land in the Native Land Court. Continuing Ngati Maru claims cast doubt on the wisdom of the decision of Crown purchase agents to ignore their interests prior to 1865.

---

Waiheke: 'Appendix to the Report of the Land Claims Commissioner', 8 July 1863, AJHR, 1863, D-14.  
33. Waitangi Tribunal, *Waiheke Island Report*, Wellington, Department of Justice: Waitangi Tribunal Division, 1987, pp 8-9

*Crown Purchases, 1866–73*

#### **6.2.4 Native Land Court facilitated purchases**

The Native Land Act 1865 required the Crown to purchase land from only those Maori whom the Native Land Court determined to be its rightful owners. In some cases, however, the Native Land Court appears to have facilitated purchases, and may well have legalised purchase arrangements made prior to its title determination. Such appears to have been the case with the 1872 Kaitaia north purchase, and with 1873 Pakiri north arrangements which subsequently embarrassed the Crown.

The 1872 Kaitaia purchase featured Native Land Court Judge Frederick Maning, with Resident Magistrate William B White acting as Crown agent (rather than in a judicial capacity). Since Maning's Native Land Court minutebooks have not survived we know very little about how he determined title to the 11,000-acre Kaitaia block in 1868. Te Rarawa and Te Patu disputed the area, but Maning awarded title to 10 Te Rarawa individuals. Since Te Patu lived nearby, their exclusion from the title may have promoted the possibility of a purchase. The titleholders lived a considerable distance from the area, mostly in the Ahipara/Whangape area.<sup>34</sup> These people had little to gain economically from such a large and distant block which they had to have surveyed at their own expense prior to the title determination.

White had earlier reported that since most Maori couldn't afford expensive surveys, they applied for Native Land Court title determinations only if they had 'previously agreed to sell the land.'<sup>35</sup> In ordering title to the block, Maning also took the unusual step of partitioning it between the agriculturally valuable northern half, and the rugged southern half. When Chief Judge Fenton later questioned him about

*Crown Purchases, 1866–73*

this, Maning maintained that Maori told him the southern portion (which he restricted from alienation for 21 years) contained gold deposits. He justified this restriction on the grounds that it protected the Crown's, not Maori, interests. He believed that the Crown would eventually want to purchase that area, and he believed that it should purchase it from Maori, rather than from Pakeha speculators who would almost certainly bid up the price.<sup>36</sup>

---

34. CT, 23 October 1868, DOSLI, ref 1064; Tamaho Maika report, *Northlander*, 17 August 1922

35. White to Fenton, 5 July 1867, AJHR, 1867, A-10, p 10

36. Maning to Fenton, 23 October 1872, claim Wai 45 record of documents, doc F20, vol II, pp 586–587

A notorious land speculator, and later member of the House of Representatives, John Lundon, obtained control of the adjoining Ruaroa block at about the time of the Kaitaia title determination.<sup>37</sup> He soon cast his covetous eyes upon the green rolling country of the northern section which Maning had not restricted the title to, perhaps in anticipation of a Crown purchase. White therefore prevailed upon Pollen to authorise him to negotiate the purchase of Kaitaia north in 1871.<sup>38</sup> To complete the purchase, however, White required the further cooperation of Judge Maning. Since three of the 10 Kaitaia titleholders had died before White could get them to sign a purchase deed, he applied for a special Native Land Court succession hearing. Maning willingly complied. As a result, seven surviving titleholders signed a deed in July 1872, and three successors to deceased titleholders signed another in September.<sup>39</sup>

The Kaitaia north purchase then became the very first purchase in Auckland province financed out of the Immigration and Public Works Act 1870. More importantly, the Native Land Court title determination in favour of absentees, its expensive survey requirements, and the cooperation between Judge Maning and White (himself a former Native Land Court Judge), paved the way for the purchase.

The 1873 Pakiri north arrangements provide an even more vivid example of cooperation between the Native Land Court and Crown purchase agents. The original north/south divide at the Pakiri River grew out of a 38,000-acre 1858 purchase at what Rogan considered a bargain-basement price.<sup>40</sup> When Rogan

---

37. Maori later petitioned Parliament that Lundon obtained control of this area without ever paying for it: 'Petition of Timoti Puhipi', AJHR, 1882, I-2, no 364, p 22. David Routledge refers to Lundon as a man capable of 'both high-minded altruism and blatant skulduggery': DNZB, Wellington, 1993, vol II, pp 279–280

38. White to Pollen, 26 December 1871, claim Wai 45 record of documents, doc F20, vol II, pp 581–582

39. Deeds, 31 July, 25 September 1872, TCD, vol I, pp 27, 88

40. He told McLean 'you got that Pakiri block at a ridiculously low price the Kauri alone is worth twenty times the sum

completed the Waikeri-a-wera purchase the following year, the 30,000 acres north of the Pakiri River remained the only Maori land along the east coast from Auckland to Whangarei. As the only Maori outlet to the east coast, one would have expected Maori to have clung to it like a last prized possession.

A dramatic series of events conspired to compromise Maori possession of their last coastal outlet. In September 1864 Tainui prisoners escaped from Kawau and persuaded Hori Te More to supply them from John McLeod's store at Waitangi, a few miles north of Helensville.<sup>41</sup> McLeod, the founder of Helensville and later Bay of Islands member of the House of Representatives, prevailed upon Te More to promise compensation. When Te More failed to fulfil this promise, McLeod successfully sued him for almost £300.<sup>42</sup> Representing Te More in the Auckland Supreme Court was the architect of the highly questionable 1873 purchase arrangement, John Sheehan.<sup>43</sup> When he entered Parliament as the member for Hobson in 1872, Sheehan supported McLeod's bid to have the £300 Te More owed him paid by the Crown and deducted from the Pakiri north purchase price. Sheehan assured the Native Minister, McLean, that this was acceptable to Maori, and that he was willing to negotiate terms without charging for his services.<sup>44</sup>

---

paid by the Govt': Rogan to McLean, 24 June 1859, McLean papers, fol 541

41. For part of the story, see James Belich, *The New Zealand Wars*, Auckland, 1986, pp 197–198.

42. McLeod to McLean, 28 June 1872, MA 13/62

43. Sheehan shared many of Landon's personal and political characteristics. Both were central figures in native land purchase scandals. See their entries written by Waterson and Routledge respectively in NZDB, vol II, pp 279–280, 465–469.

44. Sheehan memo (apparently enclosed in McLeod's letter to McLean) 28 June 1872, MA 13/62

Native Land Court Judge Rogan had determined title to Pakiri north in 1870 in a manner that greatly complicated subsequent purchase. He awarded title to a woman, Rahui Kiri, and two minors, including the son of Te More.<sup>45</sup> Even though Sheehan persuaded Arama Karaka to allow him to act as a joint trustee for one of the minors, under the terms of Maori Real Estate Management Act 1867 trustees could not sell the property of their wards. Since he had just entered Parliament, however, Sheehan foolishly thought he could pass another act to make such a sale legal. During early 1873 he told the Crown purchase agent, Colonel Thomas McDonnell, that he ‘would see about this’ or arrange this matter satisfactorily in Parliament.<sup>46</sup>

Both provincial and central government officials had declared support for the Pakiri north purchase as early as October 1872, and in December McLean authorised a £100 payment to McLeod on the understanding that it would be deducted from the purchase price.<sup>47</sup> Later Maori evidence indicates that Sheehan never obtained their consent for paying off McLeod, although McLean and McDonnell probably accepted Sheehan’s assurance that he acted with full Maori consent. Sheehan couldn’t even obtain the consent of Rahui Kiri to the purchase. She was not willing to sell her share of the land, although she was willing to allow the Native Land Court to partition it to allow the other two-thirds to be sold.<sup>48</sup>

Crown agent McDonnell applied to the Native Land Court on 30 December 1872 for the necessary partition order.<sup>49</sup> Anticipating no difficulties in obtaining Native Land Court cooperation, Sheehan then drafted a purchase agreement which he,

---

45. CT, 7 March 1870, DOSLI, ref 325. Although Rogan ordered the issuance of certificates of title for Pakiri north on 29 April 1869, in this report the date of issuance by the chief judge of the NLC has been taken as the effective date in this and all other cases.

46. McDonnell to T M Haultain, 16 March 1874, MA 13/62

47. Ibid, Gillies to McLeod, 17 October 1872; R J Gill (Native Office) to Lewis, 17 December 1872

48. McDonnell to Pollen, 24 December 1872, *Epitome*, C111

McDonnell, Te More, and Karaka signed on 21 February 1873 in Helensville, where the Native Land Court sitting took place. This agreement specified three conditions necessary for the completion of the purchase. These were that the block was to be partitioned to allow two-thirds of it to be sold; that the trustees ‘shall be authorised by Law to dispose of a freehold interest’; and, since Te More’s son had died, that the Native Land Court would declare him successor. McDonnell also paid £20 out of a total purchase price of £2000.<sup>50</sup> This extraordinary agreement, therefore, required simultaneous Native Land Court and parliamentary support to allow the completion of the purchase. McDonnell reported, however: ‘Mr Sheehan assures me that there will be no difficulty in obtaining the necessary legal authority for the fulfilment of the agreement’.<sup>51</sup>

Sheehan, of course, believed that he had already obtained all the necessary Maori support, but in this he was mistaken. When the Native Land Court heard the matter of McDonnell’s application for the Pakiri partition, Rahui Kiri spoke out against it. She apparently had second thoughts about the whole business. Although McDonnell applied for the required Native Land Court succession order on 24 February, the Native Land Court eventually appointed Te More’s grandson, not himself, to succeed.<sup>52</sup> Finally, Sheehan and McLean failed to obtain ‘the necessary legal authority’ for the 1873 agreement. They apparently had a falling out later that year

---

49. McDonnell to Haultain, 16 March 1874, MA 13/62

50. *Ibid*, memorandum of agreement, 21 February 1873

51. McLean even allowed this dispatch to be published: McDonnell to Pollen, 26 February 1873, AJHR, 1873, G-8, no 18, pp 19–20

52. The NLC did not issue its succession order until March 1875: McDonnell to Haultain, 16 March 1874, W S Reid (Solicitor General) to Native Minister, 9 April 1877, MA 13/62.

*Auckland*

over the Hawkes Bay Alienation Commission, and the law forbidding trustees from selling property remained in effect.<sup>53</sup>

---

53. Waterson suggests that Sheehan used his position as counsel for Maori petitioners to attack McLean's record as NLP Commissioner: NZDB vol II, p 458.

At this point the Crown had sufficient notice that it was entering into a highly questionable undertaking, and that unless it took definitive steps to stop the purchase and recover the funds advanced, damaging consequences could follow. Instead of containing the damage, the Crown allowed Sheehan to keep the Pakiri pot boiling. During 1873, he acted as an agent for an Auckland capitalist, Stannus Jones, in negotiating a £300 timber lease, the cost of which he then passed onto the Crown. This, like McLeod's £300 owing, was to be deducted from the purchase price agreed upon.<sup>54</sup> The Crown then allowed Edward Torrens Brissenden to complete Sheehan and McDonnell's 1873 efforts the following year.

Brissenden, who eventually became the fall guy for the entire fiasco, signed a purchase deed with Sheehan, Karaka, and Te More at Sheehan's private club in Auckland on 12 May 1874. This deed purported to transfer title to the entire 31,000-acre area, despite the fact that one of the three owners opposed the sale and didn't sign, while the three vendors signing had no legal right to sell on behalf of others.<sup>55</sup>

According to a subsequent auditor, Brissenden put £700:

on the table . . . Out of this money Sheehan took either £200 or £300 for Jones. £300 was banked in the name of the Trustees of Wi Apo [Karaka and Sheehan], and it is impossible to discover how the rest was divided.<sup>56</sup>

Once the money had been transferred, Brissenden attempted to persuade Rahu Kiri to reverse her earlier decision to oppose the purchase. He reported in August 1874 that when he had her signature on the deed ' . . . I shall make the title good at the first sitting of the Native Land Court at Kaipara.'<sup>57</sup>

---

54. *Ibid*, Haultain to Native Minister, 5 September 1876

55. Deed, 12 May 1874, TCD, vol 1, p 249

56. J E Fitzgerald (Audit Commissioner) to Native Minister, 5 March 1877, MA 13/62

57. *Ibid*, Brissenden to St John, 26 August 1874

*Auckland*

It took Native Minister McLean several years to decide to withdraw from further negotiations. In 1876, shortly before his death, McLean accepted H T Clarke's advice that the 'whole transaction is illegal. The land is held by Trustees . . . [with] no power to sell.'<sup>58</sup> Although the Crown dismissed Brissenden as purchase agent and successfully sued him for £800 unaccounted for, it apparently failed to learn the deeper lessons of the Pakiri fiasco.<sup>59</sup>

---

58. Ibid, McLean minute, 25 April 1876, on H T Clarke to Native Minister, 24 April 1876

59. Ibid, F M P Brookfield (Crown solicitor) to Attorney-General, 31 May 1877

Well before Brissenden came into the picture, the Crown had allowed Sheehan, McDonnell, McLeod, and Jones to draw upon public funds on the understanding that they would legalise the purchase in simultaneous Native Land Court and parliamentary action after the fact. As late as 1877, the Crown Trust Commissioner charged with investigating fraud committed in purchases of Maori land, was still advocating this course of action. He recommended the appointment of another native land purchase officer to ‘explain all these matters to the Natives; to arrange with Rahui for the sale of her interest . . . [and] to validate the purchase [by a special Act of Parliament]’.<sup>60</sup>

Even though McLean effectively disavowed the purchase, he apparently made no public declaration of this fact. When Sheehan succeeded him as Native Minister in 1876, he was able to continue his efforts to legalise the Pakiri north purchase.<sup>61</sup>

Two cursory parliamentary investigations into the Pakiri north purchase allowed Sheehan to fend off allegations of fraud. As Premier Grey’s Native Minister in 1877, he told the House Public Accounts Committee that he made no money out of Pakiri, and that McLean, not himself, had accepted responsibility for amending the law to allow trustees to sell on behalf of minors.<sup>62</sup> Brissenden denied any malfeasance, even though he was prepared to admit that he had rushed into the 1874 purchase. This he attributed to Pollen’s pressure to get Pakiri into the Crown’s hands, since the Great North Road was being surveyed through the block. Thus, he said:

---

60. Ibid, Haultain to Native Minister, 22 March 1877. Haultain recommended this ex-post facto legalisation of the purchase despite having already refused to certify the absence of fraud under the terms of the Native Lands Frauds Prevention Act 1870: *ibid*, Haultain to Native Minister, 5 September 1876.

61. On Sheehan’s meteoric political ascent, see Duncan Waterson’s entry on him in NZDB, vol II, pp 456–459

62. Sheehan’s evidence, 8 November 1877, AJHR, 1880, 1-2A, pp 52–53

I did not much inquire into it . . . seeing that these Natives had received money from the Government, and had been acknowledged by the Native Office [in 1873] . . . I went into the matter fearlessly.<sup>63</sup>

In late 1877, Sheehan shepherded through Parliament the amendment to the Maori Real Estate Management Act he had sought since 1872. It allowed trustees to sell the property of minors and validated prior sales (such as Pakiri).<sup>64</sup> After this, Charles Nelson, a Brissenden subordinate at the 1874 deed signing, pursued the Pakiri purchase to the Helensville Native Land Court in his NLP agent capacity. There, on 17 July 1880, Judge Rogan ordered the necessary partition.<sup>65</sup> The Pakiri purchase was therefore very much a live issue when it came before the House of Representatives's Native Affairs Committee later that year.

Reverend William Gittos, on behalf of Arama Karaka, and Karaka himself, prompted this committee investigation by petitioning Parliament to clarify the legal situation regarding the Pakiri north purchase.<sup>66</sup> While Sheehan had lost his position as Native Minister prior to this investigation, his membership of the committee allowed him to dominate its Pakiri hearings.<sup>67</sup> Consequently, the committee's findings made no mention of Sheehan's complicity in the highly questionable origins of the Pakiri purchase. All it was prepared to report was that there was:

difficulty in arriving at a definite conclusion [which] has been greatly increased by the fact that no accounts, journals, or records of any sort . . . kept by the trustees, . . . or anybody else connected with the matter . . .<sup>68</sup>

---

63. *Ibid*, Brissenden evidence, 10 November 1877, p 56

64. See his 27 November 1877 speech in moving the second reading of the Bill in the House: NZPD, 1877, vol 27, pp 513–514, 522–525.

65. Nelson's evidence to Native Affairs Committee, 17–24 August 1880, AJHR, 1880, 1–2A, pp 36, 48

66. Gittos and Karaka petition summaries, AJHR, 1880, 1-2, pp 31, 36

67. See Sheehan's cross-examination of Gittos and Karaka, AJHR, 1880, 1-2A, pp 6, 10–16, and his own evidence (pp 24–25).

68. Native Affairs Committee report, 28 August 1880, pp 1–2

As a result, the Crown succeeded in completing the purchase of two-thirds of Pakiri north in 1881. The most controversial of all 1866–73 Crown purchases was finally ‘legal’.<sup>69</sup>

### **6.3 ISSUES ARISING FROM 1866–73 CROWN PURCHASES**

#### **6.3.1 Lack of satisfactory documentation**

The House’s Native Affairs Committee’s difficulty in respect of Pakiri north highlights the even greater difficulty that confronts historians trying to reconstruct the purchases of 1866–73. The committee overstated this difficulty to its own advantage, in that it was too inclined to rely upon Sheehan’s version of events. None the less, the lack of a regularly constituted NLP Department during the years in question meant that purchasers such as McDonnell, and quasi-private agents such as Sheehan, entered into little official correspondence.

Lack of satisfactory documentation is even more severe in provincial purchases inherited by the general government. In none of the 13 cases listed as provincial purchases did the general government register a deed of conveyance in its own files. This, of course, allowed Maori objectors to the Opouturi purchase to deny the existence of such a document, and to necessitate a royal commission investigation

---

69. Deeds, 8 February, 23 June 1881, Auc 1265, 1266, DOSLI, Heaphy House Wellington

into the matter in 1950. While that commission upheld the Crown's title at Opouturi, there remains the question of whether or not it should have made such a definitive finding on the basis of indirect evidence. In the case of Patupukapuka, apparently neither the provincial nor the general government filed a deed.

The issue, stated in its most general form, is this: did the Crown fulfil its Treaty obligations to Maori in failing to preserve a satisfactory record of its purchases? In cases where it could not produce the minimal documentation of a deed of conveyance, what were its Treaty obligations?

### **6.3.2 Negotiation anomalies**

Even in purchases where negotiation documents exist they normally raise more questions than they answer. The available evidence regarding Pakiri indicates how the simultaneous actions of private entrepreneurs (such as Sheehan, McLeod, and Jones), provincial and general government purchase agents (such as McDonnell) and Native Land Court judges, could produce a confusing situation. Although Sheehan and McDonnell certainly used the Native Land Court to promote the purchase, Maori opposition to the latter's application for partition and succession orders in 1873 led to legal complications which even Sheehan couldn't ignore. Sheehan tried to resolve one anomaly with his retrospective law change in 1877, and Nelson with his promotion of a further Native Land Court partition order in 1880. While such retrospective action may have been legal, was it proper and consistent with the Crown's Treaty obligations?

A further anomalous situation arose with McDonnell's Marunui purchase negotiations during 1873. This area, adjoining the pre-1865 Waipu, Pukekaroro, and Mangawhai purchases, included land granted to a settler named Thomas Henry.<sup>70</sup>

---

70. Henry purchased a 3000-acre property (Mangawhai lot 122) in 1854, and received his Crown grant for it in 1864: McDonnell memo, 14 February 1873, MA/MLP 1/1 73/132.

Rogan believed that at least 500 acres of the land that the Crown granted to Henry was not, in fact, Crown land. Rogan asked Whangarei Land Purchase Commissioner Johnson how this situation arose, since Johnson negotiated the Mangawhai purchase out of which the Crown granted Henry his land. Johnson replied that Henry's own surveyor marked out the land, but he didn't answer Rogan's question as to 'why the Govt authorized the survey of Mr Henry's land when the native title was not extinguished[?]'.<sup>71</sup>

Henry was prepared to admit that the Crown had made a mistake in failing to properly survey the area, but he was prepared to contribute to an amicable settlement.<sup>72</sup> The principal Maori owner of Marunui, Arama Karaka, insisted that the Crown should pay him the 10 shillings an acre that Henry paid for the land in 1854. McDonnell was clearly desirous of 'a speedy settlement', since he was seeking Karaka's cooperation in the simultaneous Pakiri negotiations.<sup>73</sup> The plan attached to the 6 March 1873 Marunui purchase deed showed the disputed Thomas land outside the northeastern boundary.<sup>74</sup>

Crown officials realised they would have to pay Karaka for the land wrongly granted to Henry, but they were prepared to accept neither responsibility for the mistake, nor Karaka's price of 10 shillings an acre. One official accused Henry of causing the problem, and stated that if he wasn't willing to contribute to a settlement 'he can be made to suffer otherwise'.<sup>75</sup> Pollen accepted his subordinate's recommendation of a five shillings an acre settlement. He instructed McDonnell to inform Karaka that 'although the Govt got 10/- from Henry they have expended more than that in making roads in the District and on surveys'.<sup>76</sup>

Karaka eventually accepted six shillings an acre, but only under protest. McDonnell, in reporting this settlement, added that Karaka 'declared emphatically

---

71. 'Memorandum of Mr Rogan's Statement Respecting the Marunui Block . . .', 2 February 1873, MA/MLP 1/1 73/5

72. Ibid, Henry to Pollen, 20 January 1873, 73/92. He was willing to pay Maori 2s 6d per acre for whatever the Crown determined was outside its purchase boundaries.

73. McDonnell to Pollen, 11, 26 February 1873, *Epitome*, C111–112

74. The Crown paid Karaka and Hone Waiti Hikitanga £270 for 2160 acres at Marunui: deed, 6 March 1873, TCD, vol 1, pp 247–248.

75. TGB(?) to Pollen, 7 May 1873, MA/MLP 1/1 73/5. Because Henry indicated his willingness to contribute 2s 6d an acre to compensate Karaka, this threat was a gratuitous one: Henry to Pollen, 20 January 1873, MA/MLP 1/1 73/92.

76. Pollen to McDonnell, 27 June 1873, MA/MLP 1/1 73/5

*Auckland*

that his treatment had been most unjust, and that he consented only in consequence of his being pressed for money'.<sup>77</sup>

Since Karaka had featured in a large number of Crown purchase negotiations, he obviously expected greater generosity. Henry, too, should not have been blamed for the Crown's failure to properly survey the disputed area in the first place.

---

77. McDonnell to Knowles, 7 August 1873, AJHR, 1875, G-7, no 3, pp 2-3

A similarly anomalous negotiation situation arose in the hotly disputed Mangakahia area before the end of 1873. With the 1862–66 Te Wairoa/Mangakahia dispute in the background, John White commenced negotiations in this area in early 1873. Shortly beforehand, the Native Office dispensed with White's services as an interpreter. He then tried to lure the fledgling NLP section of the office to retain his services on a commission basis. He told Pollen that he knew Maori throughout Tai Tokerau and 'succeeded in obtaining the Authority . . . to Survey and Sell their land'.<sup>78</sup> Pollen and McLean initially thought he should seek his commission from Maori, rather than from the Crown, in negotiating purchases.<sup>79</sup> At about this time, however, Gillies recommended that White resume purchase negotiations at Mangakahia because he knew 'the political circumstances affecting some of the land'.<sup>80</sup>

In visiting Mangakahia in early 1873, Superintendent Gillies 'promised' Maori there 'that a Government officer would . . . negotiate with them'. If the general government wouldn't do this, he wrote, 'I shall be prepared to do so at once on private account'.<sup>81</sup> When White arrived at Mangakahia in February, he immediately began to negotiate a purchase of the area earlier claimed by Reverend Charles Baker, but vacated by him in 1865 (as a result of the bitter conflict) in exchange for land elsewhere.<sup>82</sup> White failed to consult the office of the Land Claims Commissioner about this, because it had only just determined that the unsurveyed area within Baker's claim should revert to the Crown.<sup>83</sup> White concluded that the 'Ngapuhi Hapu' occupying the land previously claimed by Baker 'will not give it up without remuneration'. He proposed paying them one shilling an acre, after having the area surveyed and passed through the Native Land Court.<sup>84</sup>

White then travelled with two Mangakahia Maori to Helensville, apparently to pay a deposit, engage a surveyor, and apply for the necessary Native Land Court hearing. According to Pollen he paid a £7 deposit as part of a purchase agreement with 'Matiu', in which Maori were to receive between 1s 3d and 1s 6d an acre. McDonnell later reported that 'Matiu' didn't represent the majority of Mangakahia

---

78. White to Pollen, 31 December 1872, MA/MLP 1/1 73/18

79. Pollen minute, 6 January 1873; McLean minute, 26 February 1873, MA/MLP 1/1 73/18

80. Pollen to McLean, not dated, MA/MLP 1/1 73/201

81. Gillies to Pollen, 11 February 1873, *Epitome*, C112

82. Dommet memo, 14 January 1865; D A Tole (Commissioner of Crown Lands in Auckland) to Under-Secretary of Crown Lands, 24 January 1873, MA 91/29 (547), pp 21–22

83. Ibid, Arthur Halcombe (for Land Claims Commissioner) to Tole, 29 January 1873 (telegram), p 24

84. White to Pollen, 26, 28 February 1873, MA/MLP 1/1 73/177, 73/211

*Auckland*

Maori, who thereupon rejected the terms of his agreement with White.<sup>85</sup> In a section of this report deleted from the printed version, McDonnell went even further in criticising White's conduct. He alleged that White had negotiated:

for a large tract of country . . . mostly bush and mountains, on behalf of somebody in Melbourne!

---

85. McDonnell to Pollen, 7 April 1873, *Epitome*, C112–113

I am sorry to say that Mr White has made an error in conferring with two only, out of many influential chiefs, who are very much irritated in consequence.<sup>86</sup>

Pollen soon decided to replace ‘Native Agent’ White with the salaried NLP officer McDonnell in pursuing Mangakahia negotiations. Pollen informed McLean that White’s:

action in this matter has been so very imprudent and his demands for remuneration so large that I have withdrawn my instructions to purchase and [have] taken the matter out of his hands.<sup>87</sup>

White’s blundering, however, appears to have alerted Mangakahia Maori to the dangers of Crown agents negotiating with minority interests. In July, Parore warned Rogan:

We have heard that all the land is going to be surveyed, by the people of Mangakahia, if that is true, then I will cause all the district to be bad or evil. My idea is, if I wish my land surveyed, I myself will instruct the pakeha.<sup>88</sup>

Although McDonnell won Tirarau and Parore’s support for continuing the negotiations in mid-1873, other Maori began to express objections.<sup>89</sup> Consequently, the Crown failed to complete negotiations in the disputed Te Wairoa/Mangakahia area until mid-1875 when Tirarau became the principal vendor in the Purua and Tangihua purchases.<sup>90</sup>

Although the Marunui and Mangakahia negotiation anomalies pale in comparison to those generated at Pakiri, those anomalies raise similar questions about the propriety of the Crown’s actions. While the Crown’s actions at Marunui and

---

86. McDonnell to Pollen, 7 April 1873, MA/MLP 1/1 73/331

87. Pollen to McLean, not dated, MA/MLP 1/1 73/201

88. Parore Te Awaha and others to Rogan, 5 July 1873, encl 1 in Rogan to McLean, 29 July 1873, AJHR, 1873, G-1A, p 1

89. McDonnell to Knowles, 7 August 1873, AJHR, 1875, G-7, no 3, pp 2–3; Wharepapa to McLean, 18 August, McDonnell memo, 8 September 1873, MA/MLP 1/1 73/4728, 73/7

90. Deeds, 23 June 1875, TCD, vol 1, pp 128–132. Purua and Tangihua were several miles northeast and southeast of Baker’s claim; that is, they were outside the area White negotiated for in early 1873.

Mangakahia were undoubtedly within the law, were they proper and consistent with Treaty obligations?

### **6.3.3 Adequacy of reserves**

Apart from in the 1867 Waiuku and 1868 Hoteo purchases, the Crown failed to reserve land for Maori between 1866 and 1873. This could be explained in part by the absence of a single Crown agency devoted to native land purchases to implement the Crown's previously stated policy of providing for the foreseen needs of Maori. The appointment of Charles Heaphy as a national Commissioner of Native Reserves in 1870 should have allowed the Crown to remedy this situation.

In his first major report to Parliament, Heaphy identified part of the problem. He identified that although reserves created out of pre-1865 Crown purchases in Auckland province appeared to be 'a tolerably sufficient provision for the future wants' of Maori, he believed that some tribes had 'sold recklessly, and are in danger of becoming paupers.' He identified the endangered tribes as Te Rarawa, Ngati Whatua, and Patukirikiri of Hauraki.<sup>91</sup> He calculated that Te Rarawa reserves amounted to only about 19 acres per person. He therefore recommended that the Crown should allow 'none of the cultivations of the Rarawa and Ngatiwhatua . . . to be sold'.

Heaphy further recommended that the Crown should create endowments for Maori purposes out of the Hokianga/Bay of Islands surplus land. He stated that the Crown would find it difficult to settle Pakeha on this land (without explaining why). He went on, stating, 'These difficulties would not exist, however, in many cases if the lands were appropriated as endowments towards the support of Natives in local hospitals'<sup>92</sup>

He then listed 23,185 acres of reserves and Crown land (not including surplus land) as 'Lands that may advantageously be proclaimed as Endowments for the support of Natives'.<sup>93</sup>

The Crown apparently failed to act upon Heaphy's recommendations, with respect both to calling a moratorium on Crown purchases from Te Rarawa and Ngati

---

91. 'Report from the Commissioner of Native Reserves', 19 July 1871, AJHR, 1871, F-4, p 5

92. Ibid

93. AJHR, 1871, F-4, list E, pp 42-44

Whatua and to creating endowments out of Hokianga/Bay of Islands surplus land.<sup>94</sup> Even in the case of West Waiuku, where the 1867 purchase restored pre-1865 reserves, the Crown failed to protect them against alienation by individuals without tribal consent.<sup>95</sup> The issue remains: did the Crown fulfil its obligations to provide reserves adequate for the foreseen needs of Maori?

#### **6.3.4 Crown protective responsibilities**

During 1866–73, Crown officials appear to have wanted to pass on the bulk of their protective responsibilities to Maori to the Native Land Court. According to Heaphy, the Native Land Court exercised these responsibilities by placing some form of limitation upon the alienation of approximately 13 percent of the area passing through the court before 1872.<sup>96</sup>

Despite these limitations upon alienation, the statutes defining the Native Land Court title determination process created what could be described as the necessary conditions for alienation. These necessary, but insufficient, conditions were:

- (a) the concept of individual, as opposed to community ownership, fundamental to the Native Land Court enabling legislation;
- (b) that Maori were bearing the expense of surveying land brought before the Native Land Court, without the means of defraying costs available to old land claimants; and
- (c) the additional court and associated agency costs.

---

94. The 1872 Kaitiā purchase is an example of a purchase from Te Rarawa of cultivable land, and the 1872 Pungaere purchase included a significant area of surplus land, even though the NLC had awarded Maori title in 1868.

95. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, Wellington, Department of Justice: Waitangi Tribunal Division, 1985, p 19

96. Heaphy listed restrictions contained in 267 NLC title documents, covering 258,735 acres in the Auckland province: 'Grants with Limitations,' list C1 enclosed in Heaphy report, 19 July 1871, AJHR, 1871, F-4, pp 7–14. Inspector of Surveys Heale estimated that approximately two million acres passed through the NLC in Auckland province during this period: Heale to Fenton, 7 March 1871, AJHR, 1871, A-2A, no 2, encl 5, p 18.

Although most Maori probably thought of themselves as representing community interests when they brought land to the Native Land Court for title determination, the Native Land Act 1865 dictated that they received individual title without respect to community interests. The purpose of the Act, stated in its preamble, was to ‘encourage the extinction of such proprietary [Maori] customs and to provide for the conversion of such modes of ownership into titles derived from the Crown’.<sup>97</sup>

Although section 23 of the Act allowed the court to issue certificates of title in the name of tribes, as well as individuals, only individuals could bring claims and apply for succession to land.<sup>98</sup> Section 50 provided for the partition of individual interests, and section 47 provided for the alienation of such individual interests which were not explicitly restricted.<sup>99</sup> The so-called 10-owner rule embodied in section 23 also promoted individual ownership rights and prevented whole communities from being represented by a large number of individuals named on title documents. This rule prevailed until the 1873 Act.<sup>100</sup>

The individual nature of title determined by the Native Land Court was seldom clear in the Crown deeds of conveyance. The Kaitaia deed of September 1872, following the specially arranged Native Land Court succession hearing, made it clear that, as Crown grantees, the named vendors were ‘owners in fee simple’.<sup>101</sup> Although Maori may not have understood this legalese, in effect, the Crown (in compliance with Native Land Court title determination orders) granted absolute individual property rights untrammelled by community obligations. Grantees were therefore free to alienate these rights. Since Judge Maning applied the 10-owner rule very literally at Kaitaia, he assisted W B White in completing the purchase because it then required the consent of only 10 absolute owners.<sup>102</sup>

---

97. Native Land Act 1865

98. *Ibid*

99. *Ibid*

100. *Ibid*. Section 47 of the 1873 Act repealed this rule.

101. Deed, 25 September 1872, TCD, vol 1, pp 27–28

102. Maning also assisted White by excluding Te Patu interests from the title. For an incisive critique of the 10-owner system, see Claudia Geiringer, ‘Historical Background to the Muriwhenua Land Claim 1865–1950’, claim Wai 45 record of documents, doc F10, pp 74–76, 83.

Even in cases in which the Crown attempted to protect community interests with trust arrangements, it often failed to enforce such arrangements, or to specify them as grant limitations. Clearly, the Crown failed to enforce the trustee terms of the Maori Real Estate Management Act 1867 at Pakiri. Furthermore, according to Heaphy, the Crown granted the west Waiuku reserves to chiefs on the assumption that they would act as trustees for their hapu. Heaphy reported that most of the grantees violated their trustee responsibilities without admitting any fault by the Crown. Either the Crown failed to specify such responsibilities in the terms of its grants or it failed to enforce such terms. Whatever the case, the Crown's remedy was not to perfect trust arrangements, but to dispense with them entirely. Again, individual title prevailed at the expense of community interests.<sup>103</sup>

The cost of surveys borne by Maori can be estimated from information produced in the 1880 Pakiri investigation. Karaka told the House's Native Affairs Committee that Maori paid £300 for the survey of 30,000 acres.<sup>104</sup> Since Pakiri was relatively accessible from Auckland, and because previous Crown purchases defined all its boundaries, this figure may have been much lower than the average. None the less, Pakiri survey costs had to be paid out of the Crown purchase price.<sup>105</sup> In 1867, W B White stated his belief that, such was the burden of survey costs, that Maori would bring their land to the Native Land Court only if they had previously negotiated purchase arrangements.<sup>106</sup> Inspector of Surveys, Theophilus Heale, confirmed this observation when he wrote:

The Native landowner is already placed at a great disadvantage in getting his land surveyed: rarely possessing money, he is obliged to find someone to survey his land on credit, and so often pays double what it costs a European . . .<sup>107</sup>

---

103. At west Waiuku, the Waiuku Native Grants Act 1876 gave statutory effect to this individualisation of reserves created by the 1864 and 1867 Waiuku purchases.

104. Karaka's evidence, AJHR, 1880, I-2A, pp 11, 13

105. *Ibid*

106. White to Fenton, 5 July 1867, AJHR, 1867, A-10, no 5, p 10

107. Heale report on NLC surveys, 2 August 1867, AJHR, 1876, A-10B, p 5. He made the same kind of observations four years later: Heale to Fenton, 7 March 1871, AJHR, 1876, A-2A, pp 19–20.

Pakeha land claimants bringing land before Commissioner Bell before 1863 were able to defray their survey costs with a system of generous allowances. Essentially the claimant could pay his surveyor in additional land granted explicitly for this purpose.<sup>108</sup> Since the additional land granted would otherwise become surplus land, the Crown could afford to be generous to Pakeha. The Crown exhibited no such generosity to Maori claimants after 1865. Instead of receiving generous survey allowances, Maori had to endure what was later formalised as a system of survey liens. They had to pay for surveys in full, often by forfeiting the land to those who could pay survey costs, whether they were Crown or private purchase agents.<sup>109</sup>

During Colonel T M Haultain's 1871 investigation of the operations of the Native Land Court, Bay of Islands Resident Magistrate Barstow told him that Mangonui Huirua 'was compelled to sacrifice' the 7000-acre Pungaere block for £300 to pay his surveyor. He paid W H Clarke, his surveyor, £90 'during the work in progress', but evidently sold the land in order to pay the £60 outstanding a year later. According to Barstow:

---

108. Although provided for as a 1s 6d per acre survey allowance in section 44 of the 1856 Act, Bell later changed it to a 15 percent addition to grant acreage: Land Claims Settlement Act 1856; M Alemann, 'Pre-Treaty Purchases', claim Wai 45 record of documents, doc F11, pp 29–31.

109. Survey liens were not formally introduced until after 1873: 'Native Land Court Surveys', AJHR, 1879, H-19, p 7.

If Europeans wish to secure any particular block under the present system, their best plan is to get a surveyor to undertake the work, then induce him to press for payment, and they can get the land from the Native owner on almost any terms by advancing the money. Some Maoris are easily imposed upon by interested individuals, and the Government ought to interfere to give them [Maori] further protection.<sup>110</sup>

Apparently, Maori forfeited Pungaere to pay excessive survey costs.

In addition to survey costs, Maori also incurred court and associated agency costs arising from the title determination process. In the case of the 56,000-acre Muriwhenua north block purchased privately in 1873, court fees amounted to £7 12s (including a £4 hearing fee). A note on Maning's title determination order indicates that these fees were 'Not Paid' in Court. They were probably paid later by the purchasers of the land.<sup>111</sup> Normally the Native Land Court would charge claimants £1 per hearing day, and £1 for the examination of the required survey plan. If the Native Land Court upheld the claim, Maori would have to pay a further £1 for the Native Land Court-issued certificate of title, plus £1 for a Crown grant prepared in Wellington.<sup>112</sup> In addition, Maori had to pay other Native Land Court fees associated with partition and succession processes, such as those required in the Pakiri case.

The Pakiri case also highlights hidden agency costs associated with the Native Land Court and Crown purchases. The 1877 and 1880 parliamentary hearings revealed that Sheehan acted for Maori in putting the block through the court in 1869. Furthermore, Judge Rogan effectively appointed him to act as a trustee for one of the titleholders.<sup>113</sup> Sheehan denied making any money out of Pakiri, but, even if this was true, Maori clearly incurred other costs in becoming dependent upon his services. Obviously, they lost control of the purchase process when Sheehan began deducting

---

110. Haultain, 'Notes of Conversation with Mr Barstow RM', 4 February 1871, AJLC, 1871, no 1, p 47

111. Rigby, Muriwhenua north report, claim Wai 45 record of documents, doc B15, p 41

112. Fees schedule, Pungaere Crown grant, 23 July 1869, Auc 446B, DOSLI

113. Sheehan's evidence, 8 November 1877, 9 August 1880, AJHR, 1880, I-2A, pp 24, 51

payments for McLeod and Jones, apparently without Maori consent.<sup>114</sup> Maori also lost control of the situation in that they had no way of understanding the legal implications of each twist in the purchase negotiations. In 1877 the Solicitor General recommended that the Crown initiate civil actions against Sheehan, Karaka, and Te More to recover the public funds they had handled.<sup>115</sup> Although the Crown eventually decided to proceed against Brissenden, rather than the aforementioned, the whole affair placed Maori in a certain amount of legal jeopardy.<sup>116</sup> In sum, the agency costs associated with an native land purchase-facilitated purchase process can be added up, not so much in pounds, shillings, and pence, as in effective control. The extent to which Sheehan exercised control in the Pakiri north purchase was in almost direct inverse proportion to Maori control.

---

114. Although Sheehan denied acting as Jones' agent, he admitted negotiating the terms of his timber lease to ensure that they did not conflict with the 1873 purchase agreement. He also admitted paying Jones his share of the purchase price: Sheehan's evidence, 8 November 1877, AJHR, 1880, pp 52, 54.

115. W S Reid to Native Minister, 9 April 1877, MA 13/62

116. For example, during his extended cross-examination of Karaka before the Native Affairs Committee, Sheehan implied that contradictory aspects of Karaka's testimony might have amounted to perjury: Karaka's evidence, 3–4 August 1880, AJHR, 1880, I-1A, pp 1–16.

Overall, the Native Land Court proved unable to protect Maori interests in Crown purchase transactions. The only effective protection it could have exercised would have been either in granting communal rather than individual title, or in enforcing effective trust arrangements. Although legislation allowed for both communal title and effective trust arrangements, such protective actions apparently ran counter to the prevailing individualist values underlying Crown policy. These values, expressed in Sewell's 1870 evocation of the necessity of 'detrribalisation', seriously impaired the Crown's ability to protect Maori community interests.<sup>117</sup>

The issue, generally stated, is whether the individualist values underlying Crown policies were consistent with its Treaty obligations. Was it possible to protect Maori land rights without recognising that communities, rather than individuals, normally exercised these rights?

---

117. Sewell made this statement to the House of Representatives in explaining the NLC's objects. These were bringing Maori land 'within the reach of colonisation' by allowing it to be purchased and destroying, wherever possible, 'the principle of communism [or tribalism] which ran through the whole of their institutions': NZPD 1870, vol IX, p 361.

## 6.4 CONCLUSION

The evidence of greatly diminished Crown purchase activity during 1866–73 may reflect another dimension of the values underlying the prevailing policy. By dismantling the Native Land Purchase Department in 1865, the Crown assumed that private entrepreneurs would take over responsibility for purchasing Maori land. The number of private purchases undoubtedly exceeded Crown purchases during these years, but because the Crown failed to monitor private purchases carefully, few are properly documented. An unpublished list of private transactions in Auckland province between April 1865 and 15 June 1869 records the sale of 184,558 acres.<sup>118</sup> In essence, the Crown divested itself both of its dominant purchasing role, and its monitoring role. Although a trust commissioner appointed under the terms of the Native Land Frauds Prevention Act 1870 could have fulfilled an effective monitoring role, the limited evidence of Haultain’s investigations in the Auckland district make it impossible to gauge his effectiveness.<sup>119</sup>

Even where the Crown did enter into the purchase negotiations outlined above, it did so without adequately documenting its activities. It entered onto a bewildering array of ad hoc arrangements with provincial and private agents, and with the Native Land Court. The picture of 1866–73 Crown purchases is therefore one of weak

---

118. Registrar of Deeds, ‘Return of [Native] Lands . . . Sold or Leased . . .’, MA-MT 1/1B 157

119. Native Land Frauds Prevention Act 1870. The Act required the commissioner to verify that a purchase neither was ‘contrary to equity and good conscience’ nor violated the terms of any trust. He was required to confirm receipt of

*Crown Purchases, 1866–73*

institutions, poorly coordinated. This institutional weakness, as much as the deliberate individualism underlying policy, accounts for diminished Crown purchase activity. Of course, such diminished activity was also a by-product of the prevailing climate of individualism.

---

the stated purchase price ‘and [the fact] that sufficient land is left for the support of the Natives’ (ss 4, 5).

## *Auckland*

Finally, there remains the issue of whether the Crown's second waiver of pre-emption in 1865 was consistent with its Treaty obligations. A much greater acreage appears to have changed hands after 1865 than areas privately purchased after the first waiver in 1844.<sup>120</sup> Therefore, one may well ask: what did the Crown do to ascertain Maori consent to waiver, and what did the Crown do to protect Maori community or individual interests once it had waived its pre-emptive rights? If it didn't take sufficient precautions, could the waiver itself be regarded as in breach of the Crown's protective obligations under the Treaty?

---

120. The 184,558 acres privately purchased in Auckland province between 1865 and 1869 should be compared with Rose Daamen's finding in her national pre-emption waiver report.

