

## CHAPTER 5

# GOVERNMENT LAND PURCHASING – THE OVERALL FRAMEWORK

Government land purchasing began in the Aotea (Rohe Potae) block in late 1889 on instructions from Native Minister Mitchelson.<sup>1</sup> By this time, the Government was committed to large scale purchasing of Maori land in the Rohe Potae for the purposes of European settlement. The main foundations on which purchasing would operate had also been firmly established. In spite of the efforts of Rohe Potae chiefs, the Government had retained the Native Land Court as the crucial mechanism for legally determining title within the district. Importantly, at the same time, the Native Land Court provided the means for transferring traditional Maori ownership into title that could be legally purchased. The court had begun hearings on internal divisions within the Aotea (Rohe Potae) block in 1888. By 1889, the first subdivisions were becoming legally available for purchase. At the same time however, it is clear that Maori in the district were almost universally opposed to selling land. In addition, the Crown had ensured itself a virtual monopoly on land dealings in the Rohe Potae, through the Native Land Alienation Restriction Act 1884. As a consequence, the Government had a relatively free hand in establishing purchasing policy in the district and officials assumed an important role in contributing to and implementing Government policies. During the 1890s, it also became evident that the Government was willing to provide an array of legislative measures and amendments designed to facilitate the freeholding of Maori land. Some courtesies were still being paid to Wahanui and other Ngati Maniapoto leaders at this time, largely in order to gain their assistance in setting an example in land selling. It seems clear however, that the Government was determined to decide the extent, pace and method of purchasing without the effective participation of Ngati Maniapoto leaders.

### 5.1 THE NATIVE LAND COURT PROCESS

The Native Land Court process was crucial to Government purchasing in the Aotea (Rohe Potae) block. A full investigation of Native Land Court operations and the legal provisions governing these is beyond the scope of this report. It is also

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1. Memo from National Minister Mitchelson to Lewis of 20 December 1889. The instructions were sent by telegram from Lewis to Wilkinson on 21 December 1889 and followed up with a letter of further instructions on 28 December 1889 correspondence on NLP 89/332 and attachments on MA 13/78.

understood that a major study of the Native Land Court in the nineteenth century is currently being undertaken by David Williams. It does seem clear however, that in spite of Government assurances to Ngati Maniapoto leaders, that the court had been greatly improved after the criticisms of the 1883 petition, the chiefs still had good reason to be concerned.

It seems clear that the court process facilitated the alienation of land from Maori ownership, for the purposes of European settlement. The court provided very little assistance, even major obstructions, for Maori wanting to retain land and develop it or lease it themselves. The court's creation of multiple, fragmented, individual title for example, proved to be a major obstacle for hapu who wanted to retain and develop land themselves. The process of individualisation of ownership and the creation of individual title as a tradeable commodity, also threatened hapu and chiefly authority over land management.

Shortly after Government purchasing began in the Rohe Potae, a commission on native land laws released its findings. The 1891 Native Land Laws Commission (also known as the Rees commission after its chairman) provided a damning indictment on the Native Land Court process of the time.<sup>2</sup> The report confirmed that many of the features the Ngati Maniapoto chiefs had been so concerned to avoid, were still prevalent in the Native Land Court process.

The 1891 commission found that through the operation of the Native Land Court, the Legislature had endeavoured to establish, contrary to native custom, a system of individual title to native lands. These efforts, particularly through the Native Lands Act 1873 and its many amendments and alterations, had resulted in 'confusion, loss, demoralisation, and litigation without precedent'. The commission quoted the words of many of its witnesses, in concluding that, 'The result is chaos'.<sup>3</sup>

The commission also made particular criticisms of the Native Land Court Act 1888. The report found that clause 21 of that Act had reached the 'climax of absurdity' by requiring that the respective individual interest of each owner should be defined in the original order of ownership or partition. The commission described the task this set the court as 'indescribably hopeless' and as if Parliament was playing a 'gigantic practical joke'. The commission explained that clause 21 required the court to determine an individual interest where no such interest existed in native custom. The court was required to do this without the guide of a solitary precedent or rule, and with at least 35,000 Maori owning land in common in the North Island, plus all the numerous claims to succession already occurring. In contrast, the commission argued that the quasi corporation of tribes and tribal authority already existing, would have made corporate dealing relatively simple.<sup>4</sup> The majority on the commission were not so much opposed to the Crown dealing in Maori land, but believed dealing at a hapu or 'quasi corporation' level would be much more effective.

The commission condemned the results of the last 25 years where:

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2. AJHR, 1891, sess ii, G-1,

3. Report of Native Land Laws Commission, AJHR, 1891, sess ii, G-1, p x

4. AJHR, 1891, sess ii, G-1, pp xvii-xviii

## *Government Land Purchasing – the Overall Framework*

the Native-land law and the Native Land Courts have drifted from bad to worse. The old public and tribal method of purchase was finally discarded for private and individual dealings. Secrecy, which is ever a badge of fraud, was observed. All the power of the natural leaders of the Maori people was undermined . . . An easy entrance into the title of every block could be found for some paltry bribe.

The commission acknowledged that Maori suffered not only from land alienation under this system, but were also hampered in trying to use the land they retained:

As every single person in a list of owners, comprising, perhaps, over a hundred names had as much right to occupy as anybody else, personal occupation for improvement or tillage was encompassed with uncertainty . . . In the old days the influence of the chiefs and the common customs of the tribe afforded a sufficient guarantee to the thrifty and provident; but [this was lost] when our law forced upon them a new state of things.<sup>5</sup>

The commission went on to describe other ill effects evident in the land court process. This included the gradual deterioration of the court with its ‘excessive’ and ‘imperious’ fees and charges.<sup>6</sup> The commission also condemned the ‘pernicious’ influence of native agents or Kaiwhakahaere. They had no accountability and were not governed by any rules or procedures, but had established almost complete control of Native Land Court proceedings. The commission found that while some were of assistance to the court, many were unscrupulous. In addition, they often received fees equal to or larger than leading lawyers, so were prone to prolonging court cases indefinitely.<sup>7</sup>

The commission also drew attention to the huge mass of legislation accompanying the Native Land Court process. It noted that every year there was some attempt to amend the confusion and during some sessions half a dozen Bills might be introduced. Of these, three or four might become law and the pages of Hansard were filled with discussions on native lands. The report described how in 1888 there were eight Acts on the subject of Maori lands and courts, and in 1889 there were nine. This was without all those that were only partially concerned with such matters, or those that had been withdrawn or abandoned. At the same time, in the ten years from 1880 to 1890, there were more than a thousand native petitions to Parliament. In fact:

So complete has the confusion both in law and practice become that lawyers of high standing and extensive practice have testified on oath that if the Legislature had desired to create a state of confusion and anarchy in Native-land titles it could not have hoped to be more successful than it has been.<sup>8</sup>

After meeting with Maori to hear evidence on land legislation, the commission reported that it had also received allegations:

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5. AJHR, 1891, sess ii, G-1, p x–xi

6. AJHR, 1891, sess ii, G-1, p xi

7. AJHR, 1891, sess ii, G-1, p xviii

8. AJHR, 1891, sess ii, G-1, p xi–xii

that the Native Department and its officers, especially of late, had interfered in many ways with the surveys of land, the actions and decisions of the Judges in the determination of titles, and the sittings of the Court. So far had this feeling been engendered in the minds of the Natives as to cause large numbers of them to distrust the Court.<sup>9</sup>

There is evidence that many of the general criticisms of the Native Land Court process, as outlined by the 1891 commission report, could also have been made of the way the court process operated in the Rohe Potae during the 1890s. More research is required, but as will be seen, it seems clear that officials aggressively pushed for individualisation of title through the court process, in the interests of land purchasing in the district. Other features condemned by the report such as the Kaiwhakahaere, or court agents, were also evident in court sittings in the Rohe Potae. Large court fees and lengthy proceedings and rehearings were a matter of considerable concern to Rohe Potae owners, as were associated survey fees required before title could issue. The chaotic and often inaccurate state of court records, such as inaccurate lists of owners, was already noted in the district just a few months after purchasing began.<sup>10</sup> Problems such as impersonation of owners also continued in spite of efforts to stop them.<sup>11</sup> Problems with long court sittings, often miles from where the owners lived, and the subsequent debts that had to be paid off in land as described in evidence to the commission were also present in the Rohe Potae and acknowledged by Lewis in his evidence before the commission.<sup>12</sup>

The 1891 commission report had also noted that evidence from Maori had revealed a great deal of concern about the way in which Government officials could manipulate the Native Land Court process, and judges themselves appeared to be aggressively assisting the aims of land purchasing. The report described how Government officials were accused of interfering in many ways with the court processes, including land surveys, the actions and decisions of the judges in the determination of titles, and the sittings of the court.<sup>13</sup>

Native Land Court judges in the Rohe Potae enthusiastically used legislative provisions that assisted land purchasing, for example, requirements that lists of individual owners be supplied before title would be awarded. Judge Mair ordered that lists of owners were printed for the original Aotea block hearing. The printed lists were circulated so that chiefs could make sure they were correct.<sup>14</sup> However, the lists were also sent to the Native Land Purchase Department where officers then had individual names to target. Owners were aware of this and were very reluctant to provide lists until the court forced them to do so. For example, in 1890, W H Grace explained how owners tried to keep title at a hapu level and avoid handing in lists of individual owners that could then be targeted by purchase officers. He described how when owners showed a reluctance to hand in lists, the

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9. AJHR, 1891 sess ii, G-1, p xiii

10. For example, in Otorohanga block; memo from Wilkinson to Lewis, 20 March 1890, MA 13/78, 90/70

11. For example cases of impersonation in 1890, see MA-MLP, 90/304, box 28 and attachments; for example cases in 1897 see correspondence, December 1897, MA-MLP, box 46, NLP 97/256

12. AJHR, 1891, G-1, pp 153–9

13. AJHR, 1891, sess ii, G-1, p xiii

14. MA 13/78, NLP 86/494

court responded by threatening to decide who the owners would be itself. With regards to the Rangitoto Tuhua block for example, he reported:

This large block has passed the Court in so far as finding the hapus, and all that remains to be done is the passing of the lists of owners, which no doubt will be done in the course of the next week or two, for the Court has called on the Natives to bring them before it at once or else the Court itself will do so, that is find out for itself who the owners are that should go into the certificate.<sup>15</sup>

While this type of provision was employed rigorously by Native Land Court judges, David Williams has shown how, in general, judges also chose not to implement other legislative provisions that may have offered some protection for Maori. This was because Native Land Court judges of the time were in the vanguard of attempts to open up Maori land for purchasing.<sup>16</sup>

Native Land Court judges were also well known for their high-handed and arbitrary decisions over the conduct of hearings. Owners who suffered through this, were obliged to go to further expense seeking redress, often in petitions to Parliament. The 1891 commission had commented on the huge number of petitions Maori were making to Parliament. A brief investigation of petitions regarding Rohe Potae land reveals many of the problems with the process. For example, there are printed reports of inquiries under various claims adjustments and amendments Acts for almost every year. Reports under the Maori Land Claims Adjustment and Laws Amendment Act 1904, for example, include findings that owners in Te Kauri block suffered injury through the court partitioning the block without due notice. An application to partition out the Crown's interests was notified for hearing in March 1899. At the hearing and without further notice, the court then went ahead and partitioned the unsold part of the block. The same commission found that owners in the Tahora block suffered injuries under almost identical circumstances. The court went ahead and partitioned the block without notice to the owners.<sup>17</sup>

Surveys were an unavoidable part of the Native Land Court process. Title could not be determined without a survey plan even if it was quite rough. The *Pouakani Report* contains more detail on the issue of surveys. As noted in that report, the pressures of the Native Land Court process resulted in many survey errors that were detrimental to Maori owners. In addition, attempting to rectify such errors was a very expensive process.<sup>18</sup> In the Rohe Potae for example, in 1891, Maori owners in the Umukaimata and nearby blocks complained that errors in the survey of the blocks where court evidence and orders had not been followed properly meant that they had been swindled by the Land Purchase Department of some 6000 acres of land.<sup>19</sup>

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15. W H Grace to Lewis, 24 May 1890, NLP 90/172 and attachments in MA-MLP, box 27

16. D V Williams, 'The Use of Law in the Process of Colonization: An Historical and Comparative Study, with Particular Reference to Tanzania (Mainland) and to New Zealand', Phd thesis, Dar es Salaam 1983, pp 306–308

17. AJHR, 1905, G-1, report of royal commission appointed under Maori Land Claims Adjustment and Laws Amendment Act 1904

18. Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brookers Ltd, 1993, p 243

19. Judge Gudgeon to Chief Judge, 15 August 1891, MA-MLP, box 30, NLP 91/291 and attachments

It seems clear that the various stages of the court process also offered many opportunities for manipulation or interference from officials. The actual processes by which land passed through the Native Land Court could be quite complicated. The following brief outline is intended to do no more than assist with understanding the close relationship between the court process and purchasing in the district. Very briefly, as blocks of land passed through the Native Land Court process, they were subject to a series of determinations. These defined ownership progressively from hapu to individual level. They also transformed simple ownership rights and interests in a particular block into closely defined individual ownership of a particular area of land in a specific location within a block. These stages were rarely all achieved in one court sitting. At a variety of stages the court's work would cease for a while and a time period was allowed for applications for rehearings to be made and if necessary, heard. At many of these stages in the process, for example, when lists of owners were made up, or when relative interests were defined, there were also opportunities to make out-of-court agreements which could then be ratified by the court without further investigation. These agreements could also involve the Crown, where the Crown had acquired interests in the land. Not all blocks went through all the stages possible in the court process or even the same pattern of stages. An early Crown purchase would for example, remove the need for further hearings on subdivisions.

Costs were also unavoidably linked to the court process and they were often substantial. Costs were associated with surveys, court hearings, and rehearings. As land was subdivided, survey and other costs were also charged before title could be finalised. The ability of officials to manipulate costs and use them to incur debt, was used to advantage in the purchasing process in the Rohe Potae.

## **5.2 THE INFLUENCE OF GOVERNMENT OFFICIALS**

The legislative framework provided officials with so much influence that their role, the extent of their influence, and the extent of Government controls over them, seems to warrant a closer investigation.

George Wilkinson was appointed Government land purchase officer in the Aotea (Rohe Potae) block in 1889. In reality, during most of the 1890s, he was also responsible for purchasing in much of the wider Rohe Potae. His purchasing responsibilities were within the 'railway area' over which the Crown had a monopoly in dealing in Maori land and where purchase money was available through various railway loan Acts. This included the Pouakani blocks, for example. Wilkinson often referred to this larger area as the Rohe Potae, ironically coming closer to the chiefs' 1883 version of the district. In the Aotea block itself, Wilkinson was involved in by far the majority of purchasing during the 1890s. From time to time, however, he was assisted by other land purchase officers.

Wilkinson was already an experienced Government official when he was appointed to the Rohe Potae. He had previous Government land purchase experience in the Thames and Waikato districts. He was also experienced in other Government duties.<sup>20</sup> He was Government native agent and land purchase officer

located at Alexandra (Pirongia), at the time he was appointed to the Rohe Potae.<sup>21</sup> He also seems to have been court interpreter at the Otorohanga Native Land Court at least some of the time between 1886 and 1890.<sup>22</sup>

It seems to have been common at this time for Government officials in districts to have held more than one Government appointment and sometimes these were held concurrently. It raises obvious issues of conflict of interests, where the protection of Maori rights were concerned. For example, in 1885, Ballance visited Waikato Maori to hear their grievances. He advised them to put the grievances to Wilkinson who, as Government native agent, would investigate them.<sup>23</sup> However, Wilkinson was also the local land purchase officer. As many of the grievances were related to purchases, this appeared to raise a clear conflict of interest. Similarly, the Government relied on Wilkinson's reports as Government native agent in deciding on purchase policy, but as a land purchase officer he also had vested interests in this. His role as interpreter to the court would also obviously give him much valuable knowledge for land purchasing. Conversely, his land purchase duties would give him a keen interest in what happened at court.

As an experienced official in the district, Wilkinson had been present at the series of hui between Native Ministers and Ngati Maniapoto leaders regarding the Rohe Potae from 1883 onwards.<sup>24</sup> The importance of his duties in purchasing in the Rohe Potae gave him more immediate access to Ministers and senior officials than might otherwise have been the case. His advice based on experience and wide local knowledge was often treated with significant respect. For example, a suggestion he made in 1891 about minors' interests was immediately picked up by Native Minister Cadman for inclusion in his Native Land Court Bill.<sup>25</sup> Wilkinson's reports always had an air of authority and objectivity and he rarely appears to have disappointed his superiors. He was careful to avoid being seen to be acting out of self interest, in contrast to other less astute land purchase officers. On the rare occasions where he did appear to have done so, for example, when he was accused of favouring his wife's interests, he was still able to command the support of his superiors.<sup>26</sup>

Wilkinson was also obviously knowledgeable in Maori language and customs. He had close links to the Maori community and his wife appears to have had influential Ngati Maniapoto connections. Her sister was also married to the prophet Te Mahuki.<sup>27</sup> As a result, Wilkinson appears to have had extensive knowledge of the Maori political and social situation within the Rohe Potae. Although married into the Maori community, Wilkinson expected and welcomed the assimilation of Maori into European society and culture. He regarded the opening up of the Rohe

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20. MA-MLP, box 26, NLP 89/256

21. For example, see MA 13/93, NO 84/291 and 88/238

22. For example, 1889 note from Lewis – when resume duties as interpreter to the Otorohanga court – can make copies of lists of owners for own use; memo from Lewis to Wilkinson, 8 July 1889, MA 13/78, NLP 89/190

23. Ministers' outward letterbook, 1885, MA series, 30/3, p 38

24. MA 13/78, NLP 90/60

25. Wilkinson to Lewis and note by Cadman, 27 May 1891, MA 13/78, NLP 90/125

26. NLP 1901/66 and attachments; raised question of declaring his personal interest

27. See MA-MLP, box 61, NLP 99/74 attachment to NLP 1901/66

Potae district to close European settlement as inevitable and ultimately beneficial to both Maori and Pakeha. He also welcomed the move from iwi and hapu control of land to ownership based on individual title. He believed the Native Land Court had been created to achieve this purpose. He believed his role was to ensure the court achieved this transformation in title as quickly and effectively as possible. Wilkinson explained this in early 1891 when the court appeared to be failing to define relative interests quickly enough. He was critical that the court could determine title without having to push on and define the relative interests of individual owners. He felt this was defeating ‘the very purpose for which the NL Court was established in New Zealand’. That was, to change old native title ‘to that of one from the Crown for the purposes of settlement’.<sup>28</sup>

Although Wilkinson was by far the most active land purchase officer in the Rohe Potae, he was assisted by others at various times. Of his assistants, the most active appears to have been William Henry Grace. W H Grace was appointed temporary assistant land purchase officer in the Rohe Potae for three months from the end of March 1890. This was at a time when Wilkinson was making very strong efforts to make a breakthrough in purchasing individual interests. W H Grace also apparently held other Government positions in the district at the same time. For example, at this time he was also Native Land Court interpreter at Otorohanga and when his official service in land purchase ended, he stayed on as interpreter. Even so, his duties as interpreter also required him to assist with land purchase ‘in any way he can’.<sup>29</sup> Presumably this included attesting to signatures, a role that required a licensed interpreter. This dual role was also approved by the Native Minister. W H Grace sought extra employment when his role as interpreter lapsed between Native Land Court sittings and appears to have helped with land purchasing during these periods as well. For example, in October 1894, he was officially appointed as land purchase officer to replace Wilkinson who was taking three months’ leave of absence.<sup>30</sup>

W H Grace also had considerable experience in dealings with Maori land, although not always in an official capacity. He came from a large family who had made close links with Ngati Tuwharetoa and to a lesser extent Ngati Maniapoto. His brother John Grace, was also a court interpreter and land purchase officer. Another brother, Lawrence Grace, as well as being active in land purchasing at various times, was also a member of the House of Representatives for some years and was a Justice of the Peace. Lawrence Grace was an member of Parliament in 1886 when the Native Land Court began sitting in the Rohe Potae. He had been one of those who had advised Ngati Tuwharetoa that their best interests lay in making an application to the Native Land Court to have their own title investigated and their boundaries determined. He had argued this would allow them to settle their land title so they could turn their attention to improving their position.<sup>31</sup> The separate application that Ngati Tuwharetoa made in 1885, essentially helped to undermine the aim of Wahanui and others leaders to have only one external

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28. Wilkinson to Under-Secretary Native Department, MA 13/78, NLP 91/65

29. MA-MLP, box 27, NLP 90/172 and attachments; NLP 90/39 and NLP 90/166, February, May 1890

30. Correspondence, MA-MLP, box 35, NLP 94/279

31. *Pouakani Report*, ch 8, p 115

boundary for the whole district, and led to the creation of the separate Taupouiatia block.

It is important to consider the implications of W H Grace's character and past activities, given his later role in purchasing in the Rohe Potae. He had been involved in the early 1882 Native Land Court hearing on the Mohakatino Parininihi block where Ngati Maniapoto challenged Ngati Tama's claim to ownership. In that case he had acted as court agent or Kaiwhakahaere for Ngati Maniapoto.<sup>32</sup> However, Evelyn Stokes has submitted diary extracts that show that he was actually employed by Joshua Jones at this time. He was acting for Ngati Maniapoto in order that Jones could preserve his lease.<sup>33</sup> As already seen, W H Grace had also been active in lobbying Ngati Maniapoto chiefs when Bryce sought their agreement to make an application for the external boundary survey.

Like Wilkinson, Grace had also married into the local Maori community, although the many relationships in the district conducted by various Grace brothers caused some concern among hapu and iwi leaders.<sup>34</sup> Like Wilkinson, the Grace brothers believed the future prosperity of the Taupo and Rohe Potae districts was dependent on extensive European settlement. As well as their land purchase activities, they were also active in lobbying the Government on this.<sup>35</sup>

W H Grace was also experienced in purchasing Maori land on behalf of the Government previous to 1890. He had worked as both Government native agent and land purchase officer in the Upper Waikato in the late 1870s and again as land purchase officer in the Taupo district from mid-1885.<sup>36</sup> He was much less circumspect than Wilkinson and the records associated with his past land purchase activities showed that he was apparently well versed in some of the more unsavoury tactics used to manipulate Native Land Court hearings to assist purchasing. He was accused on oath, for example, of coaching a witness to give false evidence in the 1884 hearing of the Maungatautari block.<sup>37</sup> His activities in the Taupo region also came to light at the Taupouiatia commission of inquiry.<sup>38</sup>

At first the Government refused to take notice of complaints against the activities of the Grace brothers, including W H Grace in the Taupo district. The complaints were simply put down to being motivated by those who were anti-land selling and anti-public works. For example, Hoani Taipua, a member of the House of Representatives, wrote to the Native Minister in October 1887, seeking an inquiry into the large number of complaints against the brothers. The Native Department's Under-Secretary, T W Lewis, advised the Minister that the allegations should be taken 'with several grains of salt' as Taipua's informants were known opponents of land selling and public works.<sup>39</sup> However, as a result of evidence before the Taupouiatia commission in 1889, the Government was finally forced to recognise

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32. *Pouakani Report*, p 109

33. Diary extracts of W H Grace, 1882, submission of Evelyn Stokes (Wai 143 record of documents, doc H18)

34. For more details see *Pouakani Report*; MA-MLP box 26, NLP 89/240 and attachments

35. For example, letter from L M Grace urging the Government to recommence purchasing in southern Taupo so district would progress, 31 October 1890, MA-ML, box 28, NLP 90/385

36. MA-MLP, box 27, NLP 90/172 and attachments

37. MA-MLP, box 61, NLP 92/112, attachment to 1901/95

38. For more details, see *Pouakani Report*; MA-MLP, box 26, NLP 89/240 and attachments

39. Lewis to Native Minister, 17 October 1887, MA-MLP, box 27, NLP 87/310 attached to NLP 90/172

that W H Grace had been involved in bribing witnesses to withhold evidence in Native Land Court hearings on the Pouakani block.<sup>40</sup>

The Native Department Under-Secretary, Lewis, reported to the Minister, that the inquiry revealed that W H Grace had entered into an agreement with Mrs Moon (Karawhira Kapu) to pay a bonus to certain Maori owners if they did not prosecute their claims to the Pouakani block in the Native Land Court. Lewis described Grace's actions as very 'irregular and reprehensible' and done without the knowledge or the authority of the Government. He reported that Grace's actions had not come to light until after he had left the Government service.<sup>41</sup> Grace had claimed to the commission that if he was able to buy land at a lower rate than that authorised, then he could use the difference to pay bonuses to chiefs for services in assisting land purchase. He intended to pay the moneys promised in the agreement, out of funds saved in this way. Sheridan, the officer in charge of the Land Purchase Department, commented that Grace had no authority do so and it would not be allowed, except with the approval of the Minister.<sup>42</sup> In other words, his main failure had been not to obtain ministerial approval first.

W H Grace was cross-examined before the commission by Mr Moon. File notes indicate that Sheridan apparently believed the Moons had been instrumental in bringing forward the complaints, after falling out with Grace. Grace also revealed under questioning that he had arranged with storekeepers to supply certain Maori owners on his recommendation. The advances were then paid off when the owners received money for their land. Sheridan commented on this. He asserted that any arrangement Grace made with storekeepers was on his own responsibility 'and is not acknowledged by this department'. In response to Grace's claim that he had used his discretionary powers, Sheridan knew of no such powers other than using his own 'common sense'. Grace claimed that he had been given no special instructions in land purchasing. He was simply following what he knew had been done in other instances where similar tactics had been used, for example at Te Aroha. He pointed out that in the Waimarino block purchase, bonuses in the form of land had been paid to certain chiefs for their services. He was aware the Government had later repudiated this, but he claimed that this was after he had made his agreement. Had he chosen, Grace might also have mentioned the Takoha system that had been prevalent in Taranaki until only a few years before, and where the Government was still trying to sort out the consequences.<sup>43</sup>

In the end, W H Grace appears to have been saved by the fact that he had already left the Government service by the time the inquiry was held. Otherwise, department officials assured the Minister, such activities (for example, using money authorised for purchasing for paying for services without authority ) would have likely been met with dismissal and prosecution.<sup>44</sup> Grace had actually been

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40. MA-MLP, box 26, NLP 89/240 and attachments

41. Report to Native Minister, 16 August 1889, MA-MLP, box 26, NLP 89/240 and attachments

42. MA-MLP, box 26, NLP 89/240 and attachments

43. For example, re Chas Browne and fiasco with Takoha payments and advances in that situation, MA-MLP, box 27, NLP 89/318

44. Note by Sheridan on Lewis report, 19 August 1889, MA-MLP, box 26, NLP 89/240 and attachments

retrenched as part of the layoffs from the Government due to the depression in the late 1880s.<sup>45</sup>

However, it is revealing that Grace apparently had very little difficulty in being re-employed by the same officials as a land purchase officer. He applied for such employment in late 1889 after hearing that purchasing was beginning in the Rohe Potae. Sheridan noted to the Minister that ‘Mr Grace did his work very well when in the service before’. His actions over the Pouakani hearing were the only ‘irregularity’ noted against him and Sheridan was quite satisfied that in that case he had been guided by a wrong sense of duty and the advice of his brother who was then in the House. Sheridan recommended him for temporary employment.<sup>46</sup>

The application was stood over for a while but when Wilkinson needed help to attest signatures on purchase deeds in early 1890, W H Grace was appointed temporary land purchase officer as well as court interpreter, in the hope that he could assist Wilkinson to ‘break the ice’. This was done with Ministerial approval.<sup>47</sup> When the time period for the temporary appointment ended, as already noted he was kept on as interpreter while it was understood that he would still be available to witness signatures or assist Mr Wilkinson in land purchase ‘in any way he can’, also with the Minister’s approval.<sup>48</sup>

In later years, W H Grace continued to move between official and private employment. In about 1892 he appears to have fallen out with Wilkinson. He then acted as an agent at court or Kaiwhakahaere, for Ngati Raukawa as non-sellers opposing the seller’s (and also the Crown) case in the Wharepuhunga block hearing in April and May 1892. In that hearing he was also critical of Crown purchase activities in the block.<sup>49</sup> In 1894 he also sought to have compensation included in helping pay off survey liens due on land for some owners, including his wife.<sup>50</sup>

The senior Government official involved in the development of land purchase policy in the Rohe Potae was Thomas William Lewis. In 1890, when purchasing in the district had just begun, Lewis was the Under-Secretary of the Native Department and at the time he was also responsible for the Land Purchase Department. T W Lewis was already a very experienced official in 1890. He had begun Government service in 1863 in the Defence Office and in 1869 became private secretary to Sir Donald McLean when the latter assumed ministerial office. Lewis was made Under-Secretary of the Native Department in 1879. In 1885 he was also placed in charge of the Land Purchase Department.<sup>51</sup>

T W Lewis shared very similar views to Wilkinson on land purchasing and the role of the Native Land Court. He explained these to the Native Land Laws Commission in 1891. Regarding the Native Land Court and native land legislation, Lewis strongly believed that:

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45. MA-MLP, box 27, NLP 90/172 and attachments

46. MA-MLP, box 27, NLP 89/346 attached to 90/172

47. MA-MLP, box 27, NLP 90/39 attached to 90/172

48. MA-MLP, box 27, NLP 90/166 and NLP 90/172

49. MA-MLP, box 61, NLP 1892/112 attached to NLP 1901/95

50. MA-MLP, box 62, NLP 94/121 attached to 1901/96

51. Evidence before Rees commission 1891, AJHR, 1891, sess ii, G-1, p 145

the whole object of appointing a Court for the ascertainment of Native title was to enable alienation for settlement. Unless this object is attained the Court serves no good purpose, and the Natives would be better without it, as, in my opinion fairer Native occupation would be had under the Maori's own customs and usages without any intervention whatever from outside.<sup>52</sup>

Given that the purpose of the Native Land Court was entirely to enable land to be made legally available for settlement, Lewis argued that it should be able to make a final and definite ascertainment of native title in order that either the Government or private individuals could buy the land. Lewis suggested that obstructions to this should be dealt with. For example, where false evidence hampered the court it should be able to imprison offenders for brief periods in order to put a stop to the practice.

Similarly, Lewis did not believe that Maori should be allowed to keep their land out of court. Where owners had not sent in applications to determine title, then the court should simply notify them of its intention and then ascertain title itself. If the owners refused to give evidence then the court should decide ownership on the best evidence it could find. Lewis was especially concerned that the court should decide the relative interests of individual owners when title was determined. Lewis advised that all possible impediments to bringing land before the court should be removed. For example, the Crown should pay the survey costs required for the initial determination of ownership and assist Maori owners who were prevented from bringing lands to the court because of costs. This assistance could be provided out of moneys set aside for purchasing and then should form a lien on the land to be recovered on the application of the Crown. The court should then award land to pay for all the costs.

Lewis argued that the Crown should also take precedence above all other suitors before the land court. This was because in providing land for settlement, the Crown was acting in the interests of the whole country, 'Natives and Europeans together'. This would mean that in cases where the Crown wanted a case heard, that hearing should automatically take place before any others that might be waiting. Lewis also complained that restrictions against alienation should not apply to the Crown as the Crown would always be responsible for meeting and remedying any transaction where it might have acted improperly.

Lewis suggested a number of other possible improvements to the court to the commission, in the interests of ascertaining a quick and reliable form of individual title. He also noted some suggestions that might help remedy some of the 'evils' at present associated with the land courts and therefore ensure their better operation. He noted, for example, the problems associated with owners having to attend court sittings in case their claim might come up and then finding maybe after some months that their case(s) would not be heard. In the meantime the owners had gone into debt living in town and were forced to sell some land to pay the debts. Lewis suggested a system of runanga where the owners could decide title and individualise it themselves, have this decision publicly notified so objections could be made and then have the court in effect ratify it at a pre-set hearing, with limited

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52. Rees commission report, AJHR, 1891, sess ii, G-1, p 145

dates set in advance. Lewis hoped that this proposal would in fact remove the bitter and constant litigation that was now taking place in court and allow Maori to decide title themselves and in their own way before it reached the court. He believed that they were then more likely to give truthful evidence. Lewis was confident that this would tend to facilitate subdivision and individualisation by the court and would bring the native owners into harmony and sympathy with the court, instead of being dissatisfied and antagonistic towards it. He felt this would work particularly well in the Rohe Potae where land court hearings had been taking place for about five years ‘and for the practical purposes of dealing with it, it is but little advanced’. However, he believed that the Ngati Maniapoto tribe could have arrived at a satisfactory settlement themselves and the same could happen in the Taupo region. This would also vastly reduce costs and time for everyone, natives and the colony.<sup>53</sup>

It seems clear that most if not all of Lewis’ concerns about the operation of the land court and associated land purchasing were based on problems being encountered at the time in the Rohe Potae. The failure of the Native Land Court to individualise title quickly enough was to be remedied by allowing Maori to determine title themselves in what was recognised to be a much more effective format – through traditional chiefly and hapu authority. This was what Maniapoto leaders had sought all along. But the ultimate ends were quite different. Lewis and his contemporaries saw the whole colony benefiting from the individualisation of title and the alienation of land from Maori to European ownership. Maori leaders saw that for Maori this in effect meant marginalisation. They wanted to maintain some control over land management after title was determined and some means of retaining, developing and using land themselves.

The assumptions and beliefs held by Government officials were important in developing and promoting land purchase policy in the Rohe Potae district. They believed they had a duty to manipulate the court system to make it more effective in enabling Maori land to be freeholded. They also played an active role in promoting the many legislative amendments designed to facilitate the court process and land purchasing. The monopoly situation the Government had created for itself in the Rohe Potae through the Native Land Alienation Restriction Act 1884, made the alliance of land purchase officers, senior officials and Ministers even more powerful. They also had access to the wider Cabinet and Native Land Court judges and officials as necessary. With competition excluded, there was little opportunity for effective public scrutiny and they were able to develop district wide strategies with little fear of competition.

There is plenty of evidence of the power of this close relationship between various officials and Ministers. For example, Lewis seemed to have developed a close working relationship with the Chief Judge of the Native Land Court. He was apparently able to discuss issues of court policy and practice that affected land purchasing with the Chief Judge and also discuss possible remedies. For example, in 1889 he was able to confirm his views over the effects of recent legislation and obtain agreement on the priorities to be set for the court when it next sat in the Rohe Potae.<sup>54</sup>

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53. 1891 Rees commission report, AJHR, 1891, sess ii, G-1, pp 145–151

As the 1891 commission report had predicted, the task of defining relative interests was far too large for the Native Land Courts, including those sitting in the Rohe Potae. However, officials still appeared to think the task was possible, and continued to seek assistance from the chief judge in the matter. In 1891, Wilkinson again asked Lewis to intervene with the chief judge to have the court due to sit in Otorohanga instructed to make defining relative interests its first priority. He was convinced by this time that:

whatever may be the policy that it is intended to adopt hereafter with regard to Native lands and their acquirement and settlement by Europeans, I think that it is clear that it is absolutely necessary that the extent of each owner should be defined as soon as possible.

Lewis agreed, and advised the Native Minister about their concerns. He informed the Native Minister that he had been concerned about the matter since the Native Land Court began operations in the Rohe Potae and that it ‘has been the subject of frequent conversations between the chief judge and myself’. Lewis explained his belief that the court should declare relative interests when it made its first decision and if the owners refused to assist with this then the court should declare that all the interests were equal. Otherwise, he explained, purchases by the Crown were attended by great risk. He sincerely hoped that when the court reopened at Otorohanga the settlement of relative interests would be the first work undertaken. This convinced the Native Minister, A J Cadman, and he instructed Lewis to attend to the matter as soon as possible. Lewis wrote the required note to the chief judge, asking him to kindly suggest or arrange a way by which the ascertainment of relative interests might be hastened. Chief Judge Seth Smith was sympathetic and replied, ‘This can be arranged’.<sup>55</sup>

As will be seen, Lewis and Wilkinson were also apparently successful in persuading the chief judge to agree to having two courts sit in the district in late 1891 in another attempt to try and clear the backlog of definition of interests.

Government officials also had the distinct advantage of having relatively easy access to the legislative process. Legislative amendments were regularly approved to assist with land purchasing. For example, in 1890, Lewis commented on a proposed Native Land Court Bill, that the ‘attached Bill has been drawn to meet the requirements of the Land Purchase Department in removing legal difficulties in the way of the Crown acquiring Native land’. Lewis asked the chief judge for comments and sent the draft to the Native Minister asking that, if possible, such legislation should be drafted to facilitate the land purchase operations of the Crown. This was approved by the Native Minister.<sup>56</sup>

In the more detailed investigation of some early purchases later in this report, it will also be seen that the land purchase officers were able to manipulate and use the court processes to advantage for land purchase aims. This included for example, the

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54. Lewis to Wilkinson, 28 December 1889, MA 13/78, attachment to NLP 89/332

55. Wilkinson to Lewis, 26 March 1891; attached file notes, April 1891, MA 13/78, NLP 91/65

56. Lewis to Native Minister, 24 May 1890; approval by Minister, 27 May 1890, MA-MLP box 27, NLP 90/193

manipulation of the timing of hearings, the process of applications for subdivisions and surveys, and the use of costs and fees to force further subdivisions and sales. In much of this they had the close support of senior officials and often Ministers, who could remove difficulties through amending legislation and the adoption of sympathetic policies.

The influence wielded by officials was in stark contrast to the difficulties owners often appeared to face in obtaining Government assistance with the Native Land Court process. The usual response in these cases was that the Government could not interfere with court. For example, in 1891 the Government refused requests for assistance to stop fences being built on disputed land in Otorohanga, on the grounds that it could not interfere in the court process.<sup>57</sup>

There was nothing necessarily illegal in the influence wielded by officials involved in land purchasing in the Rohe Potae and efforts were generally made to observe the letter of legal and constitutional requirements. However, the spirit and intention of these requirements, where the protection of Maori interests were involved, was another matter entirely. The close involvement of all levels of the Government, along with the monopoly situation, gave officials enormous advantages. This combined with Treaty obligations suggests that the Crown had a corresponding obligation to ensure that Maori interests were fairly protected. However, from the evidence available, it seems that any such obligations were allowed to become subservient to the needs of purchasing.

### **5.3 OVERALL GOVERNMENT POLICY AND THE LEGISLATIVE FRAMEWORK**

Officials were also taking their cue from overall Government policy. It is beyond the scope of this report to investigate Government policy in detail, or the legislative framework supporting Government purchasing policy in the Rohe Potae. However, it is clear that by at least the mid-1880s, successive governments had become increasingly committed to extensive state purchasing of Maori land. Tom Brooking has argued that the Liberal land buying programme of the 1890s was the biggest of any administration after the New Zealand wars, both in terms of expenditure and the area of land acquired.<sup>58</sup> According to Brooking, between 1891 and 1911 the Liberal Government purchased some 3.1 million acres of Maori land for an average price of 6s 4d an acre, and most of it was purchased in the 1890s. As will be seen, the first Crown purchases of interests in Maori land in the Rohe Potae (Aotea block) were made in April 1890. By 1900, the Crown had acquired between one-third and half of the whole block, or some 687,769 acres. Brooking argues that the overall Liberal buying programme of the 1890s, together with a further land buying spree in the years from 1909 until 1920 meant that such ‘Large scale land purchase was more effective as an agent of colonization than war’.<sup>59</sup>

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57. MA-MLP, box 29, NLP 91/210 and attachments

58. Tom Brooking, “‘Busting Up’ The Greatest Estate of All: Liberal Maori Land Policy, 1891–1911”, NZJH, vol 26, no 1, 1992, p 78

59. Ibid, p 78

The legislative framework established during this time and the constant refinement of it, was crucial to land purchasing. Brooking argues that in the 1890s the Liberals were:

able to acquire so much Maori land so quickly because they passed a range of legislation which locked together like the pieces of a meccano set . . . it was characterized, like all Liberal legislation, by constant amendment and improvization – to make it work better.<sup>60</sup>

In looking behind the reasons for the Liberal land buying programme Brooking has also noted that purchasing policies while at times seeming to be questionable economically, did nevertheless have the desired effect of undermining iwi and hapu authority. As will be seen, the scattered nature of some Crown purchases restricted settlement for some time. There were also significant expenses involved in making some purchases, especially those involving secret purchasing. In those cases, expenses were high and could include substantial travel expenses and the costs of bonuses paid to assist in acquiring signatures. The land then had to be further developed for European settlement, including survey and roading work. There was also interest to be paid on the loans for the purchase money. More research is required on this, but it seems likely that Crown optimism that settlement could be entirely self-financing may have been misplaced in some instances, even with cheap Maori land. For example, Brooking has noted that, ‘The land-buying sprees of the 1890s and 1912–20 made little economic sense’. However, he argues, that:

Liberal Maori land policy was clearly about much more than economic gain and racial prejudice; it was also concerned with completing the process of colonization and of extending Pakeha power and dominance.<sup>61</sup>

Both Brooking and Ward have noted that the Liberals were not loath to employ coercive legislation in pursuit of their aims. Brooking has argued that many aspects of Liberal Maori land policy were ‘coercive and punitive’.<sup>62</sup> Ward has also described the Liberal tendency to ‘resort to compulsory measures to assist private development’.<sup>63</sup> The introduction of legislation to establish native townships on Maori land in 1895 was largely a result of frustration with the slowness in acquiring Maori land in places such as the Rohe Potae. The Minister of Lands, McKenzie, introduced the Native Townships Bill to Parliament in 1895, arguing that it was intended to overcome the inability of Europeans to acquire legal title to lands in certain areas. Although it was clear by 1900 that the Government intended to establish such townships in the Rohe Potae, this did not actually happen until after a 1902 amendment. Further comment on the townships will therefore be included in chapter 8 of this report, a brief summary of alienations of Maori land in the period from 1900 to 1920.

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60. *Ibid*, p 81

61. *Ibid*, pp 90–91, 93

62. *Ibid*, p 84

63. Alan Ward, ‘Whanganui ki Maniapoto’, report commissioned by the Waitangi Tribunal, 1992 (Wai 48, doc A20), p 112

Figure 3: Early Crown purchases in the Rohe Potae in the 1850s