

CHAPTER 1

THE ERA OF LAND PURCHASING

1.1 Introduction

Between 1909 and 1925 over 2 million acres of Maori land were sold or leased, almost all of this in the North Island.¹ After 1922, although purchasing continued, the Government had largely lost interest in obtaining more Maori land for settlement, and purchase activity gradually declined. Visits by land purchase officers and private purchasers, hearings before the Maori Land Court and Maori land boards, surveys, partitions, and meetings to consider partitions and sales, were the predominant experience for North Island Maori in the use of their lands in this period. The land court and land boards were essential to the purchasing process, because they were required to follow up proposals for alienations and ensure that purchases were properly completed and to check that the interests of both sellers and non-sellers were protected. How robust their powers were and how well they used those powers is examined in this part of the report. In addition, this part will examine how far the Crown in its own purchasing was subject to the checks and balances in the system of purchase.

1.2 The Situation before 1909

To understand the system of purchasing which was put in place in 1909 it is necessary to look briefly at the events leading to the development of the Maori land boards. The elevation of James Carroll to Native Minister in 1899 was followed by what became colloquially known as the ‘taihoa’ policy. In 1900 Carroll introduced the Maori Councils Act and the Maori Land Administration Act, the latter being an attempt to reconcile Government and Kotahitanga objectives. Maori were to voluntarily place their lands under the control of Maori Land Councils which would open them up for settlement and return rents to the Maori owners. A majority of the members of these councils were Maori, but with the chair appointed by the Governor.

The system was first applied in the Wanganui district. A study of that district strongly suggests that the Government objective to open up lands for settlement and production overwhelmed the Maori concern to retain some control over the

1. For a detailed analysis see Rachael Willan, ‘Maori Land Sales, 1900–30’, report commissioned by the Crown Forestry Rental Trust, March 1996

1.3 Maori Land Court and Boards, 1909 to 1952

process. There were attempts to bully councils into long term rentals.² When this did not succeed the legislation was changed.

In 1905, under the Native Land Settlement Act, the land councils, which had consisted of four Maori members out of seven, three of whom were elected, were replaced by three member district Maori Land Boards, with all three members being appointed, and only one required to be Maori. The Maori presence and influence was thus reduced. Also, compulsory vesting in the land boards was introduced.³

In 1906 the Native Land Department was separated from the Justice Department and set up with a land purchase arm. The Government voted money to recommence large scale purchasing of Maori land.⁴ The Government appointed Sir Robert Stout and Apirana Ngata as commissioners to tour the country and recommend what lands might be sold by Maori and what they might usefully retain and develop for themselves. It was estimated that 7,600,000 acres of Maori land remained in the colony. Of that, the commission looked at 3,000,000 acres and made specific recommendations on under half of that area, recommending that 644,000 acres should be retained for Maori use, 410,000 acres leased and 241,000 acres sold.⁵ The Native Land Settlement Act 1907 legislation provided that the land boards should implement the recommendations of the commission.

These developments set the scene for the large scale alienations which followed.

1.3 The Scheme for Sales and Leases under the 1909 Act

When the 1909 Act was introduced to Parliament, it was pointed out that it was complex legislation, and that the best legal minds of the day, the judges of the Native Land Court, James Carroll, Apirana Ngata, and John Salmond, had worked on the bill.⁶ The central feature of the bill, distinguishing it from legislation in the recent past, was provisions allowing for the alienation of land by individual owners or meetings of owners. It has been suggested that it provided a 'ready and quick method' for the alienation of land. This is the conclusion that can be drawn from the volume of land sales in the period.⁷

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2. See Selwyn Katene, *The Administration of Maori Land in the Aotea District 1900–27*, MA thesis, Victoria University of Wellington, 1990
 3. AJHR, 1951, g-5, pp 14–19, traces the evolution of the councils into boards and the changes through to 1913. And see Tom Brooking, "'Busting Up" The Greatest Estate of All: Liberal Maori Land Policy, 1891–1911', *New Zealand Journal of History*, vol 26, no 1 (April 1992), pp 78–98
 4. G V Butterworth and H R Young, *Maori Affairs*, Wellington, 1990
 5. Butterworth, 1990, p 66
 6. G V Butterworth, 'Maori Land Legislation: The Work of Carroll and Ngata', *New Zealand Law Journal*, August 1985, pp 242–249 and 259
 7. See for example John Hutton, 'A Ready and Quick Method: the Alienation of Maori Land by Sales to the Crown and Private Individuals, 1905–30', report commissioned by the Crown Forestry Rental Trust, 3 May 1996, and Willan 1996. Overall, between 1900–30 about 4.5 million acres were alienated in one form or another. Willan, p 2.

Reading the legislation, it is apparent that it enabled Maori owners to very quickly reach a decision to sell or lease land. At that point, however, a series of checks were provided to ensure not only that the transaction had been made without fraud, but that it would provide a proper return to the sellers, that no individuals were impoverishing themselves as a result of the transaction, and that minority opposition to the alienation was properly recorded. On their face, these checks suggested a procedure which was far from straightforward. The key agencies involved in enforcing the checks were the Maori Land Court and Maori land boards. Consequently, as will be seen, at least with regard to private purchases (some Crown purchases were exempt from these checks), it was the court and land boards who finally governed the rate at which sales and leases occurred, and the flow of land out of Maori hands in this period.

Dealings in Maori land were defined under the catch-all word ‘alienation’. It had a definite meaning – almost any disposal of native land by its owners to third parties, including sales, leases, licences, gifts, and easements.⁸ The Act made sales and leases easier firstly by removing many restrictions on alienations. In the past, alienations had been complicated by two types of restrictions. A block of land might be subject to a general restriction against sale (the restriction attached to the block), or, an individual shareholder might be restricted in what they could do personally with their shares in a block of land (the restriction attached to the particular shares). The 1909 Act provided that all existing restrictions were to have no force or effect on any alienation which might be made after the commencement of the Act.⁹ Instead, a presumption would operate that such restrictions did not exist, a Maori personally could alienate their interests in land as they saw fit, and Maori land itself could be alienated as if it were European land. This was however subject to whatever special provisions the 1909 Act itself might provide for.¹⁰ Many restrictions applying prior to the 1909 legislation had been imposed to give some measure of protection against unwise or unwitting alienations.¹¹ The 1909 legislation provided for a variety of ways of dealing with Maori owners over alienations, each variation depending on the number of owners of the block of land concerned.

1.3.1 Land with fewer than 10 owners

Where land had fewer than 10 owners it could be disposed of as if it were European land with only one substantive extra condition; the sale had to be brought before the appropriate Maori land board for ‘confirmation’, which is discussed below.

Things became much more complicated when there were more than 10 owners. Two courses could then be followed. Both required the intervention of the district

8. Section 2. Native land included customary as well as freehold native land.

9. That is 24 December 1909. Section 207(1).

10. The Act provided that a native might ‘alienate or dispose’ of land in the same manner as a European, and native land might be alienated or disposed of in same manner as if it was European land – s 207(2).

11. Without examining particular cases, it is however difficult to determine how widespread or significant the impact of this particular change was.

1.3.2 Maori Land Court and Boards, 1909 to 1952

Maori Land Board. Either a meeting of the owners could be called by the relevant land board, or the potential purchaser could seek consent from the land board to proceed without such a meeting, something known as ‘precedent consent’.¹²

1.3.2 Precedent consent method of land alienation

This method was, on paper, reasonably straightforward. Before executing an instrument of alienation, a party to the proposed alienation could ask a Maori land board whether an assembled owner meeting was required. The land board would decide this having regard to the ‘public interest’ and the interests of the native owners.¹³ If consent was given, the purchaser could proceed as if the land were owned by less than 10 owners.¹⁴ Having completed the purchase negotiations, one further step remained. The purchaser had to get confirmation of the purchase from the land board. This was a separate matter from the consent already given.¹⁵

This precedent consent procedure did not operate for long however.¹⁶ In effect, after 1912, only the second method, a meeting of assembled owners, was available for the alienation of land with more than 10 owners.

1.3.3 Meeting of assembled owners

Where precedent consent was not applied for or not obtained, the assembled owners provisions applied. ‘Some party’ to a proposed alienation could apply to a Maori Land Board for a meeting with the owners. The meeting was then summoned by the Maori land board, but only if it was happy that the proposed alienation could be lawfully made and was not contrary to the interests of the owners or public.¹⁷

The board determined where and when any such meeting was held.¹⁸ Notice was given, although meetings were not invalid if notice was not in fact received.¹⁹ At any meeting five owners ‘present or represented’ were a quorum, irrespective of their shareholding.²⁰ The president of the relevant Maori land board or his representative had to be present also.²¹ Given that blocks of land could have hundreds of owners, and that a meeting had to be called if the land had more than 10 owners, the quorum of five owners, or their representatives, was very low.

Resolutions to alienate were passed if those voting in favour of the alienation owned more shares in total in the land than any person voting against.²² In other

12. Section 209(1)

13. Section 209(2)–(3)

14. Section 209(5)

15. Section 209(6) specifically stated this.

16. See below

17. Section 356

18. Section 341(2)

19. Section 341(3)

20. Section 341(5). The wording shows that this provision contemplated agencies, ie agents, attending meetings acting on behalf of owners.

21. Section 341(6)

22. Section 343

words, one or a few large shareholders could carry a matter against the wishes of many smaller shareholders. It was contemplated that any owner, trustee or proxy who voted against a motion could sign a ‘memorial of dissent’ in the presence of the representative of the land board, who would then make a written report of the result to the land board and deposit ‘a statement under his hand of the proceedings of the meeting’ together with any written resolution and memorial of dissent.²³

The resolutions which a meeting of assembled owners could consider were to:

- vest land in a Maori land board for leasing or sale;
- lease land through the agency of the board for Maori settlement purposes;
- form an incorporation;
- accept an offer of purchase, lease or exchange from the Crown;²⁴
- agree to any private offer of alienation;
- agree that land of certain types already vested in a board be sold.²⁵

1.3.4 Confirmation

In the case of land owned by fewer than ten owners, or where a private purchaser had been granted precedent consent to negotiate over land held by more than 10 owners, once a deed or other purchase document had been signed, within six months it had to be presented to the nearest district Maori Land Board for consideration.²⁶ The board had to be satisfied that:

- the instrument of alienation had complied with formalities as to interpreters and other matters which provided evidence that the Maori signatories understood the effect of the transaction;²⁷
- the alienation was not contrary to ‘equity or good faith’ or the interests of the owners;
- no native would become landless by the alienation. The Act defined this to mean a native whose total interests in Maori freehold land were ‘insufficient for his adequate maintenance’.²⁸ No particular acreage was specified;
- the price paid was adequate, and had been ‘sufficiently secured’;
- no breach of trust was involved and no breach of any law.

Once satisfied of those matters, the board was to issue a certificate of confirmation ‘as a matter of right’.²⁹ Until that occurred, the alienation was of no force or effect.³⁰

This requirement for confirmation gave land boards not only an important role in ensuring that only the alienations beneficial to Maori would be passed, it could also be a significant incentive to private purchasers to ensure that they dealt adequately

23. Section 344(2)–(3)

24. The ability to lease was not added until 1913, no 58, s 101(4)

25. Section 346

26. Section 218

27. Section 220(1)(a) and s 215

28. Section 2

29. Section 220(2)

30. Section 217(1). In addition, where land was owned in the name of one person only, an application could be made for the appellate court to order that it thereafter be held as European land – s 208.

1.3.4 Maori Land Court and Boards, 1909 to 1952

with all affected Maori parties in any transaction, and completed transactions and did not leave the interests of some owners outstanding. If confirmation was not given, it was as if no transaction had occurred, which could be a financial disaster for a prospective purchaser.

In the case of land owned by more than 10 owners and where there had been a meeting of assembled owners who had passed a resolution in favour of an alienation, the process of confirmation was slightly different. The resolution of the meeting was reduced to writing and presented to the nearest Maori land board, along with a report from the land board's representative at the meeting, including any memorials of dissent. The land board then had to consider 'the public interest' and the 'interests of the owners' and determine whether to confirm the resolution itself.³¹ If any of the owners might be made landless by the transaction, it was not to be confirmed, at least until their shares were cut out.³² This confirmation process was similar to that for purchases involving land with under 10 owners, but there was no requirement to consider specifically whether owners understood the transaction, or whether it was contrary to equity or good faith, or if a breach of trust might be involved. This is presumably because those issues would be raised at the meeting of assembled owners, which was attended by a board representative who presumably would be aware of these issues.

Because of the added complexities of purchases where more than 10 owners were involved, and the added problem with finalising such transactions with all the owners, purchasers were given some assistance by further provisions that, where some owners dissented from a resolution to alienate, the land board could postpone its final decision on confirmation to allow time for dissenters to apply to the land court to have their interests partitioned out.³³ The board could also grant confirmation of the resolution before partition orders were made, taking into account shares to be cut out by the forthcoming partition orders.³⁴ If the resolution to alienate passed by the owners was not clear as to the boundaries of the land, the land board could take steps to ascertain the boundaries to give effect to the resolution and define them finally in its confirmation order.³⁵ Finally, if any person might be made landless by the alienation the land board could make application itself to the land court to have partition orders made to cut out that person's interest.³⁶

Once a resolution was confirmed, in the case of an alienation to a private purchaser, the Maori land board itself became the agent for the owners to execute in the name of the land board an instrument of alienation in accord with the terms of the alienation. This was a very powerful agency which the statute created. The owners had no right to revoke the agency.³⁷ The land board could agree with the

31. Section 348

32. Section 349. 'Landless' had the same meaning as for confirmation for land with less than 10 owners – s 2 of the 1909 Act.

33. Section 348(1)

34. Section 348(2)

35. Section 350

36. Section 349(1)–(2)

purchaser in the instrument of alienation such terms, conditions and provisions as were consistent with the resolution.³⁸ At this final stage, the land board was also to satisfy itself that no undue aggregation of land was occurring in the hands of one purchaser.³⁹ This was an important plank of the Liberals' land policy.⁴⁰

It can be seen from these provisions that both the land boards and the land court were important agencies when it came to finalising any purchase. They had considerable powers to assist a purchaser to complete a complex transaction, but by the same token, if they used these powers in a pedantic fashion, they could delay or frustrate such purchases. Also, the land court and the land boards could provide a check against each other in the interests of the Maori owners. A Maori land board might want to push to confirm an alienation in accord with a resolution of the owners, and obtain the best price by allowing the best land to be alienated, but the Maori Land Court could act independently to ensure that the dissenting owners had their interests properly protected.

However the worth of these safeguards was already undermined by the fact that the land boards were being asked to act both as trustee for land which Maori wanted to retain and settle themselves, while also being responsible for calling meetings and assisting purchasers to progress resolutions to alienate land. Not only that, they were being asked to make judicial rulings on whether particular alienations were in the best interests of Maori.⁴¹

These then were the rules for private purchasing. The situation was quite different however, for Crown purchases.

1.3.5 Alienations to the Crown

Under the 1909 legislation, purchases by the Crown were organised around the Native Land Purchase Board. It consisted of the Native Minister, the Under-Secretary for Crown Lands, the Under-Secretary of Native Affairs, and the Valuer-General.⁴²

Where land was owned by fewer than 10 owners, the Crown could purchase or otherwise acquire any native land (apart from land vested in a land board or administered by it, or land held by an incorporation) in the same manner as European land, and confirmation by a Maori land board was not required.⁴³ Instead, there were requirements that no land could be purchased for less than the land value showing on the current district valuation roll,⁴⁴ and a purchase might not be made

37. Section 356(6). The resolution and confirmation themselves not being a contract to carry out the alienation – s 356(9).

38. Section 356(7)

39. Section 356(8) – 3000, and later 5000, acres were stipulated.

40. See Brooking, 1992, pp 78–98

41. The land boards were first given the power to confirm alienations under the Native Land Laws Amendment Act 1908, s 7.

42. Section 361

43. Section 369

44. Section 372 – a roll taken for rates purposes, a district roll under the Valuation of Land Act 1908.

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if any Maori would become landless, and it was a duty on the Native Land Purchase Board to make ‘due inquiry’ in that regard.⁴⁵

Where land was owned by more than 10 owners, the Crown could not apply for precedent consent. Instead, the meeting of owner procedures had to be invoked. The Act provided that the Native Minister would submit a proposal to the relevant Maori land board, which would ‘thereupon’ summon a meeting of owners to consider a resolution.⁴⁶ The land board was not required to consider whether a meeting was in the best interests of the owners, as it was for private purchases. It may have been presumed that the Crown would always act in the interests of Maori. Once a resolution was passed, the land board was to confirm the resolution in the normal manner (including partitioning out interests of dissenters, as for private alienations), then pass it to the Native Land Purchase Board. As soon as the land purchase board adopted the resolution, it became a contract of purchase directly between the owners and the Crown. The process was finalised when the Crown issued a proclamation that the land had been purchased and it had become the property of the Crown.⁴⁷

Apart from these differences, the Crown also enjoyed two major advantages over private purchasers. Firstly, the Crown could restore pre-emption over particular areas for limited periods of time. Whenever it entered or thought of entering into a contract or negotiating for the purchase of native land, the Native Land Purchase Board could recommend to the Governor that an Order in Council be made prohibiting any other alienations of that block for up to one year, but this could be extended by six months as required.⁴⁸ Secondly, the Crown could purchase undivided interests.⁴⁹ While private buyers had to buy discrete blocks, the Crown was able to treat with only some shareholders and gradually increase its ownership within a block – seeking a partition of its interests out of the block at a later time if it was unable to secure all the Maori interests.

The Crown enjoyed another advantage. It could purchase from a Maori land board any native land vested in a land board and which the land board had power under the Act to sell. This could be done by private contract without auction or public tender, on terms agreed between the land purchase board and the Maori land board concerned.⁵⁰

1.4 Changes in 1913

While the 1909 legislation under the Liberals effected the major change from past policies, its operation in practice cannot be properly understood without also considering the changes made in 1913 by the Reform Government. The Reform

45. Section 373

46. Section 355

47. Section 368

48. Section 363(1)–(2)

49. Section 371

50. Section 366

Government drew support from North Island Pakeha farmers who wanted to own properties freehold, rather than leaseholds as favoured by the Liberals, and who felt they had a right to settle considerable areas of Maori land. This ‘right’ was quite bluntly asserted. In 1913 settlers at Waimana told the Native Minister, William Herries, that ‘certain of the Natives near Waimana had started to carry out improvements along the river banks with the idea of retaining the land; the settlers considered it would be an injustice that the only pieces of flat land available should be monopolised and the settlers be driven to the hill tops whereon to establish their homes.’⁵¹

To satisfy this pressure for Pakeha land settlement, the new Government first made a clumsy attempt to buy up a large area of Maori land in the North Island. It introduced a Land Laws Amendment Act 1912 which contained a late amendment providing for Maori to enter directly into agreements with the Crown to sell or lease their lands by way of public auction.⁵² This was an attempt to take advantage of an offer of some North Island chiefs to lease 250,000 acres for private settlement. Te Heuheu Tukino, Hiraka te Rango and others had approached Maui Pomare and through him, Prime Minister Massey, offering the lands for lease. Massey had had the amendment hastily drafted.

The scheme never came to fruition. When the amendment was debated in the House of Representatives, Apirana Ngata claimed to have a letter showing that the chiefs were no longer interested in the scheme. He pointed out the problems with it. First, he said that the Government now had to realise that chiefs could no longer guarantee the support of the people under them. The Native Land Acts made all owners equal. The Liberal Government had been approached with the same scheme under the 1909 legislation, and meetings had been held at Hawkes Bay, Taihape and Taupo. However the owners had not accepted the price offered by the Crown. Ngata outlined the features in the proposed bill which had discouraged the chiefs:

- the bill provided only for a sale, or lease with the right to purchase. No lease of a limited term of years was provided for;
- the purchase money would not be paid over as cash – rather, some large part or even all of it would be held and invested, and Maori receive the interest;⁵³
- Maori were not anxious to put their lands under Crown land boards – they had been discouraged already by the Maori land councils/boards experience.⁵⁴

This incident is important because it indicates both the Maori and Government views on land alienations at the time. Maori were prepared to offer large areas to settlers, but for a limited period, and they wanted cash from any alienations to be

51. Notes of a meeting at Waimana, 11 February 1913, ma 28 31/29

52. Section 49

53. Although Ngata did not say it, consistent with the practice under the land boards, the money would almost certainly have been used to make basic improvements to the land (eg formation of roads) for the benefit of incoming settlers, if not loans to the incoming lessees to settle the land.

54. 17 October 1912, NZPD, 1912, vol 161, pp 328–329. Massey argued that the chiefs had only rejected the proposal after receiving a briefing on the bill from Ngata. Ngata did not deny that he had met the chiefs over the amendment, but insisted the chiefs had arrived at their own conclusion on the matter; 18 October 1912, vol 161, p 481.

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paid directly to them. The Crown sought, on behalf of Pakeha settlers, outright ownership and the creation of a central fund as insurance for Maori welfare in the future.

1.4.1 The Native Land Amendment Act 1913

The Reform Government's second attempt at land legislation in 1913 was more successful. It attacked the area with the greatest potential to slow down land alienations, the system of checks operated by the Maori land boards and the land court once a decision to alienate had been made. The architect of this legislation was Native Minister William Herries. Prior to 1912 he had been a well known critic of the Maori land boards, claiming that Maori should be left in control of their lands to do with them as they wished. In August 1912 he explained to a deputation of Maori from Wanganui which complained that the land boards were attempting to put lands vested in them into perpetual leases that:

he intended to inquire very closely into the question as to whether the Court and the Council could not be brought together and made one body. He has always opposed the tying up of Native land and handing it over to the Board. He could quite understand the feelings of the Natives in having their lands vested in the Boards very often without their knowledge. . . . He would endeavour to bring down legislation next Session, with the assistance of Hon. Dr. Pomare, which would remedy some of these evils. Any measure brought down would be submitted to the Chiefs or the Natives to see whether they could suggest anything better or to get their approval. He said he felt himself in the position of the protector of the remnants of the Native race, yet at the same time the land could not be allowed to lie idle when both the Natives and the Pakeha were wanting to settle it.⁵⁵

The debate over the 1913 amendment bill concentrated mostly on provisions allowing the Government to buy lands, such as the West Coast leases in Taranaki, held on trust. The Government wanted to on-sell land to Pakeha tenant farmers unhappy with their current leasehold tenure.⁵⁶ There was, however, broader debate about the aims of the Crown policy to purchase Maori 'waste' land. The Government's view was that as long as it could get the land from Maori without compulsion, it was advancing the cause of settlement.⁵⁷ Apparently 'a very large section' of North Islanders were calling for all Maori land to be put into the hands of the public trustee and the purchase money simply apportioned to Maori – so the Government stance was apparently a major concession.⁵⁸ The belief was that Maori

55. ma 13/56 Ohotu block

56. See NZPD, 1913, vol 167, pp 823–824. The west coast settlement reserves bill was being debated at the same time as the 1913 Act. Herries accused the opposition of dragging out objections to the 1913 Act so as to delay debate on the west coast legislation – p 854. One member suggested that the bill breached the Treaty of Waitangi and suggested that it would need to be referred to the Home Government for consideration and approval, or else the Governor should not sign it into law – p 816. Pomare, as the Maori member of the Executive Council representing the native race, supported the bill and attacked Ngata and others who opposed it – pp 407 and 409.

57. 28 November 1913, NZPD, 1913, vol 167, p 388

had much ‘useless land’ which they could easily sell, and buy horses and ploughs to cultivate their remaining land.⁵⁹ The mere fact that the Crown was to be a major purchaser was seen as a protection in itself, since the Crown dealt fairly whereas the speculator was crooked. As one speaker put it, ‘[i]f the waste Native lands come into the hands of the Crown we have nothing to fear, because justice will be done both to the Natives and the country.’⁶⁰ However at least one member warned that there was no ‘waste’ Maori land left, as had been pointed out by the under-secretary himself in his report that year.⁶¹ Members seem to have had difficulty recalling the extensive discussions about potential landlessness in the debates of the 1890s.⁶²

Apart from provisions allowing the Crown to make purchases in the West Coast and other reserve areas, the 1913 Act made one major change to the general purchasing powers of the Crown. In a report in 1913 the under-secretary had complained that Crown offers of purchase were often being defeated at meetings of assembled owners – it was assumed that those opposing resolutions to sell or lease to the Crown were owners interested in making private deals with other parties. In the Crown view, this was speculation. The Crown could not avoid this problem because the 1909 Act required the Crown to apply for a meeting of assembled owners where there were more than 10 owners in a block.⁶³ This also meant that the Crown had to have any resolution from the meeting confirmed by a Maori Land Board, and the land court would cut out partitions for dissenters. The under-secretary commented:

It is . . . desirable, in the larger blocks, where a number of owners are concerned, and a motion to sell has been defeated by a not fully representative meeting, that provision should exist for the Crown to acquire individual interests.⁶⁴

The 1913 legislation simply repealed the requirement that the Crown call assembled owner meetings.⁶⁵ In one stroke, the Crown acquired the ability to avoid a publicly advertised meeting, and any requirement that it put one proposal for the purchase of a whole block to all owners who might be assembled. It also avoided the confirmation procedure before the land boards, including any orders that the land court might make to partition out the interests of dissenters. Instead, the Crown could use its power to purchase undivided interests to steadily buy up shareholders’ interests. The only check on its powers were the requirements that the land be bought at the current recorded value under the Valuation of Land Act 1908,⁶⁶ and

58. Ibid

59. Ibid. The contradiction was obvious – if the land to be sold was bought by Europeans for cultivation purposes, why was it ‘useless’ to Maori?

60. 28 November 1913, NZPD, 1913, vol 167, p 396

61. Ibid, p 405. There were also some complaints that the legislation was being rushed through at the end of the session, eg p 397.

62. See the Hutton report and the Preamble to the Maori Lands Administration Act 1900.

63. Section 370

64. AJHR, 1913, g-9, p 2

65. 1913, s 112

66. Section 372

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that the Native Land Purchase Board satisfy itself that no Maori would be rendered landless.⁶⁷

As to the specific changes to the role of the land boards and the land court, Herries contended that in 1909, with the rush of alienation applications opened up by the new legislation, the old boards could not cope because they did not have sufficient 'judicial ability'. It seems that he meant the ability to allow alienations. He mentioned a case near Auckland where even though the president had been a 'strong man' he had been outvoted on an alienation matter by the other two members of the board – one Maori, one European.⁶⁸ Herries may also have been reacting to problems which had arisen with the Native Land Court making orders in ignorance of board actions. In one case, the Crown had organised a meeting of assembled owners and had obtained a resolution in favour of sale to the Crown. The land had in the meantime been partitioned by the land court and one of the partitions alienated.⁶⁹ Herries had had to order the land board presidents to notify the judges of all assembled owner meetings to avoid this sort of problem.⁷⁰

Herries described his proposed new system in this way:

By the 1909 Act all land transactions, all confirmations of sales or leases, passed through the Maori Land Boards. The Native Land Courts were confined to questions of title and to questions of succession. The Maori Land Boards were the sole means by which you could purchase land from the Natives, either by the Crown or the Pakeha purchaser. When I took office it was felt that the Boards were not strong enough, and there was a general desire that they should be abolished and that the whole question of the purchase of Native land and the confirmation of dealings should be vested in the Native Land Court. I found that I could not exactly do that without entirely recasting the 1909 Act. What I have done in this Bill is this: I have practically made the Native Land Court and the Maori Land Board the same. The North Island is to be divided into Native-land districts, and in each of those districts there will be a Judge and Registrar. The Judge will constitute the Court, and the Judge and Registrar will constitute the Maori Land Board; practically the Maori Land Board will be the Judge himself. We hope by that means to give a more judicial aspect to the system of Maori Land Boards than was the case before.⁷¹

The confusion of duties is obvious. The land boards were already compromised in having to act as trustees and promote settlement for Maori, as well as progress private alienations, and make rulings on the benefit of those alienations for their Maori beneficiaries, as well as the general public. Now, they would also have to make decisions on partitions designed to protect the interests of dissenters. How could the dissenters be sure that the land board was properly considering their interests in a partition, when the board was also finalising a purchase and seeking the best price for the sale of the block of which their land was a part? The scheme

67. Section 373

68. 3 August 1916, NZPD, 1916, vol 177, p 741

69. Under-secretary to Native Minister, 24 October 1912, ma 19/3

70. Native Minister to under-secretary, 21 October 1912, ma 19/3

71. 28 November 1913, NZPD, 1913, vol 167, pp 385–386

certainly would provide a ‘one-stop’ alienation service, but the cost would be confusion for all parties about the role of the land boards and land court.

Accordingly, one would think that under such a scheme the land boards and the court would be careful to distinguish between their respective roles. It was evident from the beginning however that this was unlikely to occur. When asked if he was ‘wiping the Boards out?’, Herries replied that he was ‘practically amalgamating’ the land court and the boards, ‘but we still maintain the term ‘Boards,’ under which the Judge can sit either as a Court or as a Board.’⁷² Nor did the fudging of roles end there. Although the land boards were to consist of a judge and a registrar (the arrangement to date had been a president, a Maori member and a European member), it was said that the judge would ‘practically’ be the land board.⁷³ As Herries put it several years later, ‘Practically speaking, the Judge of the Native Land Court is now the Board, and the Judge of the Native Land Court presides over all meetings in which any alienations are confirmed.’⁷⁴ And in an exchange between Herries and James Carroll over the continuing role of the land boards, Herries said that he hoped that the boards would have less and less to do with actually administering land:

I hope in a few years the Boards will not have anything to do with the land. I practically abolish the Boards. I want to keep them a judicial body for the granting of confirmations and various judicial matters that come before them at the present time.

The Hon Sir J CARROLL – Confirmation is administrative.

The Hon Mr HERRIES – I call it judicial. The whole scheme of the Bill was practically to abolish the Boards, only if I had actually abolished the name of the Board it would have meant considerably greater difficulty in preparing the Bill and altered their constitution entirely.⁷⁵

The ‘greater difficulty’ was a reference to the other functions of the boards, such as the administration of lands already vested in them on behalf of Maori, and administration of monies from sales and rents until they could be distributed to individuals. It was not legally possible for a court, a body designed to adjudicate on issues, to have such ongoing and extensive trustee functions.⁷⁶ There was no Maori Trustee at the time to take on this role. Had he actually abolished the land boards, Herries would have had to have designed a separate body to take on these functions, or immediately returned vested lands to their Maori owners and left it to private purchasers and lessees to make arrangements for the distribution of sale and other monies held by the land boards on behalf of owners. This would have raised problems for the successful completion of purchases and leases. So the land boards

72. Ibid, p 386

73. Ibid

74. 3 August 1916, NZPD, 1916, vol 177, p 741

75. 9 December 1913, NZPD, 1913, vol 167, p 857

76. The Minister of Internal Affairs, Bell, also hinted at this in debate on the bill in the Legislative Council when he said that ‘it is desirable to distinguish to a certain extent between the judicial duties of the Court and the administrative duties of the Land Board, though both are discharged by the same individuals . . .’, *ibid*, p 866.

1.5 Maori Land Court and Boards, 1909 to 1952

were ‘practically’ abolished only as far as Crown and private purchasers and lessees were concerned, since they only needed to apply to the boards for a confirmation order. But they remained significant institutions for Maori, because of their ongoing administration of lands and monies on behalf of Maori.⁷⁷

The Maori MPs recognised this. Ngata was concerned the changes would weaken the Native Department by putting extra work on the judges. ‘Much depends on the personal predilection of the Judges. If a Judge thinks most of his work as President of the Maori Land Board, he will, if this additional work is imposed upon him, hardly do justice to the other branch of his work; and if he thinks most of his work as Judge of the Maori Land Court, he will not do justice as President of the Maori Land Board. I speak with some knowledge of this matter – with experience of the Waiariki and the Tairawhiti Maori Land Boards.’⁷⁸ Ngata unsuccessfully moved that a Maori resident in the district be added as a third person to each land board.⁷⁹ Carroll also argued eloquently for the inclusion of a Maori member.⁸⁰

There appears to have been only one suggestion that there might be an actual conflict of interest created by the new law, and this concerned the proposal that Maori land boards delegate some of their powers to Crown land boards constituted under the Land Act 1908.⁸¹ It was suggested that persons presently sitting on these Crown land boards had family members interested in Maori land.

1.5 The Land Court, the Land Boards, and the Operation of the Land Purchase System on the Ground

It is not possible to know exactly how the system operated in each district without a full analysis of alienation figures and Maori Land Board proceedings in each district. John Hutton has produced one report on the Waikato–Maniapoto Maori Land Board.⁸² Some of the minutes of the Tairawhiti district Maori Land Board are held in National Archives in Wellington as part of the microfiche collection of Maori Land Court minute books. Another source of information could be the statements from the Maori land board representative who attended each meeting of assembled owners⁸³, but these have not been located, if they were ever independently kept. The following section looks at general statements and particular cases which hint at the underlying general practice, and also highlight cases of abuse.

77. In the Legislative Council it was said there were still ‘many functions cast upon the Maori land board by various statutes’ and it was desirable to continue the existence of the Board for the performance of these functions. 28 November 1913, NZPD, 1913, vol 167, pp 385–386.

78. 28 November 1913, NZPD, 1913, vol 167, p 400

79. 4 December 1913, NZPD, 1913, vol 167, p 577

80. Ibid, p 837

81. Ibid, pp 579 and 817

82. John Hutton, ‘The Operation of the Waikato–Maniapoto District Maori Land Board’, report commissioned by the Crown Forestry Rental Trust, May 1996

83. Required under s 344(2)–(3) of the 1909 Act – noted above

1.5.1 Customary land

Before land could be purchased, it had to have the legal status of Maori freehold land. Maori land in its ‘original’ legal state, known as ‘customary land’, did not have a formal list of owners who could sign off on an alienation of the land. Accordingly, in the nineteenth century, a precursor to almost all land purchases had been an application in the land court for a determination of the owners of customary land and the issuing of a certificate changing the status of the land to Maori freehold land and listing the owners who had power to sell.

In the period after 1909 this occurred much less frequently, as most customary land had already changed status to Maori freehold land. Figures from the Maori land court, and a perusal of land court records, show the small and dropping number of applications for investigation of title from 1909–22.⁸⁴

Year	Title orders
1913	61
1914	82
1915	24
1916	22
1917	23
1918	10
1919	33
1920	11
1921	14
1922	15

However, occasionally a block remained in customary title and this impediment to the beginning of the purchase process had to be overcome. In 1917 an MP enquired about what was being done to individualise titles to land around the Tokaanu township, which it was said was overgrown with blackberry. ‘Owing to the fact that the land was held by Maoris, and had not been subdivided, the district was not going ahead. If one Maori tried to cultivate a small portion of the land near the Township of Tokaanu other Maoris claimed it, and so cultivation was stopped.’ He hoped steps would be taken immediately to have the land court promptly individualise title.⁸⁵ The reply came back that the blocks concerned had until recently been customary land. The land court had only recently sat and clothed them with a freehold title. They were said to have been some of the last large blocks in the North Island without a Maori freehold title.⁸⁶

84. AJHRs, 1913ff, g-9 series

85. Hindmarsh (Wgtn Sth), 14 September 1917, NZPD, 1917, vol 180, p 151

86. Ibid, p 152. The Government was attempting to purchase the blocks.

1.5.2 Maori Land Court and Boards, 1909 to 1952

In 1920 there was a complaint that Maori on the East Coast were refusing to take the 6000 acre Tikitiki block, which was still customary land, through the land court, so that rates would not have to be paid on it. Customary land was exempt from rates. The owners had refused to attend land court sittings on the matter. In this case it was pointed out that the land had actually been before the land court, but judgment had not yet been issued. The Native Minister commented that there were now only 15,000 acres of customary land remaining in the whole of New Zealand.⁸⁷

1.5.2 Under 10 owners

It is hard to determine from records such as land board minutes which alienated blocks had fewer than 10 owners as opposed to those alienated under other provisions. Rachael Willan has shown that the Crown and private buyers used this provision to purchase very large cumulative areas.⁸⁸ Ngata commented on this phenomenon in 1916:

Large areas of Native land are yearly changing hands by way of direct alienation. The law is that where the land is not owned by more than ten owners an alienation may be effected by the individual execution of the owners. Justices of the Peace, lawyers, and other official witnesses, and licensed interpreters of the first grade, go around with the deeds and obtain the individual signatures of the owners.⁸⁹

Land Court minute books do not record if partitions were undertaken for the express purpose of reducing ownership sufficiently to avoid having to call a meeting of assembled owners. Instead, many partition orders appear to have been sought as a consequence of alienations, rather than prior to them. The peak number of partition orders made by the land court appears to have been in 1916, which roughly coincides with the peak years for land alienations by sale and lease. In other words, the peak in partition orders does not precede the peak in alienations, suggesting that partitions to reduce ownership for sale purposes may not have been a widespread practice.⁹⁰

1.5.3 The application of the precedent consent method

As was noted above, precedent consent could be applied where there were more than 10 owners of the land and a private purchaser sought permission to deal with the owners as if there were only ten. Minutes of the Tairāwhiti District Maori Land Board suggest it was frequently sought and granted in that district.⁹¹ However, in 1912 the Supreme Court ruled that alienations contemplated by section 209 of the Native Land Act (the section concerning more than 10 owners) were ‘dealings by

87. 24 September 1920, NZPD, 1920, vol 187, p 1290

88. Willan, 1996

89. NZPD, 1916, vol 177, p 71

90. See tables below. This data is however subject to many variables which make a more precise correlation difficult. Partition orders are discussed below.

91. For Example, 3 Tairāwhiti District Maori Land Board MB (1910), pp 250ff

the whole owners' and the land boards, in granting precedent consent to dealing with the individual owners direct, 'must grant its consent not to alienation of the individual shares, but to a proposed alienation of the whole block and by all the owners.' This created a problem. The Tairāwhiti land board had been using provisions of the 1909 Act for the incremental confirmation of sales.⁹² That is, it was granting precedent consent to an alienation of land, and then making incremental confirmation orders as each parcel of shares was purchased. In effect, the land board was giving private purchasers an ability similar to the Crown's ability to buy up individual shares.

However, the Supreme Court ruling meant that once precedent consent was granted, the land court could not go on to confirm a part purchase of the block, but must wait until all owners had signed up to the sale. This raised the possibility of purchase negotiations dragging out for many months, and owners who had not yet signed up to the purchase holding out to obtain a higher price for their shares. The situation was made more acute by the fact that, by law, the land board had to receive an application for confirmation within 18 months of precedent consent being issued.⁹³ So if a purchase was not completed in that time, the purchaser had to apply all over again for precedent consent. For fear of encouraging speculation 'together with the fact that the Board must avoid anything which would tend to form a tangle of incompleting titles', the Tairāwhiti land board determined that it was not in the interests of the public or Māori to grant precedent consents, except where they were applied for by 'the whole of the owners under special circumstances.'⁹⁴

An attempt was made to remedy the situation with the passage of section 8 of the Native Land Amendment Act 1912, which provided that precedent consent granted on the application of one owner had the effect of granting permission for all owners to negotiate to sell their interests unless some limits were imposed on the consent.⁹⁵ However, Herries commented in 1916 that the system had been abolished 'principally because of a judgment of His Honour the Chief Justice in the Supreme Court, who practically held that the Act as it stood on the statute-book was inoperative.'⁹⁶ Whether this refers to the 1912 case or a fresh case is not clear.

The Tairāwhiti District Māori Land Board minutes do not generally discuss the precise reasons why precedent consent might be given or refused. It was generally granted without comment. In the odd case it was refused – it seems where opposition from owners was evident.⁹⁷ In one case, involving an application for precedent consent to purchase the 85 acre Pourewa (or Springs) Island, the land board noted that a woman appearing on behalf of her dead father wanted his share divided out of any sale:

92. Section 281(2)

93. Section 209(7)

94. 8 October 1912, 4 Tairāwhiti District Māori Land Board MB (1912), p 286

95. And see 5 Tairāwhiti District Māori Land Board MB (1913), p 8, 10 January 1913

96. 3 August 1916, NZPD, 1916, vol 177, p 737

97. For example, June 1910, 3 Tairāwhiti District Māori Land Board mb: p 250 precedent consent given, noted there were no objectors; p 251 consent refused because a dispute among owners is evident.

1.5.4 Maori Land Court and Boards, 1909 to 1952

The Board pointed out this was only an application for consent & they [the owners] need not sign the deed of sale unless they liked and it would come before the Board afterwards when they may or may not confirm.⁹⁸

This suggests that the board did not have a problem with granting precedent consent in the face of mild concerns, because of its power to intervene later when confirmation was sought.

1.5.4 Over 10 owners – assembled owner meetings

The assembled owner procedure was new in the 1909 legislation. One historian has described it as ‘a very important provision because it was at these meetings that the tribal leaders could exercise their influence to stop the improvident sale of land.’⁹⁹ Did it serve this function? The process was described in 1916 as follows:

The system of buying from the assembled owners is this: You give notice to the Maori Land Board that you desire a meeting of the assembled owners to be called. The Board issues notices to all the owners they can find or of whom they know the addresses who are connected with the block, and they publish a notice in the Gazette and the Kahiti that a meeting of the assembled owners will be held at a certain place on a certain date to consider the question whether the land will be sold to John Smith at the Government valuation. Of course, there is a chance of abuse in these first steps, and one of the weaknesses of the process is the difficulty of getting the notice brought before the owner, but that is a matter that has been got over to a great extent. There is no very serious complaint now with regard to a Native not getting the notice, because the Kahiti is very freely circulated amongst the Natives, and if they do not get the actual notice they probably hear from some one else that a meeting is to take place. There is a system by which proxies can be given by those who cannot be present personally, and under the original regulations a certain amount of abuse crept in with regard to these proxies. . . . Then, when the purchaser gets his meeting of assembled owners, if he can get a unanimous vote he proceeds to apply to the Maori Land Board to get his purchase confirmed . . .¹⁰⁰

There was a class of cases where there were more than 10 owners for a block, but the assembled owner procedure was not followed. Where an owner had died and the succession orders had not been finalised so that the successors were not registered, they were treated as one person only. So in the Oharae block in the Tai Tokerau district, a purchase in 1915 was allowed to proceed without a meeting of owners being required, because although 22 persons were alive with interests in the block, there were only eight registered owners.¹⁰¹ Given the notorious backlog in succession orders,¹⁰² it is possible that cases such as this were common. But if that were true, it is odd that more protest was not recorded. It is likely that in some

98. 5 September 1910, 3 Tairāwhiti District Maori Land Board MB (1910), p 265

99. Butterworth, 1990, p 67

100. 3 August 1916, NZPD, 1916, vol 177, pp 737–738

101. *Foster v Tokerau Maori Land Board* [1916] NZLR 1006, and s 8(1)(d) Native Land Amendment Act 1913

102. See the separate report on succession.

cases, where owners became aware at an early stage of negotiations for a sale or lease, successions were brought up to date in contemplation of the alienation. Court minutes in the period show that succession applications were often heard alongside alienation and partition applications. The lack of protest might also be put down to a lack of notice of a proposed alienation.

The extract quoted above notes that problems had been experienced with getting notice to owners. The comment that ‘if they do not get the actual notice they probably hear from some one else that a meeting is to take place’ is a telling one. Possibly the speaker was correct. The minute books of the Tairāwhiti District Māori Land Board do not disclose any pattern of problems with notice. Nor do the minute books of the land court in the period disclose concerns about notice. In any event, the 1909 Act provided that a meeting could not be invalidated because any owner had not actually received notice.¹⁰³

The technical requirements for notice in the Kahiti seem to have been closely adhered to. When in 1921 it was discovered that several resolutions had been passed by meetings of assembled owners without the required prior notice in the Kahiti, the Crown solicitor advised that such an omission was fatal to any resolutions passed.¹⁰⁴ However, the requirements were not so strict as to the content of such notices. In 1912 a meeting of assembled owners passed a resolution to vest certain land near Dannevirke in the Ikaroa District Māori Land Board for sale by public auction. One owner attacked the decision on the basis that the notice was insufficient. It had stated that the land, ‘or any part of it’ might be sold. It was argued that the words ‘any part’ did not detail what land might be affected, and that it was possible that an amended resolution, quite different in substance from what was set out in the notice, could be carried by a minority of owners attending a meeting. This argument was rejected. The Supreme Court said that the notice fairly set out the substance of the resolution and there was no possible misunderstanding.¹⁰⁵

A larger problem was the way in which proxies were used at assembled owner meetings. It seems that proxy voting quickly became popular. This popularity was initially boosted by the land boards. In 1910 some boards were sending out proxy forms with each notice of a meeting of assembled owners. The under-secretary stressed that this procedure was not to be followed and forms were to be issued only on request.¹⁰⁶ Why he gave this direction is not clear. It does not seem to have been out of any concern for Māori purchasers. The concern may have been that the practice encouraged private speculation. In the first years of the operation of the

103. Section 341(3)

104. 23 March 1921, ma 1 19/1/25

105. *Atenata Wharekiri v The Ikaroa District Māori Land Board* (1912) 31 NZLR 477 (SC). The resolution of the meeting was held to be void however because it restricted the board to sell by public auction – when the statute allowed sale by public auction or tender. The judge commented that ‘a Native owner who is not supposed to know the whole law’ might well have agreed on the express understanding that only auction would be considered.

106. Under-Secretary T Fisher to presidents of Māori Land Boards, Aotea, Waiariki, Waikato–Maniapoto, Tokerau, Tairāwhiti, Ikaroa districts, 27 October 1910, ma 1 19/3

1.5.4 Maori Land Court and Boards, 1909 to 1952

assembled owner scheme, the Government complained that Maori were using the proxy process to defeat sales to the Crown. The under-secretary noted in his annual report in 1913 that:

persons acting as proxies have attended meetings solely for the purpose of endeavouring to defeat a sale to the Crown. Although no actual proof can be brought to bear, it is assumed that in some cases a proxy represents the lessee of the land or would-be purchaser or speculator, besides acting for the Native owners, and his knowledge and ability are brought to bear by the use of arguments that will appeal to the Native's imagination, and so defeat the motion before the meeting.¹⁰⁷

The under-secretary recommended that the land boards should, pursuant to their own regulations, limit the appointment of proxies to other owners in the block only. He also recommended, and got, an amendment allowing the Crown to avoid assembled owner meetings – as has been seen above.

The Native Minister commented on the problem of proxies in 1916:

Under the old system, when the Act was passed in 1909, before we knew better, a proxy could be given which did not state the intention of the man who gave the proxy. Cunning Natives then used to go round and get proxies from the owners who did not wish to attend, and if there were two Pakeha purchasers trying for the same piece of land the Native with his pocket full of proxies got a high price, because he could transfer those proxies intended to benefit one purchaser to the other purchaser for a price, or if there were only one purchaser he could demand more money for his proxies. I do not say that this was often done, but there was always the possibility that it might be done.¹⁰⁸

The solution was an amendment in 1916 requiring proxies to state, on their face, the wishes of the person granting the proxy. This particular solution appears to have been suggested by the President of the Waikato–Maniapoto Maori Land Board. He gave an example of a meeting of assembled owners in Te Kuiti where, out of 79 owners in a block, only four owners were present in person at the meeting. The solicitor acting for the proposed lessee had proxies from 35 other owners. The four owners present voted against a resolution to lease the land. The solicitor exercised the proxies in favour of the alienation. Justice Holland, acting as deputy for the president, had declared the resolution carried. Twenty owners attended a subsequent board meeting where the president himself presided. They managed to convince him that the earlier vote should be disregarded. A fresh vote saw the resolution to alienate lost, suggesting that those owners who had signed proxies had merely authorised the solicitor to act on their behalf, but had no knowledge of the motion that would be put. The president recommended that in future the motion should be stated in the proxy form itself.¹⁰⁹ This case also illustrates that the low

107. AJHR, 1913, g-9, p 2

108. 3 August 1916, NZPD, 1916, vol 177, pp 737–738

109. W J Bowen, President of Waikato–Maniapoto District Maori Land Board to under-secretary, 21 October 1911, ma 1 19/3

quorum requirement (five owners or their representatives) in the 1909 Act could sometimes allow meetings of owners which were very poorly attended to nevertheless pass major resolutions concerning alienation.

There was also a problem with owners who had signed proxies turning up to meetings and voting at odds with the way the proxy holder voted. In 1911 John Salmond was asked whether boards could legitimately refuse to consider proxies where an owner represented in the proxy was present. He thought that they could.¹¹⁰ The Native Land Amendment And Native Land Claims Adjustment Bill 1914 (clause 2) was designed specifically to prevent speculators operating at assembled owners meetings, by requiring people attending meetings to say if they were acting as agents or not. Agency, which the Government viewed as evidence of the involvement of speculators, was said to be 'rife' in Maori land sales.¹¹¹

There were also problems with purchasers who persistently requested extra meetings. To remedy this, in 1915 there was an amendment to provide that purchasers who asked for a second meeting of owners within 12 months of a previous meeting must lodge with the land board the likely expenses to Maori of attending.¹¹² This suggests that not only did boards readily grant meetings on the request of purchasers, but that the meetings were also an expense to Maori. Several meetings over one block, or over adjoining blocks in the same district may have been a considerable expense in time and money to the owners. It would be interesting to discover if these sorts of costs had an impact on land sales, either by placing owners in debt, or by encouraging them to consider several alienation proposals at the one meeting. Gazette notices for meetings of assembled owners show that it was quite often the case that several alienation proposals over different blocks would be considered at a single meeting.¹¹³

The problems did not end with the passing of a resolution at a meeting of owners. There might also be trouble if a meeting did not get a unanimous vote:

There might be a majority who are willing to sell, but there might be a certain number of objectors – generally people living on the place – who do not want to sell, and the difficulty is to protect their rights. When the procedure was first in operation there was often not sufficient time given to the non-sellers to register memorials of dissent, and some Natives were not aware that they could do so. Now there is ample opportunity given to the non-sellers to register their dissent, and before the land is alienated to the purchaser the interests of the non-sellers must be cut out. That means a survey of the block, and very often trouble occurs in cutting out their interests.¹¹⁴

There was also a need to give minorities who rejected sales more time to object. Under the 1909 Act, a Maori land board could confirm a sale as little as half an hour after a meeting. Indeed, a case went before the Native Affairs Committee where a

110. 23 August 1911, ma 1 19/1/25

111. 5 October 1915, NZPD, 1915, vol 174, p 610

112. Ibid. Native Land Amendment and Native Land Claims Adjustment Act 1915.

113. The *Gazette* recorded these notices under the index entry 'Native land – Alienation – dates fixed for meetings of, – owners of certain blocks.'

114. 3 August 1916, NZPD, 1916, vol 177, pp 737–738

1.5.5 Maori Land Court and Boards, 1909 to 1952

land board confirmed an alienation only one hour after a meeting of owners. The 1913 Act increased the time for filing a memorial of dissent to three days. In 1916 this was increased to seven days. This did open up a further speculation problem – a rival purchaser might get an owner to file a memorial in return for extra cash for the land. But the Government decided that it could live with this possibility.¹¹⁵

1.5.5 Partitions

Partition applications were an integral part of the alienation process. They were either made before or during alienations. The most common reason for making an application seems to have been to divide the interests of non-sellers out of a block. Partitions fell within the jurisdiction of the Maori Land Court, so there is a quite comprehensive and readily accessible record of applications and the results. The figures for orders made in the court in the period are as follows:¹¹⁶

Year	Partition orders
1913	783
1914	1019
1915	2083
1916	2172
1917	1617
1918	1247
1919	1119
1920	904
1921	813
1922	898

The number of orders appears to rise in the years when alienations were also high, demonstrating a rough correlation between the two.¹¹⁷

115. 5 October 1915, NZPD, 1915, vol 174, p 610

116. AJHRs, 1913ff, g-9 series

Year	Sales	Leases	Total	Partition orders
1912–13	210,553	241,562	452,115	783
1913–14	234,120	136,582	370,702	1019
1914–15	215,651	91,609	307,260	2083
1915–16	142,961	101,696	244,657	2172
1916–17	160,651	103,564	264,215	1617
1917–18	148,706	135,081	283,787	1247
1918–19	154,046	45,002	199,048	1119
1919–20	126,030	40,267	166,297	904
1920–21	103,694	43,184	146,878	813
1921–22	55,015	50,914	105,929	898

Sales and leases through land boards (acres)

From a perusal of land court minutes in this period, the following general conclusions can be drawn about partitions.

- Partitions generally were associated with alienations, with applications either being received before negotiations with a potential purchaser, or after a decision had been made to alienate the land, if a group of dissenting owners was identified. In fact, the Native Land Amendment Act 1913 specifically provided that for any partition application made by a Maori owner ‘the land shall, as far as practicable, having regard to the interests of the Native owners, be subdivided into such areas according to quality and utility as will enable each allotment to be disposed of to an individual purchaser or lessee by the Native owner or owners . . . according to law.’¹¹⁸
- In most cases, the partition was not disputed, an arrangement having been made among the owners before the application was brought to court. In the Rotorua region, many partitions were prearranged by committees. For example: ‘the shares were arranged by a Committee of seven chosen from N’Parua’,¹¹⁹ or, ‘We have arranged a partition of that part of this block lying between the road and the Waikato River in such a manner as to give each partition frontage to the road and also to the river. The estimated area of the land between the road and the river is 2884 acres and we have divided it as follows: . . .’¹²⁰ In one case it was even stated that a partition dispute had been referred to a committee of tribes meeting in Te Ngae who had ruled on it.¹²¹

117. Willan 1996 and AJHRs 1912–22, g-9 series

118. Section 46

119. 9 November 1911, 56 Rotorua MB (1912), pp 177–183

120. 13 November 1911, 56 Rotorua MB (1912), p 208

121. 23 January 1912, 56 Rotorua MB (1912), p 242. However one person objected to the ruling and the matter ended up before the land court.

1.5.5 Maori Land Court and Boards, 1909 to 1952

- In cases where the partition had been pre-arranged, the court minutes indicate that the court would undertake a cursory examination based on whatever maps and brief (from the minutes) explanations were put before it. For larger blocks where many owners were involved, the investigation would be more extensive.
- Where a dispute arose, the court would usually send groups away to sort out an arrangement among themselves, with the court overseeing the negotiations to ensure that general equity was maintained among the owners in the final result.
- Where the court had to adjudicate on a partition dispute, it would call and hear sometimes quite extended evidence, and in its decision would have regard to valuations, previous and current occupation and use of different parts of the block, and general equity. For example, in one disputed application, a visit by the court to the block revealed a valuable limestone deposit on it. The court ordered that a fresh partition proposal be drawn up to allow all owners to share in the deposit.¹²² In another case, a partition plan before the court showed a river in the wrong position, prejudicing one owner who had cultivations near the river. An amended order was issued.¹²³ In yet another example, in 1910 there was an appeal from a Native Appellate Court decision, where that court, on discovering that two elderly people with land in the Waimarino block, not present at the partition hearing, would lose their cultivations, adjusted the partition order made.¹²⁴ In another case a partition was appealed against as unfair because one party was apportioned an area containing a large part of a watercourse going through the land. The appeal was upheld.¹²⁵ In another case, one owner who had used and managed a block claimed special preference in a partition scheme. The land court ruled that it could take some account of the occupation and use by that owner, especially on those areas where the land was of equal value, but where the part of land claimed by that owner was of greater value than the rest of the block, occupation and use of itself was not sufficient to upset a presumption of equity between the owners.¹²⁶ In another decision in 1926 a partition order was varied because:

partition of the papakainga portion . . . upon a strict basis of the relative interests in the whole block, is not practicable. The papakainga portion has become closely occupied and to give each family or section of owners its exact proportion of area

122. 4 May 1911, 53 Otorohanga MB (1911), p 39

123. 11 May 1911, 53 Otorohanga MB (1911), p 83

124. 23 November 1910, Appellate Court 8, reel 277, case no 38, Native Appellate Court panui (Akld 1910–43), p 48, judgment re appeal by Pihopa Turehu from decision given at Wanganui on 16 July 1910, partition by Native Appellate Court Waimarino, nos 3g, 3h, 3j and 3k blocks.

125. Okurupatu a3 sec 2b no 3, 18 September 1914, 3 Ikaroa acmb, p 363, Wellington, Jackson Palmer CJ, MacCormick J: 'inspection of the land makes it plain that while in other respects the land partitioned is of fairly even quality the appellant's area does not adequately represent the value of her interest owing to the fact that while appellant owns less than $\frac{1}{4}$ of the total area the portion awarded to her contains about $\frac{3}{4}$ of the wide and deep watercourse on the land . . . Court below not aware of the true position as the appellant neglected to attend and respondents counsel was not familiar with the land . . .'

126. 27 May 1911, 53 Otorohanga MB (1911), pp 181–182

would be inexpedient firstly because it would entail hardship on resident owners by taking away part of their occupations and improvements and probably in one or two cases even houses, and secondly because small pieces would be left here and there which could not profitably be dealt with.¹²⁷

However the general rule, as noted above, was to consider whether the partition was equitable. ‘The proper principle to adopt in partition is to give to each party a fair proportion of the land while preserving the existing occupation only in so far as can be done without injustice to anybody. If one party has occupied more than its fair share it must be prepared to give up something on partition.’¹²⁸

So while many partitions arising out of alienations seem to have been agreed, there is evidence that in more than a few cases they did some violence to the iwi or hapu estate. This was admitted in a discussion about partition in the House of Representatives in 1916:

In some cases perhaps the relative interests of certain descendants of chiefs might be larger than those of other members of the tribe. But if you take a block in which there are, say, a hundred Natives, and they all have equal interests, each Native will be entitled to a one-hundredth part of the block. The modern practice is to partition this up according to the value of the land, so that it is possible for those who reside and have their cultivations on the block, and who are not willing to sell, to have legitimately and rightly some portions of their cultivations taken from them, because they are probably cultivating the most valuable land, and cultivating more than they are entitled to have if a division of the block were to take place and each one was given an exact share according to the relative interests by value of the land. Some of these complaints, therefore, are without foundation and cannot be entertained, because that which is complained of is strictly legal. The people who live on the land naturally cultivate the best portions of it. They extend their cultivations over the land, so that if the land was equally divided according to their relative interests they would have to part with that portion of the land which is in excess of their individual share. That is one of the faults peculiar to landholding in common, and it cannot be helped.¹²⁹

This discussion raises an important point. While owners were not under any compulsion to sell, – Butterworth has suggested that the assembled owners procedure ‘gave rangatiratanga a legal recognition’¹³⁰ – if any one of the owners wished to sell, then the hitherto coherent land block held in common was split by partition. This threw the onus on Maori to present a completely united front. Any dissenters could cause the iwi or hapu estate to be split up to enable them take out their individual share. The comment above suggests that such partitioning following meetings of owners could be quite destructive of tribal or hapu holdings. It also suggests that the power of assembled owners meetings to hold on to land was

127. 23 Tairawhiti ACMB (1926), p 229 Pakowhai

128. 25 February 1918, 1 Waiariki acmb, p 339, in re Waerenga East 2a. Also see 4 December 1930, 10 Aotea acmb, p 516 re Hautu 3f7

129. 3 August 1916, NZPD, 1916, vol 177, p 738

130. Butterworth, *Maori Affairs*, 1990, p 67

1.5.5 Maori Land Court and Boards, 1909 to 1952

largely illusory. The mere fact of a meeting being held was almost a guarantee that some land would be purchased, and pressure placed on the remaining estate which, if the partition were a significant one affecting fertile areas in the block, made it less economic as a consequence.¹³¹

The harshness of partition can be demonstrated in several cases. In the case of the Parihaki block there was a decision to sell land in the block, and also an application to the land court to cut off the non-sellers' piece. The land court judge visited the block; but he awarded the houses of some of the residents and some of the best cultivations to the European purchasers who bought the interests of non-resident Maori owners.¹³²

Another case involved the Manukau f block. The non-sellers refused to come to court to discuss partitions apparently because the judge refused to visit the block to discuss the partition details, and the court partitioned the land without the non-sellers being present. A petition was laid before Parliament complaining that:

at the meeting of assembled owners the resolution was carried subject to a condition that the interests of all permanent occupiers on the block be partitioned before the resolution was confirmed; that the petitioners found that the kaingas and cultivations of several of the permanent occupiers had not been excluded from sale, and are now lost to their owners; that the shares of some of the permanent occupiers had been located by the Court in such a poor part of the block that they found it necessary to remove from the block; that some of the owners who appeared at the meeting and objected to the sale had their shares sold; that one owner had his kainga located by the partition of the Court in a different subdivision from that to which it belongs.¹³³

In the final result one owner at least was faced with the blunt option either of removing his house from a boundary or being compensated when it was destroyed.¹³⁴ This result, while viewed as unfortunate, was not regarded as in any way particularly exceptional or abhorrent – confirming the attitude evident in Herries' statement above.

Partition could be pushed to odd extremes. For example in 1925 the land court had to consider how eeling rights in a lagoon in the Hereheretau block should be allocated. The lower court (sensibly) treated the rights as communal, but the appellate court ordered that the rights be treated as individual, and directed the lower court to make an appropriate division, taking care to ensure that others retained rights of access over the water where the individual rights were held.¹³⁵

The ongoing problem of partitions associated with sales is evidenced by a comment of the Maori Appellate Court in 1930 that the land court had been called

131. This process of partitioning out dissenting interests is explained above – p 6

132. 3 August 1916, NZPD, 1916, vol 177, p 761

133. Ibid, pp 756–758

134. Jackson Palmer CJ at AJHR, 1917, g-6a

135. 18 April 1925, 22 Tairawhiti ACMB (1925), p 226, re Hereheretau b2l. While one cannot argue with the decision of the court that eel rights were properties controlled by particular persons or groups, the requirement that they now be turned into individual property interests reduced custom to absurdity. The lower court had possibly been attempting to avoid this by treating them as communal – but that too did not do justice to custom.

on to review voluntary agreements for ‘innumerable partitions’ under sections 121 and 59 of the Native Land Amendment Act 1913 – which allowed a review of partitions if circumstances arose where the court felt a hearing was justified. The main point to be considered in such applications was ‘whether the partition is an equitable one and if not can it be varied without prejudice to rights acquired under the partition by third parties.’ One ground for such a review was that a non-seller might have retained a more valuable portion of the block than the sellers.

A 1913 report provided more detail on the problems of surveying partitions on the ground. Often subdivisions were noted on a sketch plan, but later, when a comprehensive survey was carried out, it would be found that there was not sufficient land and adjustments had to be made pro rata. Lack of access was also a problem. While the legislation and land court rules¹³⁶ required that a preliminary report on likely road lines must be prepared, no one was willing to pay for this report. Maori would not deposit the money for this preliminary survey work up front, especially since they might not be happy with the access lines proposed. An amendment in 1913 required that, in subdividing a block, the land court should particularly have regard to ‘water-supply, road-access, aspect, and fencing boundaries’. Each subdivision should, as far as possible, contain a reasonably sufficient area of land suitable for a homestead, and generally the court should have had regard to ‘the configuration of the country, the best system of roading, and facilities for settlement.’¹³⁷ Maori owners however, had different priorities. It was noted in 1916 that:

the difference between the Department’s and the Native owners’ view is that the Department holds that the partition scheme should be attempted to be carried out on the general configuration of the country, whereas the Native owners desire a partition according to family ‘takes’ and occupation rights.¹³⁸

1.5.6 Confirmation

As has been noted above, alienations by sale or lease, along with other transactions, required confirmation by a district Maori land board. The requirements varied, depending on whether the purchase was made with fewer than 10 owners, using the precedent consent method, or using the assembled owner procedures. The common process for the private purchaser to follow in obtaining confirmation was described in 1916 as follows:

First of all he has to pay the money to the Board, or to give satisfactory receipts, so that the Board would be perfectly satisfied that the Maoris have got the money. Then he has to make a declaration to show that he has not got more land, including the land he is intending to buy, [over about 5000 acres]. He then has to show that the Native he is purchasing from is not landless. It is his business to find that out, and generally

136. Section 117 of the 1909 Act, and rule 29

137. Section 54 of the Native Land Amendment Act 1913

138. Under-secretary, AJHR, 1913, g-9, p 3

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that takes some time to do. Further, he has to show that the transaction is all right for the Natives, and it is for the Board to judge whether it is in the interests of the Natives to sell. Eventually he has to show that the price is adequate, the Government valuation being taken as a guide. The conditions, therefore, are fairly onerous.¹³⁹

It is correct to say that, on the face of things, the confirmation process contained important safeguards to Maori selling land. In practice however, the safeguards often did not apply or were poorly applied.

As has been noted above, confirmation could in some cases follow very quickly after resolutions had been passed. The incident mentioned above, where confirmation was given half an hour after a meeting, suggests that some assembled owner meetings may have taken place close to and perhaps alongside Maori land board sittings, perhaps even in the same premises. Hutton finds in his study of the Waikato–Maniapoto District Maori Land Board that the board rarely refused confirmation and did not inquire into the reasons why Maori might want to sell land. Without that inquiry Hutton asks how the board could properly gauge whether or not a sale was ‘contrary to equity or good faith, or in the interests of the Natives alienating’ – a requirement for alienations of blocks with fewer than 10 owners or where precedent consent had been obtained. He says the inquiries that were made into applications for confirmation generally concerned whether sellers would be landless or not. The minutes of the Tairāwhiti District Maori Land Board show that that board also did not inquire into the reasons for a sale. Most alienations were confirmed with little more than the comment ‘supporting papers satisfactory’, and a standard condition that the purchase money be paid to the board within one or 2 months of its decision. However the minutes also regularly record disputes about confirmation applications, on the grounds of valuation, disputed terms (for leases), and possible landlessness for some of the sellers. For example, in one case the board refused confirmation for a sale because valuation evidence ranged between £24 and £50 per acre, the purchasers were offering £30 an acre, and the Government valuation was well below this figure.¹⁴⁰ The Tairāwhiti board was not hesitant about checking and challenging valuations. There appears to have been a general suspicion about Government valuations. This was also reflected in comments in the land court. In 1911 the court in Rotorua commented that ‘Government valuers are notoriously circumspect in their valuation and the Courts’ experience is that the market value of Native land is invariably higher than the Government Valuation.’¹⁴¹

But occasionally boards were caught out. The Ikaroa board was sued in 1912–1913 for confirming a sale of land at a lower than current valuation. The board had decided to grant an application for confirmation over part of the Aorangi block, subject to proof of payment of the purchase price. In the interim the Maori owners applied to have the confirmation overturned. The purchaser was offering £10 per

139. 3 August 1916, NZPD, 1916, vol 177, pp 737–738

140. 5 Tairāwhiti District Maori Land Board MB (1913), p 70, 8 May 1912

141. 6 November 1912, 56 Rotorua MB (1912), p 137. This was in relation to a compensation application for a public works taking.

acre. The Maori owners had made the board aware of a recent valuation of £18 per acre, and that there was a second purchaser prepared to pay this. The second purchaser lodged an application for confirmation, at the new higher price. The board asked the Valuer General about the higher valuation and was told that it had been made under a wrong assumption about recent sales in the area. Consequently the board signed a certificate of confirmation in favour of the first purchaser. The Supreme Court held that land boards did not have to confirm sales at or in excess of the current valuation, but had a discretion. The court cautioned however:

that a board which confirms a sale £10 per acre when the existing valuation of the land is £18–5 per acre, takes on itself a heavy responsibility, and exposes itself to a grave suspicion of having betrayed the very interest which it was established to protect.¹⁴²

That the board had acted in this way did not give the court any jurisdiction, however, to interfere in the matter. Whether this was a one-off incident or reflected a more serious general situation is not clear. While the land boards might be prepared to attack Government valuations, which were often very low, it is harder to gauge whether, as a general rule, they tried to obtain the best market price, or merely settled for a reasonable price in order to get the alienation confirmed.

As to the question of landlessness, the onus was on the purchaser to produce evidence to show that sufficient land remained to the owners. This involved checking the court registry under the names of the sellers to ascertain their other land interests. While the purchaser provided the primary evidence, it seems that the Tairāwhiti land board at least always independently considered this and other statutory requirements before issuing confirmation orders. The issue of landlessness seems to have been on the mind of the board at every stage of the alienation process. For example, when negotiations for the purchase of Pourewa Island were proposed:

The Board pointed out to Mr Nolan [counsel for the purchaser] that this island was a fishing station and also the natives got their shell fish and also seaweed there and these are matters the Board must see into.¹⁴³

But because ‘landless’ was defined not by a certain number of acres, but instead by ‘sufficiency for maintenance’,¹⁴⁴ it is difficult to discover what criteria the boards actually used. The Tairāwhiti board and the Waikato–Maniapoto board do not seem to have had a fixed number of acres in mind. The test appears to have been whether owners would be able to continue to support themselves, or whether they would become a burden on the state. Given this ambiguity, and the push for land sales to encourage European settlement, it is perhaps not surprising that the test of landlessness appears to have been set fairly low. In a 1912 case, the Tairāwhiti District Maori Land Board confirmed a sale in the absence of the owner on the

142. *In re Aorangi 3G no 3C* (1913) 32 NZLR 673, p 676

143. 5 September 1910, 3 Tairāwhiti District Maori Land Board MB (1910), p 265

144. Section 2 of the 1909 Act

1.5.6 Maori Land Court and Boards, 1909 to 1952

statement of the agent William Cooper¹⁴⁵ that the owner lived away from the district and was cultivating the lands of his wife:

He is an able bodied man able to earn his own livelihood. He works at shearing and other work and does not occupy any of his Wairoa lands. He does not use the land in question. In my opinion he has sufficient other lands to maintain him.¹⁴⁶

This seemed to anticipate an amendment in 1913¹⁴⁷ that landlessness did not occur where the land being sold would not in any event provide sufficient support to the Maori owner and also where a vocation, trade or profession or other form of income could provide an alternative adequate income. The Native Minister made the telling comment at the time that while the Crown could not purchase land so as to make Maori landless, ‘if they are landless already – as a great many of the Natives are – they are no worse off than they are at the present time.’¹⁴⁸ The 1913 amendment was quoted in a 1922 case to support the conclusion that owners who leased all their land but thereby received rents adequate for their maintenance were also not landless.¹⁴⁹

Of more interest to politicians of the time than the definition of Maori landlessness, was the requirement that confirmation should not issue if the purchaser would, by completing the purchase, obtain total interests in land beyond certain limits set by the Government.¹⁵⁰ A key Government policy in the period was land reform and putting Pakeha farmers on their own small holdings. Thus it was the issue of speculation and methods to limit it which caused most public debate. The issue of ‘dummyism’, said to be widespread in many districts, caused some discussion in 1916. Dummyism was the process where speculators got others to sign declarations that they held no more than the limited acreage any one buyer was allowed, and thereby gaining several entitlements to buy Maori land. Instances were given where a few persons held large areas under several leases, and held the leases under different names. As each one ‘fell in’ at a different time and affected only a few hundred acres, the speculators were, it was alleged, able to renew the leases without being suspected of undue aggregation.¹⁵¹ In a variation on this, it was noted that a solicitor in the Ongarue district had leased land in excess of the aggregation limits by having some of the land bought under the name of his wife. The Government response was to place a proclamation over this land preventing sales except to the Crown.¹⁵² Native Minister Herries admitted, however, that the proclamation would last only two years, and the solicitor could get in to purchase

145. Later husband of Whina Cooper.

146. 8 May 1912, 5 Tairāwhiti District Maori Land Board MB (1913), p 73

147. Section 91 of the 1913 Act

148. 28 November 1913, NZPD, 1913, vol 167, p 389. And p 389: ‘in this Bill I have studiously avoided any compulsion for any Native to sell; and, as far as my idea is concerned, I always will avoid it as long as we can open the waste lands for settlement’.

149. *Sarten v Aotea District Maori Land Board* [1922] NZLR 586 SC

150. Section 220(f) of the 1909 Act

151. Smith (Waimarino) 3 August 1916, NZPD, 1916, vol 177, p 761

152. *Ibid*, pp 73 and 177

in the few days between the expiry of this proclamation and the commencement of a new one.¹⁵³ He said, however, that a declaration had to be made before purchasing that the purchaser did not hold more than 7600 acres. An Order in Council was the only way of waiving this requirement – and these were rarely granted, only once that Herries could recall, in the case of land at Mokau. Herries also reiterated that the protections in the 1909 Act in general would prevent such abuse. Cash must be paid in advance or receipts shown to the land board, a check must be made that native owners would not be landless, and the purchaser must sign a declaration that they held no more than about 7600 acres of land of various classes. According to Herries, the boards were very strict about these matters and if not, ‘they deserve to be called to account in a very severe manner’.¹⁵⁴

1.5.7 Crown purchasing

It seems that, after 1913 and the repeal of the requirement that the Crown seek a meeting of assembled owners when there were more than 10 owners in a block, the Crown only appeared before the land court and land board rarely, and mostly in relation to purchase matters when it required partitions. This was because, for alienations involving less than 10 owners, the Crown was only obliged to have the purchase checked by the Native Land Purchase Board. The land boards had no jurisdiction. If the Crown chose to purchase individual interests in blocks with more than 10 owners, those purchases were also checked by the land purchase board and not by the Maori land boards. Combined with its power to prevent others from dealing with lands the Crown was interested in, the Crown was in a formidable position to conduct purchase operations on its own terms, with very few independent checks on its performance.

There is some evidence that after 1913, when it was no longer under a statutory obligation to hold meetings of assembled owners, the Crown commonly chose to avoid them and purchased undivided shares. The annual reports of the Native Land Purchase Board suggest this.¹⁵⁵ Occasions when individual shares were to be purchased are noted. Many instances are noted where the Crown intended to exercise its pre-emptive power – a further indication that it was involved in the drawn out process of purchasing individual shares.¹⁵⁶ The reports also show, however, that on many occasions meetings of owners were ‘directed’. But, judging by the very few meetings of assembled owners actually called to consider alienations to the Crown, these meetings do not seem in all cases to have been meetings summoned by a land board under the legislation. They may have been meetings summoned at the direction of the Minister. If that is the case, what was the nature of the Crown meetings that did occur with Maori owners? What notice was given, and what checks were there to ensure that adequate notice had been given?

153. Ibid

154. 13 July 1916, NZPD, 1916, vol 177, pp 88–89

155. See AJHR, g-9, table c, 1909 and subsequent years

156. *Gazette* notices issued whenever this power was used – and many such notices were issued.

1.5.7 Maori Land Court and Boards, 1909 to 1952

What checks were there to ensure that the Crown offered a fair market price? The legislation merely required the Crown to offer a price no lower than that on valuation rolls. What power did the Crown imposition of pre-emption give it in such meetings? Was the power used to effectively force down the price that was offered? If owners at a meeting rejected a proposal to alienate, did the Crown thereafter use its power to buy up individual shares? It is useful to briefly examine comments about Crown purchases in this period to answer these questions and also to consider whether the process would have been much different if the Crown had been required to continue with assembled owner meetings and seek confirmation of resolutions to alienate land before the land boards.

Because it was not required to purchase whole blocks, which the process before the land boards encouraged, the Crown arguably hindered Maori development in some situations where it purchased blocks incrementally. For example, in 1935, when the Crown applied to have its interests in the Matakaoa block on the East Coast defined, it was found that the Crown had purchased a set area of 380 acres previously and had since acquired undivided interests. It now wished to place these undivided interests adjoining the earlier purchase. The Maori owners were aggrieved about these subsequent purchases and questioned the good faith of the Crown. The Maori Appellate Court found that it could not look into the question of good faith, but only inquire if the purchases were legal – which they were. The Maori owners had obtained a ruling in the lower court that non-sellers were to have preference in the selection of land when the undivided areas were defined on the ground. But the court at a further hearing had changed its mind and given the Crown preference so that it could have its adjoining area. Maori contended before the appellate court that the first ruling should not have been overturned and that the second ruling was arbitrary and without precedent in the district. Their appeal was dismissed.¹⁵⁷

The Waipiro block, of some 35,000 acres, was another example of the impact of Crown purchases of undivided shares. The land had been leased at the turn of the century. Maori owners sought to restock the land once the lease fell in, but were unable, because Maori land was involved, to get finance. It was said that Crown buying into the block had exacerbated the situation. The Maori owners used the whole block for grazing, but did not know what parts the Crown might own absolutely once its interests were partitioned out. Consequently, Maori did not know which parts to improve, and they had been told that there would be no payments for improvements from the date Crown purchasing had commenced.¹⁵⁸ These situations could not occur with private sales, because the requirement for confirmation ensured that private purchasers were diligent about completing purchases of whole blocks so as to secure a good title.

Apirana Ngata complained that the purchase of undivided interests created a tendency among native land purchase officers to prolong their tenure by spreading their purchases over forty or fifty blocks, all happening at the same time. ‘The

157. 24 Tairawhiti ACMB (1928 and 1937), p 156 Matakaoa

158. 16 March 1921, NZPD, 1921, vol 190, pp 156–157

policy resulted in one or more officers patrolling a district for years, acquiring little bits at a time, and holding their jobs for a long period of years.¹⁵⁹

It seems, however, that where Maori presented an entirely united front, they could avoid Crown proposals for alienation. For example, in 1917 Native Minister Herries replied to a suggestion that the Crown purchase 30 acres at Ketetahi springs, that the land purchase officer had informed him Maori would not sell and would not attend meetings of assembled owners. He promised to try again to complete a purchase, but ‘compulsion could not be applied if the Natives would not sell’.¹⁶⁰ Ketetahi Springs remain in Maori hands today, although completely surrounded by Crown land.

However, once the Crown had begun purchasing, there was very little that could prevent it finalising a purchase of a whole block, or as much land in a block as it was interested in. It could also turn to the land court on occasions where one or two owners held out. In one case, the Crown had obtained all the interests in a block except those of one man who was a follower of Te Whiti and remained faithful to his ideals and therefore would have nothing to do with the land court. The court passed what it considered a fair partition proposal for him. This does not appear from land court minutes to have been a common practice however. Presumably the ability to impose pre-emption and purchase individual shares did the trick for the Crown in most cases. Nor is there evidence that a provision of the 1913 Act allowing Maori Land Court judges to independently report to the Minister on any lands they thought should be partitioned was much used.¹⁶¹ The Maori MP Parata had complained in 1913 that the provision would mean that ‘While the Maori may be having his breakfast the Judge is partitioning without his knowledge’.¹⁶² The minute books suggest that, in almost all cases, Maori owners initiated partition applications.

Here it is worth mentioning that partitioning out the interests of non-sellers from a Crown purchase was not without cost to the Maori owners concerned. In 1916 there was a complaint that in the case of Crown purchases and associated partitions ‘exorbitant charges’ were made against Maori owners for examining plans. Under the 1909 Act the general practice was that the costs of survey incurred by the Crown were charged against the land, which included the cost of examining the plan, which was required before it could be approved by the Chief Surveyor, and this approval completed the survey. The Government argued that such examination as a rule cost very little, being the actual costs of the examiner’s time, but would vary according to the size of the block and the accuracy of the surveyors work. Five per cent interest was charged, as the 1909 Act provided, from the date of completion of the survey.¹⁶³

159. NZPD, 1932, vol 234, p 665

160. 14 September 1917, NZPD, 1917, vol 180, p 152

161. 28 November 1913, NZPD, 1913, vol 167, p 386

162. Ibid

163. 3 August 1916, NZPD, 1916, vol 177, p 708. The MP who complained in this case was challenged to provide details of specific cases of overcharging.

1.5.7 Maori Land Court and Boards, 1909 to 1952

Not only was Crown purchasing incurring costs for Maori, but it appears that they were in many cases getting a reduced price for the land. In 1920 Ngata alleged that Crown purchasing of relatively improved Maori land had been ‘on the cheap’ for many years. He said this had been known for some time, ‘although one often felt impelled to demur to the policy of the Native Minister in purchasing Native lands, one felt that the war period was not the right time to raise a voice in protest.’ He argued that, in general, Maori had received pre-World War I prices for their land in the Hawkes Bay and Wairoa, in the Poverty Bay and on the East Coast. Further, because the Government got these lands relatively cheaply, the cost of settling soldiers after the war had been relatively cheap. The land was bought at the Government valuation, which was set at a level appropriate for local taxation purposes, but not for sales. Maori had no opportunity to contest the value in the courts as Pakeha were able to do. Ngata suggested that at least 10 per cent was added to the value of the land once it reached Pakeha hands just because it was owned by Pakeha. The value to the country of these cheap purchases was, he thought, inestimable.¹⁶⁴ The Government did not reject the broad implications of Ngata’s points, merely pointing out that fresh valuations were used in recent King Country purchases.¹⁶⁵ In 1921 Ngata again mentioned that Maori land was bought at prices varying from £1 to 12s 6d an acre and that those prices had not varied since 1909 when the valuations were made. He alleged that purchases were still going on at those prices.¹⁶⁶

Ngata’s comments were echoed to some degree by Maori landowners. As early as December 1912, a meeting of 600 Maori at Whakatane requested that the new Reform Government, among other matters, pass a Maori land valuation act allowing Maori to appoint someone to value lands on their own behalf whom they deemed suitable to do this.¹⁶⁷

It is not possible in this report to come to a conclusion on the accuracy of Ngata’s remarks. Certainly there had been a massive boom in land prices from about 1915 when the Government introduced the Discharged Soldiers’ Settlement Act providing for a scheme of resettlement of returned soldiers as farmers. Ex-servicemen were given preference in all lands opened up for settlement and given advances to buy and settle land. In a land market already rising on the basis of expectations at the end of the war, this measure put 22,792 new purchasers in the real estate market with over £23,000,000 of borrowed money. Land values increased accordingly. The peak of the land boom was 1921 when 4.5 million acres sold for just under £82 million.¹⁶⁸ It is estimated that two-thirds of rural land in New Zealand changed hands between 1916 and 1924.¹⁶⁹

164. 51 September 1920, NZPD, 1920, vol 187, pp 975–976

165. Ibid, p 980

166. 61 March 1921, NZPD, 1921, vol 190, p 156

167. ma 28 31/29, papers for judge’s conferences 1911, 1913, 1922

168. *Land Development by Government 1945–1969*, H J Plunket, Agricultural Economics Research Unit Technical Paper no 14 (1973), pp 13–14

169. ‘Economic Transformation’ in the *Oxford History of New Zealand*, p 232

It seems therefore that the Government, where it may have bought Maori land at Government valuation in the period, bought at less than market value. But if that were the case the net affect on Maori is harder to work out. Land prices were inflated in the period. Undeniably though, being denied independent valuation in a period of such flux in land prices, put Maori landowners at a considerable disadvantage. The lack of confirmation before an independent body like the land boards did not help the situation. One can speculate that, if many of these Crown purchases had been subjected to the assembled owners meeting procedure, and if they had come before the land boards for confirmation, the Maori owners might have obtained a better price, or at least an independent review of the price, and the views of dissenting groups might have been more clearly known, and their interests partitioned out as coherent blocks for future Maori settlement.

1.5.8 The attitude of the boards and the court

The adequacy of the few checks provided by the legislation to protect Maori interests in this purchasing activity is, however, thrown into further doubt by the fact that the prevailing Government policy of Maori land alienation was shared by the land boards. The sheer number of owners' meetings which were summoned by the land boards and alienations which were subsequently approved with little or no comment (in the minutes of the Waikato–Maniapoto and Tairāwhiti land boards at least) testify to this. The boards did not see their primary goal as the development of Maori land for Maori, but rather its alienation at a reasonable price, with Maori retaining enough to provide a living, or none where a living could be made away from the land. In 1912 the president of the Tairāwhiti land board commented that the boards were anxious to 'encourage the settlement of waste Native lands, and to give effect to legitimate dealings, after duly safeguarding the interests of the Native alienor.'¹⁷⁰ The comment reveals that the boards were not passive adjudicators of matters coming before them, but active promoters of settlement, and that they had a belief that there were Maori owned lands which were 'waste' for Maori, but valuable to Europeans.

Indeed, the boards were so anxious in some regions to assist with alienations, that they lent money held on behalf of Maori to the Crown to fund Crown purchases. In 1916 the Audit Office noted that the Waikato–Maniapoto land board had advanced £320 to a land purchase officer as an imprest, which was subsequently refunded to the board. The office found this irregular and pointed out that land purchase officers had no connection with boards.¹⁷¹ Astonishingly, the under-secretary replied that it was merely a question of the land board temporarily assisting the Native Land Purchase Department from funds on which there was no immediate call, and further, that since the land purchase was entirely a Government transaction, there would be ready call on the Government should any action have to be taken to recover such an advance. This procedure was, he said, followed by

170. 8 October 1912, 4 Tairāwhiti District Maori Land Board MB (1912), p 286

171. Audit inspector to controller and Auditor General, 16 December 1916, ma 19/11

1.5.8 Maori Land Court and Boards, 1909 to 1952

several boards.¹⁷² Apparently the Crown solicitor also received advances in this manner.¹⁷³ President Bowler said that large sums were paid over to assist land purchases.¹⁷⁴

Further evidence of the encouragement boards gave to potential purchasers came in a warning issued in 1907 when the under-secretary had to warn land board and department officers against supplying lists of owners and information from files to potential purchasers without instructions from the registrar of the Maori Land Court in the district.¹⁷⁵ And in 1910 the under-secretary noted that large numbers of applications to lease were being advertised in the *Gazette* for which Maori were being told that the rental would be fixed at 5 percent of the Government valuation. The under-secretary pointed out that it was up to the prospective purchaser to make an offer, which would likely be well in excess of the Government valuation. The Government valuation was merely a guide to land boards so that dealings should not be confirmed at a questionably low value.¹⁷⁶

These problems had developed largely because of the confusion the Government had created by changing the original functions of the land boards, and then combining them with the court. Prior to 1913, the boards had faced problems with Government interference in their operations. At a sitting of the Tairāwhiti land board in October 1911, the president, Aleck Keefer, announced his resignation, claiming interference in his legal jurisdiction by the Under-Secretary of the Native Department. A purchasing syndicate had come into the district seeking to obtain coastal lands. Some 15 people had entered into arrangements to sell over 20,000 acres in a single block. The board was asked to consider in its September and October meeting applications for precedent consent for persons to make further purchases. The prospect was that the whole block of around 40,000 acres might be purchased in this way. The Native Department was concerned that some of the purchasers would gain more land than was allowed under the limits on aggregation imposed by the legislation. The correspondence is incomplete, but it seems that Keefer was considering cutting corners for notice, to allow the purchase activity to continue. The under-secretary intervened, arguing that the legislation was being misinterpreted by the president. Keefer's threat of resignation followed. He agreed to remain for a time on the board provided he was not further interfered with.¹⁷⁷ The Native Minister subsequently received a petition from Otene Pitau and 26 others arguing that Keefer was a president who supported Maori interests and did not want to see them wronged. They asked that the under-secretary be removed to another position or be 'directed to keep within his boundaries and work he is fitted to'.¹⁷⁸ It

172. Under-secretary to registrar, Waikato–Maniapoto District Maori Land Board, 12 October 1915, ma 19/11

173. Registrar to under-secretary, 8 October 1915, ma 19/11. It was admitted that on several occasions amounts had been advanced out of the official account to the Crown solicitor and native land purchase officer in order to facilitate purchase of native lands by the Crown.

174. Bowler to under-secretary, 28 June 1913, ma 19/11

175. Under-secretary to all presidents and registrars, 12 July 1907, ma 19/13

176. Under-secretary to all presidents of all Maori land boards, 20 December 1910, ma 19/3

177. Under-secretary to Native Minister, date unknown. First page missing. ma 19/13

178. Petition to Native Minister, 4 October 1911, ma 19/13

seems that these owners were anxious to sell, and backed a board president who would support their preferences in the use of their land.

When it became clear that the Government intended to combine the work of the court and the boards, several judges complained about the increased workloads. Judge Jones in the Tairāwhiti district thought the combining of the offices of the judge and presidency in his district ‘untenable’. His Native Land Court duties kept him absent from his offices in Gisborne for most of the year and therefore he could not keep a proper watch on the money coming in to the land board. He also pointed out that documents requiring the seal of the president and registrar together would have to await his return to Gisborne. Added to that, Jones was also, incredibly, working as the district land registrar at the time!¹⁷⁹ In the Waikato–Maniapoto district, president Bowler was also feeling the pressure, noting in 1912 that his own time and that of his staff was already pushed with the volumes of correspondence being received.¹⁸⁰ He had noted that the boards had developed significant business ever since the Government had increased their jurisdiction and placed more lands under them prior to 1910.¹⁸¹

Maori landowners were also concerned about the increased workload. A meeting of 600 persons in Whakatane in December 1912 said that there was serious ‘inconvenience’ in that Judge Browne was both president of the land board and judge of the land court – this workload was delaying hearings. An extra judge was required.¹⁸² The under-secretary was not however impressed with these arguments. He saw great efficiencies to be gained. If at any time the work of the board should be delayed because the judge was engaged in court work, then an officer of the department could be used.¹⁸³

Notices of sittings pasted in to the front of land board minute books commonly showed a list of court sitting dates with an asterisk beside those places and dates where board sittings would also take place. These notices contemplated that the board would sit on the same day as the court. Presumably it sat in the land court offices. In the Tairāwhiti district, even before the board and the court were practically combined, it seems to have been the practice for the president to conduct public auctions of land in the land court rooms.¹⁸⁴ One can imagine that once the personnel of the court and the boards became the same, Maori owners would have had difficulty in following exactly in what capacity an official, judge or president was acting when dealing with their land. Where did the adjudication function end and the trustee function begin? When should an owner seek to be represented by

179. Memo from Jones J to under-secretary, 21 December 1912, ma 19/13. The local chamber of commerce and the Gisborne Law Society weighed in on the judge’s behalf. See Hamilton Irvine, Secretary of Gisborne Chamber of Commerce, 31 August 1912, and George Stock, President of Gisborne Law Society to Native Minister, 20 August 1912, ma 19/13.

180. Bowler to under-secretary, 19 April 1912, ma 19/11

181. President Bowler to under-secretary, 21 December 1910, ma 19/11. He repeated requests for more staff, being overworked etc ‘this Board is getting to be a big thing under the new Act’.

182. 10 January 1913; Hurinui Apanui and 23 others to Native Minister from Te Whare o Toroa Whakatane, ma 28 31/29, papers for judge’s conferences 1911, 1913, 1922.

183. Under-secretary to Native Minister, 9 October 1912, ma 19/13

184. For example, 17 August 1910, 3 Tairāwhiti District Maori Land Board MB (1910), p 263

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legal counsel, and when could they be sure that the board was acting in their best interests? In his adjudication function, how far was the president taking account of Government policy when it came to an alienation, and how far was he looking out for the future interests of the owners?

In 1918 the administration officer for the Ikaroa and South Island Maori land board resigned, citing the unsatisfactory nature of the board's work, including the point that 'very large sums were held on credit for the beneficiaries for many years with no steps taken to inform Maori that the sums existed, yet the board was often paid a good commission for distributing money'.¹⁸⁵ His other reasons for resigning make interesting reading. The officer alleged:

- in a number of cases, large sums had been advanced out of the board's general funds to meet rates or charges against particular blocks. Yet the board was only liable to pay rates when it had funds in hand for the particular block affected;
- important blocks were actually vested in the board while for others the board was merely agent for owners. For the blocks vested in the board, there had been serious neglect of responsibilities. There had not been regular inspections, a number of these blocks were not bringing in any revenue, and inadequate steps had been taken to secure tenants;
- the payment of rents on some blocks had been allowed to fall into arrears, and rent notices had not been followed up when not complied with;
- where alienations had been confirmed subject to payment, no steps were taken to see that the terms of confirmation were complied with;
- often no steps were taken to carry out directions of the board.

While routine paperwork was maintained, the registrar considered that the land board was entirely overlooking in many cases its responsibility as trustee for Maori. He argued for proper supervision of the work of the boards and pointed also to the several and anomalous roles held by both registrars and board presidents.¹⁸⁶

In fact, boards throughout the country were having problems in fulfilling a prime trustee function, the distribution of purchase monies and rents from alienations. In almost all private alienations confirmed by the boards, a condition of confirmation was that money was paid to the board – ostensibly for later distribution, although the board had powers to hold money and disburse it when it saw fit, having regard to the interests of the Maori sellers. The board used this power extensively, and became, in effect, a kind of welfare agency for Maori. Court minute books are full of applications to release interest or the capital from land purchases. In the case of alienations to the Crown, the boards had a similar role. Maori wanted cash for sales, and would not accept debentures. This policy, combined with Government concern that Maori not be made completely landless and thrown on the resources of the state meant that 'when there are large sums to be paid over to the Natives, the Boards generally insist that a certain portion of the purchase money is handed over to the

185. Registrar of Ikaroa and South Island districts to under-secretary, 10 January (undated but order in file suggests 1918), ma 24/23

186. *Ibid*

Public Trustee, or used to purchase a farm, or stock a farm or other land which the seller holds in his own right.¹⁸⁷

From the outset, the boards had trouble distributing these monies. There were several problems. One was that the beneficiaries were hard to locate, another was that they were often living outside the board district. For example in May 1911 the president of the Tairāwhiti board wrote to the under-secretary seeking permission to travel to distribute £6000–£7000 in rents which had been collected from incorporated blocks, purchase monies in several blocks, a sale in Waipiro, rents in other native townships, and rents from lands vested in the board.¹⁸⁸ In 1910 he had asked permission to travel to Tolaga Bay to pay £2000 purchase monies from the Arakiti no 2 block.¹⁸⁹ The fact that board members had to seek permission of the Government to travel to undertake distribution effectively gave the Government some control over how and when distributions occurred. For example, in 1912 the under-secretary wrote to the same president of the Tairāwhiti board advising that the expense of sending an officer to Opotiki to make disbursements should be avoided.¹⁹⁰ In 1914, Apirana Ngata asked what was being done about delays in distributing rent and purchase monies collected by the boards. Delays of up to 18 months were being experienced. He said that this was due chiefly to the centralisation of the business of the boards and the lack of proper machinery for distribution. Native Minister Herries replied that delays would be minimised now that the boards and land court were ‘amalgamated’. Distribution could now be made through the president of the Maori land board at the sittings of the land court.¹⁹¹

But while the amalgamation may have made for a more efficient land purchasing service, it does not appear to have improved greatly the distribution of purchase monies and rents. In 1915 it was said that in the Waikato–Maniapoto district about 24 inquiries per week were received from Maori owners regarding monies alleged to be due.¹⁹² The situation with the Ikaroa board has been noted.

The other concern of the registrar at Ikaroa, that purchase monies were being used as a general fund, was not an isolated example. In 1913 there was concern that in the Waikato–Maniapoto district, income received from blocks was not being credited to those blocks in the board accounts, but to other blocks the board was responsible for.¹⁹³ Similar problems were found in the Tairāwhiti district, where it was said in 1916 that the board had no accurate records to show that monies it distributed were being distributed to the right owners or former owners according to their particular interests in particular blocks.¹⁹⁴

187. Herries, 3 August 1916, NZPD, 1916, vol 177, p 739

188. President Keefer to under-secretary, 27 May 1911, ma 19/13

189. President Keefer to under-secretary, 28 December 1910, ma 19/13

190. Under-secretary to president, 17 June 1912, ma 19/13

191. 7 October 1914, NZPD, 1914, vol 170, p 448

192. Memo from E T C Downard, accountant to under-secretary, 4 June 1915, ma 19/11

193. Under-secretary to president, 27 June 1913, ma 19/11

194. H A Lambs, audit inspector to controller and auditor-general, 8 May 1916, ma 19/13

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An area that might reward further research is how far the personnel of the boards and the Government were reliant on the boards to be self funding, and to fund native department activities generally. Apart from assisting Crown purchases by making loans, the boards were directly paying some of the costs of the presidents and other officials. For example, the minutes of the Tairawhiti board record a payment of a premium to a finance company for what seems to be a life insurance policy for £500 for the president of that board.¹⁹⁵ If the boards relied on income from sales and leases to fund their expenses, this would have been an incentive for them to hold on to money meant for beneficiaries, or at least have presented a conflict in that regard. But it might also have encouraged boards to ensure that lands were sold or leased for a reasonable price.

1.6 Conclusion

In the period of large scale alienations from 1909 to the mid-1920s, the Maori Land Court and the district Maori Land Boards acted as facilitators and promoters of the alienation of Maori land. Not only were they obliged by legislation to facilitate sales, they also actively encouraged them. They saw their primary duty as ensuring that alienations occurred, whilst leaving enough land for Maori for their 'adequate maintenance'. That phrase was never, however, properly defined. It was watered down by amendments, and there was no requirement to consider the maintenance of groups on the land as opposed to particular individuals.

Because they had contradictory roles both as trustees of Maori land for Maori development, and also promoters of the alienation of alleged 'waste' Maori lands, the boards could not, and did not focus adequately on the needs of their Maori beneficiaries. Indeed, the work of promoting alienation took up much of their time and resources, to the detriment of their role as trustees. They were also placed in the contradictory position of promoting the best price in alienations as land boards, while protecting the interests of non-sellers in partitions carried out by the land court.

The Crown, through provisions in the original scheme for purchasing land under the 1909 Act, and particularly through amendments in 1913, was able to initiate and complete purchases without recourse to the land court or the boards except for partition orders. Indeed, the system of purchasing established by the legislation was so favourable to the Crown, that one wonders in some cases if its purchases were not almost a form of compulsion – particularly where pre-emption and individual share buying was involved.

While many Maori owners undoubtedly wanted to alienate their lands in this period, they also wanted to remain in control of the sale or lease process, ensuring that they received a good price for the land and that cash was provided up front, and that they retained sufficient land for their own use in the changing economy. The

195. 4 July 1910, 3 Tairawhiti District Maori Land Board MB (1910), p 254

discussion surrounding the offer of a quarter of a million acres for lease in 1912 was one indication of this. The demand from six hundred Maori at Whakatane for independent valuations for land was another. When Herries visited the Bay of Plenty district as the new Native Minister, he was told that matters of sale and leasing should be more in Maori hands, and that there should be more Maori faces on the court bench (the appointment of assessors was suggested). The people particularly wanted cash up front for sales, rather than delayed payments.¹⁹⁶

The system of purchasing initiated in 1909 and modified in the subsequent decades did not deliver on these demands. Instead it delivered a system of land boards without Maori representation, with conflicting and confused responsibilities, acting on the one hand as an active promoter of land settlement, on the other as supposed protector of and administrator for Maori interests. The general approach of the boards was not to question the need to settle 'waste' Maori lands, and indeed in some cases provide short term funding for purchases. At the same time it was meant to independently look out for Maori interests by checking that owners were given adequate notice of purchase proposals, that the prices being paid were fair, that the land remaining to Maori was reasonable and properly partitioned and that the former owners received payments or the benefits from payments for the land. Not surprisingly, the boards turned out to be quite poor at fulfilling these latter roles. Because there was no clear description of landlessness in the legislation, and no clear policy for the future development of Maori communities, the boards merely ensured by a cursory examination that individuals retained enough resources that they would not become reliant on the state for support. This was minimal assistance compared with the great advantages Pakeha settlers were obtaining through private and Crown purchasing of Maori land. Even if boards had been inclined to exercise their protective role more powerfully, they could not have prevented many Crown purchases after 1913, when the compulsory requirement to call meetings of owners for blocks with more than 10 owners was removed.

While the land purchase system did ensure that cash payments for sales and rents were readily made, particularly from private purchasers, there were often long delays in distributing those monies, and the boards retained control over much of them. Shortly after wholesale purchasing recommenced under the 1909 legislation, the under-secretary pointed out in very plain terms the logical outcome of the Government policy:

Those who will take the trouble to study the previous reports together with this will naturally come to the conclusion that, proceeding on the lines of the past three years, it will be only a question of a few more years when the Maoris (who some seventy years ago owned all the land) will, as the result of the activity displayed by alienations

196. Attached to memo, Herries to under-secretary, 7 February 1913, ma 28 31/29. They did not agree with the present law which provided that where purchasers could not make up cash payments, a deposit could be made, followed by a series of annual payments. They preferred the cash immediately – and wanted the law amended to provide that the Government pay the full purchase price direct to Maori, and then collect the remaining payments itself, passing on to Maori any interest. On this tour Herries visited Tauranga, Te Puke, Whakatane, Taneatua, Waimana, Opotiki and Rotorua.

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effected during the past three years, for which period an average of 500,000 acres per annum have been alienated, be left with a limited area for occupation. Many who want to work their land find they must lease it to obtain subsistence as . . . ‘very few’ are able to raise finance.¹⁹⁷

In the decade after the passing of the 1909 Native Land Act, there is little evidence that the land court and the boards were empowered or desired to take notice of that warning.

197. Under-Secretary for Native Affairs, 1913, AJHR, g-9, pp 3–4