

## CHAPTER 6. GOVERNMENT LAND POLICIES AND MAORI AUTHORITY OVER FLORA AND FAUNA

### 6.1 Introduction

In 1840 iwi and hapu clearly held authority or rangatiratanga over the flora and fauna of New Zealand. The management and use of indigenous flora and fauna was an essential part of Maori culture, not only for material needs such as food, shelter, medicine, clothing and equipment, but also for cultural and spiritual purposes. These included, for example, the enhancement of group identity through trading or gifting prized items of flora and fauna and the maintenance and transmission of cultural and spiritual knowledge through the management of areas that were important sources of flora and fauna. Iwi and hapu groups within New Zealand had a long history of successful exploitation and management of a wide variety of flora and fauna based products as can be seen in the extensive trading routes developed over many centuries. Flora and fauna based products were also a crucial element in Maori contact with outside groups. For some seventy years before 1840, iwi and hapu groups had established a variety of trading links with Pakeha, mostly based on the use of plant and animal products such as flax, seals, and timber. Maori also confidently exploited and incorporated new flora and fauna products into their economies, including such introduced plants and animals as pigs, potatoes, and corn and by 1840 these had also become an important source of both food and trade.

The Treaty of Waitangi offered considerable protections for iwi authority not only over land, but also over flora and fauna. This is evident in protections for taonga in general in the Maori version of article two, and more explicitly for forests and fisheries, as well as lands and estates, in the English version. For chiefs concerned about the more disruptive features of European contact, the Treaty guarantees seemed to offer an assurance that Maori would be able to retain considerable authority over lands, flora and fauna. The Treaty protections also contained a guarantee of future participation in the new society being developed, through such taonga. Discussions surrounding the signing of the Treaty also led chiefs to believe they could rely on assurances that the Crown would continue to act in good faith towards them.<sup>1</sup>

1. Alan Ward, *National Overview*, vol 2, Waitangi Tribunal Rangahaua Whanui Series, Wellington, GP Publications, 1997, pp 25-26

In terms of flora and fauna therefore, it would seem that the Treaty guarantees protected what might be called 'traditional' Maori authority over control, use and knowledge systems concerning flora and fauna (and other resources) that Maori were undoubtedly exercising by 1840. The Treaty guaranteed Maori that this protection would continue as long as they wished to retain such taonga. In protecting resources such as lands, forests and fisheries, the Treaty guarantees also provided for a significant role for Maori in developing a new society. This implied not only 'traditional' forms of authority over flora and fauna but some kind of partnership role in new forms of management and use of flora and fauna.<sup>2</sup> As this chapter will outline as regards land policies, however, within seventy years Maori had clearly been marginalised in terms of authority over flora and fauna, whether for 'traditional' purposes or in new types of management and new economic opportunities associated with the use of flora and fauna.

Government lands policies played a major role in this process in a number of important ways. In the first place, the Crown sought to undermine Maori authority over flora and fauna by claiming that Maori had given up *all* interests in flora and fauna associated with land that had been purchased. In the Crown's view, legal rights to the use and management of flora and fauna were directly related to land ownership. Crown land policies during the period 1840 to 1912 were directed primarily at purchasing large areas of Maori land for Pakeha settlement, thereby extinguishing all Maori rights in that land, including over flora and fauna. By 1912 the Crown had succeeded in transferring legally recognised ownership of most of the land in New Zealand from Maori into Pakeha ownership. As a result, the legal control of flora and fauna associated with this land was also held to have been transferred from Maori into either Crown or Pakeha control.

In addition, new systems of governance were created with overall control over land policies and through these, indigenous flora and fauna. These new systems were established in such a way that settler interests and concerns predominated, while Maori participation was largely ineffective. These included not only central and provincial governments but various forms of local government powers, including territorial local authorities such as county councils, special purpose authorities such as river, harbour, drainage and roads boards, and special interest groups such as acclimatisation societies. All of these groups were overwhelm-

2. Ibid, p 26

ingly Pakeha controlled, and all gained increasing powers over not only land, but also flora and fauna associated with land. As a result, land policies impacting on flora and fauna were developed largely to encourage and meet the needs of large-scale European colonisation of New Zealand. As settlers became more dominant following the New Zealand wars, antagonism to protecting Maori interests deepened and if the Treaty was considered at all, settlers tended to emphasise Maori obligations under article three, rather than the protections and guarantees of article two. This can be seen for example in the judicial rejection of Treaty status unless embodied in legislation, and the application of public works provisions to Maori land. Maori participation was also even more ineffective at a local government level, often due to difficulties with ratepayer and freehold property qualifications, and the Crown appears to have done little to overcome this. As a result, Maori were effectively excluded from such new forms of management, with significant implications for continued authority over flora and fauna.

This chapter traces the major processes by which Government land policies impacted on Maori authority over flora and fauna. The development and direction of these policies can be roughly divided into three periods between 1840 and 1912. The first period from 1840 to the 1860s saw the transfer of *legal* ownership and with it control of large areas of land and associated flora and fauna from Maori to settler, Crown and Provincial Government control. This period also saw the beginning of the transfer of delegated Crown powers and policies to settler communities. However for much of this period, permanent Pakeha settlement was limited to settler townships and their relatively small hinterlands. Maori were still able to continue exerting considerable authority over the management and exploitation of flora and fauna in large areas outside of this, even where legal ownership now often belonged to the Crown.

In the second discernible period, from 1870 to the end of the 1880s, official land policies reflected the more dominant position of settlers and focused largely on the 'opening up' and development of extensive areas of land for Pakeha settlement. This was to be achieved through both encouraging large-scale settler immigration and building a national infrastructure through major public works programmes. In the process, it was intended to both 'civilise' and swamp the Maori population, effectively ending Maori resistance. These policies were nationally driven and the period saw the abolition of the Provincial Governments. At the same

time, however, local authorities were given substantial development and management powers over land and associated flora and fauna, through the formal strengthening of territorial and special purpose local authorities in areas such as drainage, river control and the encouragement of special settlements.

In the final period from 1890 to 1912, technological innovations and the development of scientific farming finally made the immigrant ideal of small, family farms economically viable. The success of Pakeha farming tended to confirm Pakeha views that all land could and should be farmed for the 'national good' and that economically unimportant indigenous flora and fauna should not be allowed to remain an impediment to this. Most remaining Maori land was located in the North Island by this time and Pakeha concerns began to focus on this area in the drive to properly utilise all potential farmland. Maori landowners were widely criticised for not utilising their land properly even though many problems for Maori farmers continued to stem from Crown policies such as fragmentation of title, and exclusion from cheap credit. The Pakeha perception of 'proper' use of land also did not allow for traditional forms of harvesting flora and fauna. The perception of 'idle' Maori land helped confirm Pakeha prejudices that Maori were not 'good' farmers and gave impetus to campaigns to acquire even more Maori land, by compulsion if necessary, and to freehold leases.

Land policies for this period were determined by Liberal Governments who were primarily concerned with the 'opening up' of land for closer settlement for farming. Leasehold tenure was acceptable to Liberals if this allowed land to be used for farming. Maori also preferred leasing to the relentless drive for freehold, as it allowed them to retain overall land ownership and therefore some authority over decision making including over flora and fauna. However the Liberals increasingly bowed to electorate pressure to make leasehold terms more acceptable to Pakeha lessees and to facilitate the transformation of leasehold into freehold tenure. As the focus of economic activity shifted to the North Island, the Liberals also increasingly bowed to pressure to purchase large areas of remaining Maori land in the interests of Pakeha settlement. Counter to this, from the 1890s, some Pakeha began calling for protections for the increasingly small remnants of indigenous forests and wildlife left as a result of farming developments. This was given some commercial impetus with the inclusion of significant areas of New Zealand as part of a national and

international tourism industry. This often meant that the last areas of flora and fauna over which Maori were able to exert traditional management, in isolated river areas or on offshore islands, became sought after for scenery or wildlife preservation. A series of legislative measures were begun during this time that would eventually threaten Maori authority over even these remaining areas.

## 6.2 1840 – 1860

British intervention in New Zealand in 1840 seems to have been largely based on the view that large-scale European colonisation of New Zealand was imminent and inevitable. The British Colonial Office appears to have been convinced of this mainly by the sheer volume of reports received from a variety of non-Maori groups with interests in New Zealand. These included officials, land speculators, immigration agents, traders and missionaries.<sup>3</sup> By the late 1830s there was also a thriving market in Sydney and London in purported deeds to large areas of New Zealand. The British response was to intervene, if somewhat reluctantly, in order to ensure that the inevitable colonisation was properly organised and conducted, and the indigenous people were given some protections. Lord Glenelg, Secretary of State for the Colonies, summarised the official view in December 1837, when he wrote that he believed settlement had 'to no small extent' already taken place in New Zealand and now the only choice lay between 'a Colonization, desultory, without Law, and fatal to the Natives, and a Colonization organized and salutary'.<sup>4</sup> British intervention therefore was designed to better control colonisation, while at the same time protecting Maori from its worst consequences.

In the late 1830s British officials were also under the impression that Maori were willing participants in the European colonisation of New Zealand. The guarantees to Maori in the Treaty of Waitangi now appear to sit uneasily with the knowledge of those drafting the Treaty that large-scale colonisation was about to take place. It is not clear however whether this tension was so well appreciated at the time. A minority of European settlers and resident missionaries did have some appreciation of Maori tenure, but the vast majority of interested Europeans were convinced that Maori did not intend to *retain* their taonga very long at all. They firmly believed that Maori were willing and anxious to sell their land cheaply in

3. James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century*, Auckland, Allen Lane The Penguin Press, 1996, pp 180-187; Alan Ward, *An Unsettled History: Treaty Claims in New Zealand Today*, Bridget Williams Books, Wellington, 1999, p 12

4. Glenelg to Durham, 29 December 1837, CO 209/2, p 410

return for the advantages that colonisation would bring. Historians such as Michael Belgrave have argued that the impression that Maori would sell, or had already sold, their lands and associated resources meant influential European interests put up relatively little opposition to the Treaty guarantees, at least in 1840, because of the qualification in article two 'so long as it is their wish and desire to retain the same in their possession'.<sup>5</sup> Instead, most pre-1840 land claims were based on claimed *purchases* from Maori. This at least recognised Maori had sufficient rights in land to be able to sell it.<sup>6</sup> It has been estimated that the total amount of land Europeans claimed to have purchased in pre-Treaty deeds before 1840 exceeded the total land area of New Zealand.<sup>7</sup> Many of those claims were dropped or abandoned when the Crown began investigations into them, but even those that were seriously pursued still amounted to about half of New Zealand.<sup>8</sup> The New Zealand Company for example, based its 1839 land claims to some 20 million acres in New Zealand on purported purchases from Maori chiefs, although it quickly resorted to attacking Treaty guarantees and recognition of Maori tenure when difficulties in obtaining Crown title for the 'purchases' became apparent.<sup>9</sup> In reality, the belief that Maori were willing sellers made it relatively straightforward for virtually all European interests in 1840 at least, to acknowledge some form of aboriginal title and to agree to some form of fair purchase. 'Political recognition of customary rights was made possible by the belief that customary title had already been extensively extinguished'.<sup>10</sup>

When Britain intervened in 1840 therefore, British officials believed their major concern would not be whether Maori would part with their land (and associated resources) but how best the trade in land might be controlled in the interests of orderly settlement and protections for Maori. In this regard the doctrine of Crown pre-emption included in the Treaty was crucial, although as will be seen, its interpretation was to have a profound impact on Maori authority over land and, with it, flora and fauna. Crown pre-emption meant that only the Crown could deal directly with Maori for their land. In 1840 investigations into pre-Treaty purchases still had to be undertaken and in the meantime it was assumed there would still be a continuing trade in land. It was originally intended therefore that pre-emption would give the Crown some control over the continued pace of colonisation and where in New Zealand it might occur. Pre-emption also made it practically possible for the Crown to apply the notion of radical title being held by the Crown on the transfer of sover-

5. Michael Belgrave, 'Pre-Emption, the Treaty of Waitangi and the Politics of Crown Purchase', *New Zealand Journal of History*, vol 31, no 1, 1997

6. *Ibid*, pp 27–28

7. Ward, *Unsettled History*, p 74

8. Ward, *National Overview*, vol 2, p 31

9. Patricia Burns, *Fatal Success: A History of the New Zealand Company*, Auckland, Heinemann Reed, 1989, p 111

10. Belgrave, p 28

eignty, subject to Maori interests. Through this the Crown asserted the right to investigate pre-1840 claims and, if necessary, return any land to Maori that may have been unjustly acquired (and keep the excess of that that was justly acquired). The importance attached to controlling the land trade can be seen in the separate proclamations issued by Governor Gipps of New South Wales and Captain Hobson in January 1840, before the Treaty was even signed. These warned that no purchase of land in New Zealand before 1840 would be considered valid until confirmed by a grant from the Crown. Pre-emption also enabled the Crown to curb the speculative market in land by controlling how title could be acquired, rather than limiting Maori rights to sell. In addition pre-emption enabled control of land prices and the possibility of some degree of self-funding for the new colony.

The assumption that land for colonisation could be obtained for low prices was another important feature of Crown land policies. Most Europeans assumed that not only were Maori anxious to sell considerable areas of land, but they would do so for low, or 'nominal' prices. Many influential European theories on colonisation held at this time that the value of land depended very much on its cultivation and use by settled and civilised peoples.<sup>11</sup> Therefore the real value to the aboriginal peoples would not be in the immediate price paid for the land but in the benefits to flow from the 'civilised' settlement that followed. It was assumed that aboriginal peoples would willingly abandon their old ways for the chance to become part of this civilisation. Thus Secretary of State Lord Normanby directed Lieutenant Governor-designate Captain Hobson to not only negotiate a treaty, but to go on to obtain from Maori by 'fair and equal' means as much of their 'waste' or uncultivated land as was required for settlement. This policy also assumed that Maori would inevitably shift from their reliance on seasonal harvesting of 'wild' indigenous flora and fauna to undertake settled cultivations of largely exotic, domesticated, flora and fauna along European lines. The land was to be purchased at a low price and then on-sold to settlers for a profit to finance the new colony. Normanby argued that this was not unjust because 'To the natives or their chiefs much of the land of the country is of no actual use, and, in their hands, possesses scarcely any exchangeable value'. The assumption that much of New Zealand was 'of no actual use' to Maori also enabled Normanby to include in the same instructions the proviso that no purchase was to be made of land that, for Maori, was 'essential or highly con-

11. For example, Emmerich de Vattel, *The Law of Nations; or Principles of Natural Law; Applied to the Conduct and Affairs of Nations and Sovereigns*, London, 1760

ducive to their own comfort, safety or subsistence'. Purchases were also to be limited to only that land that could be alienated 'without distress or serious inconvenience'.<sup>12</sup> Officials apparently did not appreciate the inconsistencies in these instructions. Historian Alan Ward has pointed out that there was already a burgeoning land trade in unimproved land revealing it did have a value even at the time and although a settled Crown granted title did add value, it did not add as much value as was commonly assumed.<sup>13</sup> Nevertheless the view that Maori land could and should be purchased cheaply was to have a major impact on official land policies well past the first few decades of settlement.

Although the pre-Treaty purchase claims were based on some acknowledgement of Maori customary interests in land (including secondary interests in associated flora and fauna) that had to be purchased, British colonial policies were also strongly influenced by international theories that rejected such acceptance of customary tenure. These theories held that not only was land cultivation a superior form of land use, but that cultivation itself was a primary means of establishing land ownership. This theory viewed 'waste' land not so much as land that was of little use and therefore could be bought cheaply, but land that was not used, so therefore not 'owned', by indigenous people. Therefore on the transfer of sovereignty, such land became Crown land on the Crown assumption of radical title, unencumbered by customary interests. The writings of Emmerich de Vattel, discussed above in chapter 4, were important in the development of this doctrine.<sup>14</sup> This view had become very popular with European colonisers, including those involved in previous British colonisation, for example in the Caribbean in the second part of the eighteenth century.<sup>15</sup> In September 1839, Lord Russell replaced Lord Normanby as Secretary of State for the Colonies and his views were more closely aligned to these theories. He assumed that there were large areas of 'waste' lands in New Zealand that Maori could claim no rights to, because they did not use them. Instead such lands had automatically become part of the lands held by the Crown in its own right (Crown demesne) as the result of the transfer of sovereignty from Maori chiefs. The assumption that the Crown would have automatic access to large areas of 'waste' land led, for example, to the early agreement between the Crown and the New Zealand Company in November 1840, that a grant of four acres would be made for every pound the Company had spent on its

12. Normanby to Hobson, 14 August 1839, *BPP* (IUP reprint), vol 3, p 87

13. Ward, *National Overview*, vol 2, pp 22-23

14. de Vattel, *The Law of Nations*. This work was first translated into English in 1760 and legitimated colonial annexation on the basis that those who did not cultivate land could claim no right to it. An example from it is the following: 'those people like the ancient Germans and the modern Tartars, who having fertile countries, disdain to cultivate the earth and choose rather to live by rapine, are wanting to themselves and deserve to be exterminated as savage and pernicious beasts . . . there are others who, to avoid agriculture, would live only by living on their flocks. This might doubtless be allowed in the first ages of the world, when the earth, without cultivation, produced more than was sufficient to feed its few inhabitants. But at present when the human race is so multiplied it could not subsist if all nations resolved to live in that manner. Those who retain this life usurp more extensive territories than they would have occasion for, were they to use honest labour, and have therefore no reason to complain if other nations more laborious and closely confined come to possess a part' (p 37).

15. For example, Richard H Grove, *Green Imperialism: Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600-1860*, Cambridge, Cambridge University Press, 1995, pp 284-287

New Zealand venture. This in turn effectively enabled the Company to become a major agent of colonisation of New Zealand.

The theory that there were large areas of 'waste' land in New Zealand to which Maori had no rights did not last long in the face of the practical reality of iwi ability to physically reject it. The concept nevertheless remained an important background influence in Crown land policies. For example, it underlay Crown lands policies that distinguished between lands where Maori had residences, Pa and cultivations that required some protection and other 'unoccupied' lands that received few protections. It also helped justify the very low price paid when the Crown did eventually acknowledge that even 'unoccupied' and uncultivated lands had to be purchased.<sup>16</sup> It also appeared again in a slightly different guise around the turn of the century in the campaign to purchase 'unutilised' and 'idle' Maori lands. The continuing influence of this theory had important implications for indigenous flora and fauna as well as land, because it helped confirm the distinction between the superiority and importance of cultivated, introduced and domesticated flora and fauna as opposed to the inferiority of uneconomic, and therefore largely unimportant, 'wild' and 'unproductive' indigenous flora and fauna.

A final important Crown assumption underlying colonisation of New Zealand was the view that British legal notions involving land ownership rights should automatically apply to land transactions involving Maori as a result of the British assumption of sovereignty through the Treaty of Waitangi. By the nineteenth century, landowners in Britain had succeeded in having landed property treated in most cases as a transferable commodity. Old notions of common law customary rights associated with land were correspondingly recognised in much more limited and formalised ways. Rights of property ownership also included legal rights to resources attached to the land such as timber or minerals and these could also be transferred absolutely along with the land. Historians such as Rollo Arnold have traced the move to more strictly legal property rights in Britain as being a major factor in the enclosure movement. This resulted in the loss of common feudal rights and previously traditional privileges for peasant farmers, including for example, wood gathering or the taking of limited amounts of wild game.<sup>17</sup> The view that identifiable parcels of land could be treated as absolutely transferable commodities free of any ongoing obligations or relationships between the landowner and the community encouraged markets in land speculation, and under-

16. Ward, *National Overview*, vol 2, p 28

17. For example, Rollo Arnold, *The Farthest Promised Land: English Villagers and New Zealand Immigrants of the 1870s*, Wellington, VUP, 1981, chapter 2

pinned the establishment of private investment ventures such as the New Zealand Company. As noted above in chapter 5, Arnold has shown, many of those attracted to the Company emigration scheme were from the landless rural class in Britain who were suffering deteriorating living conditions as the result of the loss of traditional privileges and the impact of the enclosure movement.<sup>18</sup>

European assumptions that Maori were willing and anxious to sell large areas of land cheaply in order to gain the advantages of civilisation were partly based on apparent Maori willingness to encourage Pakeha settlement and to adopt new technologies and economic opportunities. There is evidence that Maori did indeed encourage Pakeha settlement and were keen to participate in the advantages Pakeha were known to bring, such as goods and technologies and markets for produce. By 1840 Maori already had experience of some seventy years of contact with Europeans, predominantly through trade. This previous experience was however based on the harvesting of resources such as whales, seals, flax and timber. There were small settlements of Pakeha engaged in these industries but their use of land was tied to the harvesting of various flora and fauna. It was not primarily based on the ownership and cultivation of land and when the use of a resource ceased, so typically did the Pakeha occupation of the land. Where land occupation continued, this was generally because Pakeha had married into a local Maori community and continued reciprocal relations with that community. This kind of occupation of land was easily accommodated into existing systems of Maori tenure and did not seriously threaten traditional authority over land or flora and fauna. In welcoming more Pakeha settlement, Maori may well have expected a continuation of relationships based on this past experience. However the proposals for large-scale colonisation implied an entirely new perception of land rights based on absolute, transferable, ownership that was well outside what Maori may have been expected to anticipate.

It is true that by the late 1830s some Maori, especially in Northern parts of New Zealand, did have more understanding of the European concepts of deeds, and what these might involve. By then a vigorous market in purported deeds to land in New Zealand had developed among Pakeha in Sydney and London. Some chiefs also seemed to accept the idea that deeds might be transferable by allowing a holder other than the original purchaser to use them to claim rights to settle. However, these

18. *Ibid*

developments still need to be seen within the limits of Maori experience. Chiefs might well make accommodations to encourage settlement; especially if the newcomer appeared to be willing to fulfil Maori expectations such as payment of tributes, provision of goods through trade, and an ongoing relationship with the local Maori community. Importantly this presented no real threat to Maori authority, as chiefs could still physically repudiate a claimed deed if they chose. Maori willingness to continue contact and have access to 'their' own groups of Pakeha, appear to have been misinterpreted by Pakeha who through the filter of eurocentric assumptions, assumed Maori were therefore willing to entirely abandon their own culture for the promised advantages of civilisation.<sup>19</sup>

The flaws in many European assumptions about colonisation quickly became apparent to Crown officials, especially those resident in New Zealand. Within a few years of 1840 it was evident that Maori rights to land could not be as quickly, easily and inexpensively extinguished as had been widely assumed. Further, the Government had very little money with which to fund such purchase activity as was necessary to extinguish Maori customary rights. As early as 1842, it was also clear that Maori had never had any real intention of alienating anywhere near the land claimed to have been purchased by private individuals before 1840. Moreover Maori ascendancy was such that iwi still had the power to continue living and using resources within the boundaries of many areas Pakeha claimed to have purchased. The Wairau 'incident' in 1843 showed for example that iwi were prepared to use armed resistance if necessary. The Crown had established investigations into pre-1840 purchase claims, known as 'old land claims'. However the complicated nature of Maori land tenure and use rights soon became more apparent through this process. Hopes that it might provide the Crown with significant areas of 'surplus' land for colonisation purposes also quickly evaporated. This was supposed to be derived from the difference between the actual area claimed to have been validly purchased, and the limited area from this that the Crown was willing to grant to successful claimants. However the investigating commissioners found that there was much less land validly involved than first claimed and any 'surplus' to the Crown was correspondingly small. Officials who were most closely involved with the claims and who had gained experience in the Maori language began to suggest that meaningful purchases would probably only be possible if they were conducted slowly and carefully, if they involved only relatively small areas of land, and if

19. See for example Waitangi Tribunal, *Muriwhenua Land Report*, GP Publications, Wellington, 1997

they were located so Maori still had access to them for purposes such as trade.<sup>20</sup> This took the Crown back to procedures the CMS had developed before 1840. These included extended and open discussions amongst those claiming interests in the land, recognition of the varied nature of rights over the land, walking over the land to ensure boundaries were known and the use of Maori language deeds to convey the nature of the transaction.<sup>21</sup> While it was possible to purchase small areas under these procedures it was much more difficult as the size of a block increased and in the case of the large New Zealand Company claims, it was increasingly apparent that they had failed to come anywhere near these standards

The realisation that Maori had not agreed to alienate huge areas of land and showed little interest in doing so presented considerable problems for the Crown if it was to remain committed to large-scale colonisation. The period 1840 to 1860 reveals how the Crown sought to develop land policies to deal with this conflict now it had become much more real. The Crown at first attempted to do this by mediating in the large purchases the New Zealand Company claimed to have made. At first, the Crown insisted that the claims had to be properly investigated in spite of intense opposition from Company interests and sought to negotiate the 'completion' of purchases in a manner that took account of Maori interests. For example, Crown officials assured Maori the Crown would continue to act in good faith towards them and created a Maori Protectorate as evidence of this. The Crown also promised Maori that they would gain future benefits from completing the sales, including the rise in value of remaining land, employment opportunities, and the provision of schools, hospitals and other services. Maori were also promised ample reserves out of the sales and that their pa, cultivations and waahi tapu would be retained and protected. Ward has noted that Maori could not help but gain the impression from this that they would be able to keep their most valued lands and also participate substantially in the developing Company settlements.<sup>22</sup>

There is evidence that Crown officials did at first take their promised duties of protection to Maori seriously believing that they could encourage a kind of chiefly gentry who would participate in decision making in the new colony. When Donald McLean was appointed sub-protector of aborigines at Taranaki in 1844 for example, his instructions from Chief Protector George Clarke were that when he was involved in completing purchases from Maori, 'in no case should they be deprived of their estates or cultivations, and that no lands shall be taken possession of but those

20. Ward, *National Overview*, vol 2, p 38

21. For example, Belgrave, pp 34–35

22. Ward, *National Overview*, vol 2, pp 81–82

they have or may be willing to alienate'. His duties also required McLean to mediate between settlers and Maori. In that respect he was informed that, 'it is characteristic for Europeans to tyrannise and assume superiority especially where there is a difference of shade in the skin... An honourable union between Natives and Europeans should be encouraged'.<sup>23</sup>

However, as difficulties with purchases became increasingly apparent, land policies appear to have increasingly favoured settler interests. This was apparent even with investigations into the pre-1840 claims. Maori had been assured during discussions over the Treaty for example, that any land found to have been unjustly acquired would be returned.<sup>24</sup> However in finding that land was more difficult to acquire than anticipated, the Crown quickly adopted the policy that any 'surplus' land would be considered Crown land for the purposes of colonisation. Even this may have been perceived as a benefit to Maori who in many cases were still clearly willing to encourage small groups of Pakeha to settle in their midst. However, the Crown appears not to have consulted with Maori over the disposal of surplus land and instead land was made available entirely to meet the needs of Pakeha settlement. The Land Claims commissioners were also required to regard every type of pre-1840 claim as an absolute sale. The original Land Claims Ordinance of 1840 referred to a variety of possible means of land transaction, for example, leases or gifts as well as sales. This had the potential for recognising that in many cases what Maori were 'selling' were use rights in return for some kind of regular tribute or reciprocal relationship – something considerably less than an absolute transfer of all rights. However, the commissioners' instructions and their subsequent proceedings limited the focus of the inquiries to treating every transaction as though, if found to be valid, it represented a conveyance of absolute title with any Maori customary interests being entirely extinguished.<sup>25</sup> As Ward has noted this was 'fatal' to the recognition of other kinds of transaction that might have allowed Maori to retain some kind of interests in the land (and therefore over flora and fauna associated with the land).<sup>26</sup> Such an alternative can be seen in the arrangements that existed between some missionaries, and the Maori that they had 'acquired' land from for their stations. Robert FitzRoy, in his evidence to the British Parliamentary select committee on New Zealand in 1838, recounted how Maori who had sold land to missionaries in the Bay of Islands had never been evicted from it, and had been allowed 'the Run of the Land, the Right of Common as it were'.<sup>27</sup> Many of the proce-

23. Instructions, George Clarke to McLean, 2 August 1844 in McLean papers, ATL ms micro 535-002

24. Ward, *Unsettled History*, p 16

25. Ward, *National Overview*, vol 1, p 46

26. *Ibid*

27. Evidence of Captain R FitzRoy, 11 May 1838, 'Report and evidence of 1838 Select Committee on New Zealand', BPP, vol 1, p 174

dures adopted in dealing with old land claims were to have long lasting effects on subsequent land policies. For example, Governor Hobson decided not to require surveys of land grants on the practical grounds that this would have been too expensive and difficult to undertake. This policy continued on into later systems of Crown purchasing on much the same grounds. However the lack of definite boundaries left Maori with considerable uncertainty over what areas were involved and whether important sources of flora and fauna might be included. This was probably not a problem in the short term, as it seems likely that Maori would have continued to harvest resources especially on 'surplus' land now legally owned by the Crown. There were however long term legal implications for continued Maori control of such resources. The process also denied Maori the opportunity to present their views on acceptable boundaries or to discuss what other interests they might believe they retained with regard to resources such as timber, flax or mahinga kai associated with the land. The Crown also abandoned the idea of investigating whether adequate reserves had been made for Maori when old land claim grants were made or whether the promises made as part of many of the transactions had been given effect to, and if not, how this might be done.<sup>28</sup>

The Crown was also faced with trying to make new purchases from Maori, as the area provided by old land claims proved inadequate for large-scale colonisation. In the process, it was found that a very strict interpretation of pre-emption was a valuable means of ensuring that low prices for purchases could be maintained. Beginning with the Land Claims Ordinance 1841, various ordinances began including all types of land disposal under the constraints of Crown pre-emption, not just land sales. This included the leases of both land and resource rights such as those to timber, through timber cutting licences.<sup>29</sup> This enabled the Crown to enforce low prices in all areas as Maori had no one else to deal with, and the Crown rather than Maori stood to gain from any increases in capital value. Apart from a short period between 1844 and 1845 when Crown pre-emption was waived under Governor FitzRoy, the Crown enforced its general right of pre-emption until the Native Land Court became operational in 1865. Maori supported the short-lived waiver because of the low prices paid to them by the Crown. However, without sufficient safeguards, the free market failed to realise much higher prices and most sales under the new system were limited to around Auckland.<sup>30</sup>

28. *Ibid*

29. Ward, *National Overview*, vol 2, p 26

30. Ward, *National Overview*, vol 1, pp 50–52

The system was also short-lived and the new Governor, George Grey, re-stored pre-emption in 1845.

Up to 1846 Colonial Office officials still vacillated over whether or not the Crown should recognise Maori customary rights in 'waste' land. By 1846 opinion that they should not be recognised had strengthened. Therefore the 1846 instructions to Governor Grey required that he not repudiate any recognition of tenure already forced upon him, but he was to 'avoid as much as possible any further surrender of the property of the Crown'.<sup>31</sup> Grey was to investigate Maori title and register land Maori claimed, while claiming the remainder for the Crown. Grey already knew Maori could effectively resist this policy and he proposed an alternative that in effect sought to realise what Crown officials had assumed in 1840, that Maori rights could be recognised to all of New Zealand, but that they could nevertheless be easily extinguished. Grey used the known complexity of Maori tenure and the known willingness of Maori to have settlers live amongst them, to claim quite misleadingly, that there were large tracts of land in New Zealand over which Maori ownership was disputed and therefore over which no Maori could claim a strictly 'valid' right. In those areas he claimed that Maori would willingly sell land for a nominal price. Grey claimed he could therefore extinguish Maori title over large areas of land for a 'trifling' consideration ahead of the needs of settlement, while reserving adequate areas for Maori needs.<sup>32</sup> Through this Grey was also reinforcing the British perceptions of land use, that only cultivations and settled residence sites were of real value. This was to have a major impact on large areas of so called 'unoccupied' lands used for traditional harvesting of flora and fauna and that might also have the potential to be exploited for new economic opportunities. Grey also reinforced the belief that such land could be bought cheaply, even though by then some Maori, notably in the Wairarapa, were obtaining considerable, if illegal, rental moneys from graziers on their open 'waste' lands.

This policy was accepted and as a result it was finally officially acknowledged that Maori interests in all the lands in New Zealand had to be purchased. Governor Grey and his Chief Land Purchase Commissioner, Donald McLean, then began to undertake a series of 'blanket' purchases, seeking to extinguish all Maori interests over very large areas of land. A number of agreements between the Crown and the New Zealand Company and its affiliates in 1846 and 1847 led to the Crown 'completing' purchases that secured large areas of hinterland around Company settle-

31. Earl Grey to Governor Grey, 23 December 1846, *BPP*, 1847, pp 68–69

32. Grey to Earl Grey, 15 May 1848, *BPP*, 1847–50, pp 22–26

ments in the districts of Otago (Otakou), Wellington, Nelson/Marlborough, Taranaki and Whanganui. Some of this was granted to the Company, while the Crown retained large areas. By 1865 almost all the South Island – some 34 million acres – were declared to have been purchased. In addition, over seven million acres in the North Island had been purchased. This included seventy five percent of the Wairarapa, about fifty percent of Hawkes Bay, and fifty five percent of Auckland.<sup>33</sup> The result was the progressive enlargement of the Crown's holdings, now known as Crown 'waste land' and the proportional diminution of Maori interests.<sup>34</sup> As part of this, the early New Zealand Company purchases were treated as a special form of old land claim that Commissioner Spain was appointed to investigate. His investigations quickly moved from looking at the validity of the purchases to arbitrating them and as much as possible finding means of 'completing' them.<sup>35</sup> Spain eventually found that the New Zealand Company was entitled to some 151,000 acres of the land it claimed to have purchased in Nelson. However the 'blanket' purchases in the district added almost two million acres to the hinterland of the Nelson settlement by 1848, much of it declared Crown waste lands.<sup>36</sup>

These large 'blanket' purchases had major implications for Maori authority over flora and fauna because the sales were treated as an absolute extinguishment of *all rights* in the land involved, including rights to resources such as forests, swamps and wildlife associated with the land. The large interior of the Nelson district for example, was now considered Crown land. The Crown stood to gain from any on-selling of the land, as well as from the new economic opportunities of the next few decades in pastoralism, gold mining and timber, through for example pastoral leases, and mining and timber licences. Maori were left with only the small prices paid for the land, uncertain reserves and the loss of potential future income from licences and leases. Importantly, ownership of the 'waste' lands also gave the Crown control over where and how resources such as flora and fauna in the district might be exploited. Maori had always shown themselves willing to take advantage of new economic opportunities and would not necessarily have opposed many economic developments involving flora and fauna. Some became involved in timber milling and gold mining in the Nelson district for example. However Crown control of large areas of the Nelson district meant Maori had little say over how activities such as milling or pastoralism might impact on important resources, through for example the use of indigenous food

33. Ward, *National Overview*, vol 1, p 8

34. Ward, *National Overview*, vol 2, p 50

35. Ward, *National Overview*, vol 1, pp 48–50

36. Duncan Moore, "Surplus Lands" in the New Zealand Company's Districts' in Ward, *National Overview*, vol 1, pp 170–171

sources, the pollution of important fisheries and the introduction of pests. Having lost legal ownership of land, Maori were regarded by the Crown as having lost the right to effectively participate in decision making over the use or protection of flora and fauna associated with the land.

If, as the Crown claimed, Maori had given up all rights to land and resources that were sold, then land that was excluded from the sales and designated as reserves for Maori was critically important in meeting Crown obligations of continuing protection for areas Maori wished to retain. In the case of flora and fauna these included valued areas such as timber stands, bird snaring areas, and resource rich streams, swamps and lagoons. Sale reserves also had to be sufficient to meet Crown assurances that Maori would be able to participate fully in new economic opportunities. Crown reserved lands policies were therefore crucially important for continuing Maori authority over flora and fauna, and the ability of Maori to continue participating in new developments concerning flora and fauna.

Crown officials do appear to have made some efforts to provide adequate reserves in early purchases, where the Maori groups involved were perceived as powerful. For example, in 1846 in negotiations to secure more land for the New Zealand Company at Whanganui, Land Purchase Commissioner Donald McLean noted Maori concerns over timber on the land. He reported that he explained that the trees would be sold with the land, and that they could not be regarded as separate. However, he did not need to press the point, as the bush Maori most wanted was located on a proposed reserve.<sup>37</sup> Some reserves made were also initially quite large, taking into account Maori needs for traditional harvesting and the need to run sufficient pigs to supply markets – an important economic activity for Maori in the first decade after 1840. The large reserve initially made in the Wairau purchase in 1847 comprising some 117, 248 acres is perhaps the best example of this. In justifying this large reserve to his superiors, Governor Grey revealed officials had a good understanding of Maori needs for large areas for traditional harvesting over and above their domestic cultivations. This included areas suitable for gathering fernroot, fishing, and running pigs.<sup>38</sup> It was also clear, though not stated so openly, that the Government still regarded Ngati Toa as capable of effective resistance at this time. As result of settler antagonism and perceptions of what was 'good' for Maori, however reserves policy soon became much more limited in the size of reserves officials were prepared to grant.

37. McLean journal, correspondence, 15 May 1846, McLean papers, ATL ms 1284

38. George Grey to Earl Grey, 7 April 1847, *BPP*, 1847–48, p 16

The large Wairau reserve, for example, was lost through subsequent Crown purchase within six years, by which time Ngati Toa had also become much less of a threat.

Another major problem with reserves policy was the lack of official clarity about the purposes individual reserves were intended to serve. There were generally two main policy aims with reserves. One was to allow Maori to preserve valued areas containing traditional cultivations, pa, waahi tapu and resources that were traditionally harvested such as flax, fish and birds. The other main aim of reserves was to ensure that Maori would gain economically through increases in commercial value, steadily increasing rental income and the development of reserves for new economic purposes such as European-style farming. This had the potential to meet Treaty guarantees but not when the same reserves were required to meet the often-incompatible types of land use required. For instance, land could have great value for traditional purposes when protected as a swamp because of the abundant bird, fish and plant life it might sustain. However the same land could be quite worthless for rental or farming purposes. In developing a reserves policy, the Crown took over the Company system of tenths reserves, which itself was hopelessly confused between reserves for 'occupation' and 'investment'. The Crown also had a policy for some years of retaining fifteen percent of profits from the resale of Crown lands for Maori purposes which may have helped make up for inadequate commercial reserves. This was, however, based on the early assumption that there would be large areas of 'surplus' land for the Crown to derive an income from. Once it was clear there would not be such large areas, official enthusiasm for the policy largely evaporated.<sup>39</sup>

Confusion over the purpose of the reserves combined with the pressure to limit their size and number led Crown officials to increasingly expect the same reserves to serve what were often essentially incompatible goals. A brief survey of purchase deeds for the Nelson region indicates that officials tended most often to agree to reserves for traditional harvesting purposes precisely because they were considered valueless to Pakeha settlers, and therefore less likely to conflict with the needs of settlement.<sup>40</sup> For example, at Te Parapara near Aorere, officials recommended extending a reserve to the size originally promised as 'it is only suitable for Native purposes. The land generally is of a very inferior description'.<sup>41</sup> Similarly, when McLean visited the Nelson area to complete

39. Ward, *National Overview*, vol 1, pp 22–23

40. Cathy Marr, 'Crown-Maori Relations in Te Tau Ihu: Foreshores, Inland Waterways and Associated Mahinga Kai', Treaty of Waitangi Research Unit, 1999

41. Alexander Mackay, *Compendium of Official Documents Relative to Native Affairs in the South Island*, vol 1, p 296

purchases in 1856, he felt required to justify a relatively large reserve promised at Robin Hood Bay. He did this on the grounds that it had no more than 4000 acres of good land, the rest being swamp and as such valueless to Europeans. Even though he considered it would only support one cattle run, he nevertheless believed it would support the 120 Maori who lived there allowing them to increase their herds of horses and cattle, as well as at the same time continuing traditional sea fishing and cultivations. McLean backed his arguments with appeals to justice and economy, but the most important reason he had for allowing the Maori community to remain, was because he believed they would be 'of decided advantage' to any Europeans settling in the area.<sup>42</sup>

Officials increasingly seemed to believe that decidedly inferior land, often considered worthless by Europeans, would support not only new European style agriculture, but also traditional hunting, fishing and gathering as well. In fact, land suitable for traditional purposes seems to have been selected most often for reserves, precisely because it was of least value to Pakeha. However this meant that Maori were often left with very little land suitable other purposes. The amount of land suitable for cultivations was often insufficient to support even subsistence living, let alone enabling the production of a surplus that could be sold to generate an income for capital for investment. For example, Alexander Mackay reporting in 1865 on the potential of reserves in the Northern South Island to provide rental found most to be 'worthless', 'poor' and 'indifferent'.<sup>43</sup>

Grey and McLean were manipulative in dealings over reserves and at times appear to have been less than honest about their intentions. They refused to accept that land might have value for both Maori and Pakeha other than for purely agricultural purposes. In making purchases they promised 'ample' reserves that would contain the 'best' land. At the same time they threatened that Maori stood to miss out altogether from the advantages of settlement and new economic opportunities if they refused to sell. They promised Maori opportunities to participate in new developments through selling land but they revealed when they described their vision of a future New Zealand, that they expected Maori to become a remnant minority, if indeed they survived at all. For example, in negotiating with Te Atiawa in 1856, McLean noted in his correspondence that securing the bays and harbours in Cook Strait and Queen Charlotte Sound and establishing British rule over the whole South Island, was a 'very important' goal of the purchase. Yet in talks with Te Atiawa, after

42. McLean journal, vol 4, entry 30 January 1856, McLean papers, ATL ms 1287

43. A Mackay to Native Minister, 6 December 1865, in Mackay, *Compendium*, vol 2, pp 310-312

assuring them that their reserves contained the best land, he then told them that their land was generally so poor and hilly, he would not have been included it in the purchase at all if he had known. After the deed was signed, he privately recorded his own hopes that the area just purchased would become the future home of a great, glorious, happy and contented people 'who will treat with kind indulgence any of the aboriginal remnants who may reside among them.'<sup>44</sup>

Other policies also tended to negate the value of reserves. For instance, even though commercial return was a major benefit promised to Maori as the result of reserves, officials actively discouraged leasing of Maori reserves when this was seen as being against the interests of Pakeha settlement. For example, McLean wrote to his official G S Cooper in 1854; 'I regret very much that you have sanctioned the leasing of Native reserves... we may abandon the idea of getting any good land in future from the Natives if we allow them to lease their reserves'<sup>45</sup> Maori use of reserves was also hindered by the poor and often vague descriptions of reserve boundaries. Long delays then often followed in having reserves finally settled and Crown granted, as meeting settler needs was generally given a higher priority. An example is the reserve at Te Pukatea (White's Bay) in the Marlborough Sounds. This was made in 1856 and intended to provide for a fishing reserve, land for potato crops and a stream for eeling. The reserve was not actually laid off until 1862 and then only under pressure from the Marlborough Provincial Government. There were disputes when surveys were made and it turned out the surveyor had worked off an inadequate description of an estimated 970 acres. In fact once records were properly searched, it was found the promised reserve would actually require more than 2000 acres, an embarrassment to the Marlborough Provincial Government that had already leased out part of the promised reserve to a European.<sup>46</sup>

Even more disastrous for indigenous flora and fauna, the Crown took the management of many reserves off Maori and insisted they were managed Pakeha-style, to try and make at least some income from them. This policy was given legislative backing, for example in the Native Reserves Act 1856. This meant that many reserves that were clearly set aside to maintain traditional pursuits such as swamps for birdlife, streams and lagoons for fisheries and bush for bird snaring and plant materials, were then cleared, drained and effectively made worthless for such purposes

44. McLean journal, vol 4, entry 9 February 1856, McLean papers, ATL ms 1287

45. McLean letter to G S Cooper, 12 July 1854, pp 10-12, McLean letterbook in Mclean papers ATL ms 1194

46. Mackay, *Compendium*, vol 1, pp 306, 329

while still tending to be of a quality or in a location that meant rental incomes would always be poor. There also appears to have been little effort on the part of the Crown to ensure reserves were protected so as to serve the purpose they were originally set aside for. There were few guaranteed legal protections against further alienation and many reserves were subsequently alienated – often as a consequence of pressure from the Crown. There was also a distinct lack of Crown or Provincial Government protection to ensure reserves could be used for their original purpose, for example protecting them against flooding, pollution, drainage or other consequences of settlement. It also became clear that in being limited to small reserves, Maori lost control over the wider ecosystems that maintained the resources on the reserves. For example, bush clearance and drainage could cause silting up of waterways that had downstream effects on fisheries and swamps some distance away and indiscriminate shooting could decimate bird numbers.

Through this period, therefore, Maori were not only losing authority over flora and fauna through sales, but the reserves set aside from sales proved inadequate to either protect areas of traditional value, or to provide a means of engaging in the new economy. At this time the Crown did begin to delegate some authority over the waste lands it acquired, but this was mostly to forms of settler government such as the Provincial Governments established from 1853 and various forms of local body such as roads boards. The Public Reserves Act 1854 for example, allowed the Crown to grant land, including foreshores, to the control of Provincial Governments for public purposes. Maori were effectively excluded from decision making and opportunities for delegated authority over important flora and fauna, in this process. Through a series of legislative provisions, various provincial governments were delegated authority over Crown waste lands and the revenue from them. For example, the Waste Lands Acts 1854, 1856, and 1858; the Auckland Waste Land Act 1858; and the Nelson Waste Lands Act 1863. These Acts included provisions that gave provincial governments powers to control, lease and sell Crown waste lands. Provincial Governments tended to be even less sympathetic to Maori interests and took the view that it was very much in the provinces' financial interests to meet the needs of settlers and encourage them to take up Crown 'waste' lands. For example, various Provincial Governments encouraged special settlements in the 1850s and 1860s including

Nova Scotians at Waipu in 1853 and 1854, Non-conformists at Albertland in 1862, Bohemians at Puhoi in 1863 and various military settlements in the Waikato in 1863.

Crown officials were aware that Provincial Governments were often antagonistic to Maori interests, but appear to have done little to overcome this. For example, in 1863 James Mackay noted that although Crown officials had deliberately limited the size of reserves to encourage Maori to buy Crown granted land on individual title, Provincial Governments were refusing to sell Maori such 'waste' land that they now controlled.<sup>47</sup> However the Crown does not appear to have allowed this to influence subsequent policies towards either the provinces or reserves set aside from sales. Provincial Governments were also confident that land purchases transferred legal powers over resources as well as land. For example, the Superintendent of Nelson province welcomed the completion of the Nelson purchases, noting in 1853 that as a result the settlers had obtained as well as land, many fine harbours, and large quantities of valuable timber.<sup>48</sup>

As the colony descended into open warfare in the 1860s, more overtly discriminatory legislative measures were passed involving Maori land and associated resources. For example, powers to take all kinds of Maori land for public purposes, whether customary or Crown-granted, was first introduced in the Public Works Act 1864, as a wartime measure intended to 'civilise' Maori while denying compensation to Maori deemed to be rebels.<sup>49</sup> There were no protections in these provisions for lands in use or occupation, or for waahi tapu. There were also no provisions for land takings by agreement, or for the original owners of land no longer required to have an option to re-purchase it – accepted principles of public works legislation by that time. The Native Land Act 1865 also contained a provision enabling the taking of up to five percent of Crown-granted Maori land for roading without compensation. This provision survived through numerous discriminatory amendments until it was finally abolished in 1927.<sup>50</sup> These provisions were to have significant consequences for flora and fauna associated with land, not only allowing for their taking with land required for works, but by the absence of recognised protections for important sites of flora and fauna and the open access to such sites for exploitation often provided for by land taken for roads.

From the 1860s the Crown also began delegating increasing powers to municipal authorities, through legislation such as the Municipal Corpo-

47. J Mackay to Native Secretary, 3 October 1863 in Mackay, *Compendium*, vol 2, p 138

48. Superintendent Nelson Province, speech on opening of Provincial Council session 1853, *Nelson Province Votes and Proceedings*, no 1, 1853, p 3

49. Cathy Marr, *Public Works Takings of Maori Land 1840-1981*, Report commissioned by the Treaty of Waitangi Policy Unit, 1997, p 55

50. *Ibid*, pp 65–72

rations Act 1867. This kind of legislation gave increasing powers over water, land and associated resources within Pakeha settlements to municipal authorities. Provincial Governments were also given increased powers over waste lands in their districts. Their policies were largely concerned with promoting Pakeha settlement and the Pakeha ideal of small, settled farms whose development generally required the destruction of indigenous flora and fauna. Provincial Governments took over the promotion of many immigration schemes for instance and with this began encouraging the settler occupation of Crown waste lands in their districts. For example from 1855 Auckland Province offered free land grants to immigrants in proportion to the passage money they had paid. Schemes were also introduced to offer free lands in proportion to rank for retired imperial troops. From 1858 the province also offered credit purchases of land and free grants to what were regarded as desirable immigrants.<sup>51</sup> Various provisions for special settlements generally involving some form of assisted purchase of Crown lands under provincial control followed in other provinces. The various provinces also began encouraging grazing on waste lands as this proved increasingly lucrative. These leases were often intended to be temporary before closer settlement took place but they tended to last as long as they proved lucrative.

Much of the effort to entice immigration to New Zealand rather than other New World destinations, presented New Zealand as a potential 'Britain of the South', with the idea of an 'empty' land waiting for new colonists and introduced species to fulfil its true potential. The propaganda contained visions of New Zealand as a rural Arcadia and exemplar of utopian progress, aimed at those shut out of opportunities to own land in Britain. This fused into a vision of idealised rural mixed farming settlements interspersed with thriving ports and small townships.<sup>52</sup> There was little room in this vision for indigenous flora and fauna. Apart from timber, settlers believed that indigenous flora and fauna had little economic value, and showed little interest in fisheries for example, for some decades. Early experiences also helped form settler attitudes that indigenous flora and fauna were 'inferior'. Many settlers were obliged to survive on 'Maori' foods such as wild birds, fish and shellfish when they first arrived or if they lived in more remote areas. They were soon well supplied with certain products such as fish, pork and potatoes by Maori, but hankered for the more scarce and therefore more expensive 'English' supplies such as beef, butter, flour and sugar. For example, Company surveyor Samuel

51. Alan Grey, *Aotearoa and New Zealand: A Historical Geography*, Christchurch, Canterbury University Press, 1994, p 179

52. Belich, *Making Peoples*, p 306

Stephens reported living off fish from harbours and eels from fresh water pools, wild pigeons, ducks and kaka in his first weeks in Nelson in 1842.<sup>53</sup> Stephens also noted on his way through Wellington in 1841 that supplies such as beef, butter, bread and vegetables were very expensive, while pork was cheap, and fish and wild fowl abundant and cheap.<sup>54</sup>

It was regarded as a sign of real progress to be able to afford, or to grow real 'English' food and either move away from native foods altogether, or consign them to sporting or recreational pastimes. This was helped by the differences in price and availability of 'Native' and 'English' foods. Along with developing farms and gardens, settlers wanted to 'fill' them with familiar plants and vegetables. For example, on his way through Wellington in 1842, early Nelson settler, J W Saxton noted with some admiration that the Wakefield garden in Wellington already contained strawberries, oaks, filberts (hazelnuts), apples, cherries, vines, cape gooseberry, rhubarb, Indian corn, tomatoes, gilliflowers, stocks and 'in fact, most of the common vegetables'.<sup>55</sup> In the first decades of colonisation neither central nor provincial governments attempted to control the importation or release of new plants or animals. Many of the most potentially destructive were released during this period with little apparent concern for the indigenous environment. Rabbits for example were initially kept in hutches as an important food source, but later released into the wild when it was thought there were sufficient numbers to survive. Even some of the early settlers questioned the wisdom of this kind of release, for their own future if not for the environment. Saxton noted with prophetic gloom in his diary in 1844 that in Nelson another settler, McDonald, had recently freed guinea fowl, common fowl 'and rabbits which I in vain cautioned him against. I hope they may not prove a scourge in future'.<sup>56</sup>

It is not entirely clear that Maori fully understood the implications of such a massive transfer in legally recognised ownership of land, and by extension associated flora and fauna, for much of the first two decades after 1840. For much of this time Maori had the capacity to physically resist such claimed transfers of absolute authority. However, Maori did want to encourage Pakeha settlement for much of this time, because they saw an overall advantage in the significant opportunities for acquiring materials, equipment, new technologies, knowledge and long term economic opportunities this offered. They were also willing to make some accommodations and changes in traditional systems to accommodate this. As a result they proved willing to rely on official assurances that

53. Samuel Stephens, diary 1842-55, p 41, ATL ms 2053

54. *Ibid*, p 28

55. J W Saxton diary vol 2, p 2, ATL ms 1758

56. *Ibid*, p 106

Treaty protections would be honoured, and that purchases and reserves would protect important resources, while opening opportunities for new benefits, such as schools, hospitals and other facilities, as well as commercial opportunities. It seems that Maori may also have been reassured by the apparent maintenance of traditional authority on the ground in the first decades after the sales, even where the land had officially become Crown land.<sup>57</sup>

There is evidence that officials may have encouraged expectations that they knew had no legal foundation when they negotiated the large 'blanket' purchases for instance. These purchases were often accompanied by days of negotiations, of enormous importance to a largely oral culture but which were often not officially recorded. These negotiations would however have been crucial to Maori understandings of what the consequences of a purchase might be, especially with regard to flora and fauna. Some surviving reports do indicate that Maori were allowed to believe that the impact would be much less than was the actual legal position. For example, Donald McLean reported to the Colonial Secretary in 1849 on his negotiations with Ngati Apa for the purchase of lands in the Manawatu. He noted that the young men of the group were concerned about the implications of a sale for their continued access to the forest ranges in the area for bird snaring. They wanted the forest ranges reserved as well as their cultivations, as they had heard that a sale might mean they might not be able to continue traditional bird snaring. McLean reported that he had assured them that ample reserves were being made out of the purchase for 'all their needs' and that even in the area sold they could 'still exercise the privilege of bird snaring so long as their doing so did not interfere with the future operations of the settlers'. They had discussed the matter further and finally the old men of the group expressed themselves 'greatly pleased with the prospect of not being prohibited from bird snaring as they were previously under an impression that they should not be even allowed to travel over the country when it became European property'.<sup>58</sup> It may well be that McLean honestly believed that once sold, pastoralism and Maori traditional hunting could co-exist on the land. Possibly he also believed that before long Maori would no longer wish to pursue old ways, including bird snaring, so it would not be a matter of conflict. Nevertheless the agreement was made based on assurances that Maori had every reason to believe would be fulfilled. However, a copy of the actual purchase deed of May 1849 simply

57. See for example the case of the Waitemata block of 1840 where Maori continued to snare birds, fish and even grow crops upon the land after it had been purchased by the Crown. Ward, *National Overview*, vol 2, pp 126–127

58. McLean report, 10 April 1849, McLean papers, ATL micro 535-002, folder 3

noted that after 'full discussions' Ngati Apa had agreed to the 'absolute surrender' of the lands. It contained no mention of continued rights to travel over the land or continue bird snaring in the forests.<sup>59</sup>

The practical impact of settlement on the ground may also have encouraged Maori to believe that their authority over flora and fauna would remain substantially intact. A number of small settler townships were created after 1840 at Auckland, and the Company towns of Wellington, Wanganui, New Plymouth and Nelson. In the first few decades these seemed to fulfil Maori expectations of relatively small, scattered settlements, providing markets for Maori produce. Even within the Company settlements, the pattern of Pakeha settlement with large numbers of absentee sections and reserves coinciding with important resources, enabled Maori to continue harvesting resources. In the outlying areas, most of which rapidly became Crown 'waste' land, Maori were able to continue to traverse land, and harvest resources such as forest materials, fish and birds.<sup>60</sup> The European sense of 'exclusive' possession of land may not have been realistic until the late 1850s in many areas.

Differing perceptions of authority over flora and fauna also appeared to co-exist in the first decades after 1840. Many new settlers revelled in their freedom to shoot birds and take fish free of Old Country game laws, on what they believed was Company or Crown land. Maori on the other hand believed the hunting was done on their authority as part of their strategy to assist and encourage the new settlements. Pakeha surveyors were often at the front line of Pakeha-Maori relations and reported the reality of many situations. For example, New Zealand Company Surveyor, Frederick Tuckett noted in 1843 that Maori were 'everywhere kind to the Europeans & desirous of inducing them to live amongst them *as long as they are few in numbers*'. He noted the chiefs at Golden Bay encouraged the few Pakeha settlers there and would 'supply them with potatoes and fish and allow them to hunt pigs in the forest'.<sup>61</sup> Tuckett was employed to lay out Company sections and reserves for Maori in Golden Bay and did his best not only to include their present extensive cultivations (from which they supplied markets at Nelson) but such land as they indicated they wanted to use to extend their cultivations. For his time, Tuckett was very sympathetic to Maori concerns and believed he had made reserves that were fair and just. He considered that local Maori of the district had not been treated fairly for their land and they refused to accept that such large areas had been sold. He was still exasperated how-

59. McLean papers, copy purchase deed May 1849, ATL micro 535-002, folder 3

60. Ward, *National Overview*, vol 2, p 47

61. Frederick Tuckett papers, vol 2, letter from Nelson 1843, ATL ms 0246-1 [emphasis in original]

ever by the 'trait in their character' that made Maori continue to insist on their ability to sell Europeans use rights only and in the process levy tribute and 'blackmail' from them forever. Tuckett was also distressed to see Golden Bay Maori abandon their previous cultivations and the reserves he had painstakingly made, and begin cultivating new areas closer to settlers, that he had already laid out for settlement sections.<sup>62</sup> What he was apparently witnessing, however, was a people, who had not been a party to the original company purchase, continuing to exercise traditional authority over their rohe. This included encouraging and granting use and hunting rights to small groups of Pakeha settlers in return for reciprocal relationships, and moving as necessary to exploit economic opportunities.

Contrary to New Zealand Company expectations, the major economic activities of the 1840s to the 1860s turned out to be pastoralism, gold mining, and timber milling. In their early phases these industries did not rely on land ownership or very much in the way of land development. As such they enabled a considerable degree of co-existence with traditional Maori harvesting of resources. Those working in the industries tended to be mobile, and low technology meant a relatively low impact on flora and fauna or concentration in relatively limited sites, enabling Maori to continue traditional harvesting over large areas. For example, from the early 1840s, the early pastoralists brought sheep from Australia and grazed them on the open plains, fern and scrub country on the east coast of both main islands, often paying illegal rentals or grass money to Maori landowners. In 1851 for instance graziers in the Wairarapa were paying £588 to Maori in annual rentals.<sup>63</sup> In the early years, the sheep ran largely on native grasses with no fencing but only natural boundaries such as ridges and watercourses. Much of the profit in pastoralism at this time came from supplying sheep to other pastoralists as sheep farming spread from the Wairarapa to Hawkes Bay and then to the Wairau and from there to Canterbury and Otago. The industry at this stage had a low impact on flora and fauna and generally did not prevent Maori from harvesting in the same areas.

Gold mining also became a major industry in the 1860s particularly in Otago, the South Island West Coast, Nelson/Marlborough and in the Coromandel. The early development of gold mining brought in many thousands of miners, but initially required little capital, and mining populations quickly moved on as gold was worked out from many areas,

62. Frederick Tuckett papers, vol 2 letter from Nelson 1843, ATL ms 0246-2

63. R D Hill, 'Pastoralism in the Wairarapa 1844-53' in F F Watters (ed), *Land and Society in New Zealand*, Wellington, A H & A W Reed, 1965, p 40

leaving them available for traditional resource use again. Even timber milling during this period was generally low scale and relatively concentrated to areas close to settlements, limited by access and technological difficulties. While environments close to Pakeha settlements were substantially modified, the hinterlands of most of these settlements were not large, and there was relatively little permanent Pakeha settlement beyond these. In these outlying areas, even when technically Crown owned, Maori still had some access to traditional flora and fauna.

In fact, in spite of various inducements during this period Pakeha generally preferred to settle near the established townships and showed a marked aversion to moving into the bush areas to develop farms. Those with sufficient capital such as the graziers preferred to take up open land rather than go to the expense of clearing bush. Those with little capital could not afford to both buy land and then pay the costs of clearing it. Settlements in outlying areas required significant government assistance and even then often struggled. Governor Grey established a few small settlements between 1853 and 1854 in the Wairarapa at Masterton and Greytown. Shortly afterwards the Wellington Provincial Council laid out just over one hundred ten acre sections within the Three Mile Bush at Carterton. These smallholdings struggled for some years, often only surviving because the settlers got employment building roads and working on nearby large sheep runs.

It was the large sheep runs that were quickly gaining economic importance and the Government began to recognise this in official land policies. The New Ulster Crown Lands Ordinance of 1849 appears to be the first official acknowledgement of what was to be a critical right to depasture stock on Crown waste lands in return for the payment of licence fees. This measure was extended in 1851 to cover the rest of New Zealand except the Canterbury block. Under extended regulations the Commissioner of Crown lands was permitted to grant runs up to a certain capacity for a period of fourteen years, conditional on the lands not being surveyed for settlement. There were also pre-emptive rights to enable the purchase of a homestead site on the leased run. These measures recognised the existing occupation of land by pastoralists in Wairarapa and Marlborough and that pastoralism was well on the way to becoming the economic backbone of the economy. In 1853, pending the establishment of the provinces, Grey issued general land regulations for Wellington and Hawkes Bay and these were soon extended to the rest of the

country. These limited pastoral rights to those with lawful Crown grants or to Maori or half-caste occupants. In an apparent attempt to encourage closer settlement the price of rural land was reduced from £1 to 10s or 5s per acre. However this appears to have helped the large runholders increase their holdings, rather than small farmers, especially as there were no restrictions regarding the quality or quantity of land that could be purchased.

Most of the available clear, coastal areas and the open fern and grass-land country offering immediate pasture for sheep and cattle were occupied by settlers and pastoralists by the 1860s. Some attempts had been made to clear forests close to settlements or those from which prized timber could easily be extracted, for example in Marlborough, the Hutt Valley, and the kauri forests of north Auckland. There were some forest clearances outside these areas, often accidental or simply to secure small quantities of prized timber. Hochstetter in a report of a visit he made to Auckland in 1859 stated that for a whole fortnight he saw from his window dense clouds of smoke from an enormous forest fire near the town, apparently a means of getting at the best kauri stands.<sup>64</sup> However, for the most part there was little substantial encroachment into forest areas for settlement during this period.

Maori became increasingly concerned about the real implications of land alienations and by the mid-1850s had begun various organised attempts to resist further land sales. Settler rejection of this led to a period of long and bitter warfare during the 1860s and land policies during the 1860s became correspondingly punitive. This included confiscation of some of the most sought after Maori lands in the North Island including large parts of Taranaki, the Waikato, the Bay of Plenty and the East Coast. This was conducted under the legislative authority of the New Zealand Settlements Act 1863 originally as a means of punishing rebellion, pacifying unsettled areas through establishing military settlements and recouping the costs of war by selling off confiscated land. However the policy was soon rapidly extended and, according to Ward, as implemented the confiscations were 'excessive to the point of vindictiveness'.<sup>65</sup> Although Ward acknowledges that the Crown officially returned significant areas of confiscated land, he notes that the implementation of the initial confiscations and the subsequent arrangements made respecting the land 'contributed substantially to the rapid alienation of most of it anyway'.<sup>66</sup> Well over two and one half million acres of confiscated land was retained by

64. Cited in G C Petersen, 'Pioneering the North Island Bush' in Watters (ed), p 68

65. Ward, *National Overview*, vol 1, p 61

66. *Ibid*, p 62

the Crown even after areas were returned, contributing significantly to Maori loss of authority over flora and fauna in these districts.<sup>67</sup>

### 6.3 1870s-1880s

By 1870 the New Zealand economy was in recession. The wars had taken longer and victory was much less conclusive than Pakeha settlers had hoped. The British Government was also insisting on the removal of Imperial troops and the colonial Government had to avoid provoking more widespread outbreaks of resistance. Old industries, especially pastoralism, gold mining and timber extraction remained economically important but had entered a new phase, where short term profits were less readily attainable and long term viability required higher levels of capital investment. Fencing, introduced pasture grasses and pest destruction efforts were becoming necessary for sheep farming for example, and the use of heavier machinery was becoming increasingly necessary for extracting gold. Pakeha settlement under the provincial system remained in small clusters around isolated townships. Most had made little progress in developing their hinterlands and their infrastructure, such as roading, remained confined within each district. The wars had stimulated some move towards a national infrastructure especially through the telegraph and the construction of some military roads. However, in 1870 there were only 46 miles of public railway in the country.<sup>68</sup> Most of the rail and metalled roads were also in Otago and Canterbury – a reflection of their greater wealth. In the North Island, the settler township of Auckland was still successfully engaged with older extractive industries, particularly kauri gum and timber, but sea transport was much more important than roading. Apart from the military roads there was little in the way of roading infrastructure in all of the North Island and it was clear that it was beyond the capacity of provincial governments to provide the economic stimulus required for more sustained national development.

From 1870, Government land policies began to be directed towards building a strong national economy based on increased settlement throughout the country and with a new nationally based infrastructure to support national economic growth. Colonial Treasurer Julius Vogel planned to achieve this through a centrally directed system of massive Government-subsidised immigration along with a major public works

67. *Ibid*, pp 63-67

68. Belich, *Making Peoples*, p 352

programme. The preamble to his Immigration and Public Works Act 1870 explained this intention, stating it was to 'provide for immigration and the construction of railways and other public works and also to promote settlement'. It was also intended to solve the 'Native problem' by swamping Maori with large numbers of immigrants, preventing further resistance, and making real, what had previously been only nominal settler control of large parts of the North Island. This programme was to be financed by large-scale borrowing, providing sufficient finance to create a national infrastructure while at the same time stimulating economic development. The public works that were to be given priority were those that would build a national infrastructure that would then allow other industries to develop; in particular, railways, roads and bridges. The vast influx of immigrants itself was also expected to create important domestic markets, in such areas as food, building materials, and housing. After this, it was expected that the 'progress' industries would take over generating their own growth, driven by continuing increases in population.<sup>69</sup> It was still expected that regions would continue with their own local works, although often as an adjunct to central programmes.

Land policy was an important feature of the Vogel Government immigration and public works scheme as it was intended that roads and railways throughout the country would be constructed by immigrants who would then buy, clear and develop the land through which the communications would pass. The sale of Crown land to the settlers would also help offset the cost of the works. It was intended to use Crown 'waste' land already purchased from Maori and to purchase more Maori land in strategic areas to break down the isolation between Pakeha townships. Such areas would then be more closely settled through the building of works such as roads and rail and the introduction of large numbers of immigrants to clear and farm the land. In the process Maori would be 'civilised' by increased contact with Pakeha and further resistance would be effectively undermined.

The deliberate aim of more extensive settlement required a change in focus from the more easily settled districts where much of the available land had already been taken up, to facilitating and encouraging the opening up and development of the more inaccessible and heavily forested land settlers had previously tended to avoid. In turn this had more tangible consequences for Maori control and access to indigenous flora and fauna. This policy also required significant Government intervention in

69. *Ibid*, p 351

encouraging and assisting settlement in these more difficult areas. The Government not only heavily subsidised immigration and took over many efforts to entice immigrants to New Zealand, but also provided them with significant assistance once they arrived. This was especially necessary where bush land had to be cleared and developed before a living could be made from it. Policies such as those enabling the purchase of freehold land on deferred payments assisted this by freeing up some immigrant capital for development and initial living costs. Various public works such as road building were also intended to provide wage work while farms were being cleared and developed.

The new public works and immigration programme was much more successful than the more limited attempts tried previously by Provincial Governments. Central Government spent some £10 million on railway building between 1871 and 1881 and had laid some 1,100 miles of railway by 1879.<sup>70</sup> Road making also boomed in the 1870s with £1,100,000 spent by Government building nearly 2000 miles of roads and tracks between 1871 and 1881.<sup>71</sup> The Government also acquired from Maori, through the Public Works Act 1876, land for roads that followed pre-European routes, without compensation.<sup>72</sup> As a result of immigration, the Pakeha population boomed and in the 1870s alone increased nearly tenfold to 490,000 at the 1881 census.<sup>73</sup> Immigration and extensive road and railway construction had the desired effect of stimulating private industry and opening up previously inaccessible areas to Pakeha settlement. Indigenous timber milling was one such industry that benefited from high internal demand in such diverse areas as house construction, railway sleepers, bridge and roading materials, packaging, ship and cart building, furniture, fencing, telegraph poles, and fuel. As well as being an important export earner, kauri timber was also used in large quantities for domestic house construction. The extension of railway lines opened up areas previously inaccessible to milling by providing transport for timber and machinery, further encouraging the industry. Other private industries to benefit included all those associated with working and developing the land for settlement, including those associated with working animals, the growing and supply of fodder and allied industries such as cartwrights, farriers, blacksmiths and coach builders. Shipping also benefited as growing hinterlands supplied ports. The increased population in turn stimulated domestic markets in areas such as clothing, food and household products. The 'progress' industry stimulated a self-fulfilling belief in the

70. *Ibid.*, p 352

71. *Ibid.*, p 353

72. Marr, *Public Works Takings of Maori Land*, p 88

73. W J Gardner, 'A Colonial Economy' in W H Oliver (ed), *The Oxford History of New Zealand*, Wellington, Oxford University Press, 1981, p 75

possibility of ever more progress.<sup>74</sup> It also led in many cases to the development of more settled hinterlands around what were originally timber, road and railway camps. Many of these original camps developed into small towns, surviving for the first few decades on a mix of subsistence farming and various types of contract work. Some that were able to take advantages of later developments in farming, especially dairying, developed farming hinterlands and survived considerably longer.

More research is required into the extent Maori were able to participate effectively in new economic opportunities arising from the progress industries, especially those involving flora and fauna, and how much they were able to participate in decision making over the impact of these developments. There is evidence that Maori contributed significantly to some industries such as road building work in the North Island, and were encouraged to take contracts by Crown officials in the belief this would hasten their civilisation through learning Pakeha ways.<sup>75</sup> Maori had by this time, however, lost the legal ownership of large areas of land and therefore the potential to earn significant income from sources such as timber licences. The low purchase prices paid for land, the inadequacy of sale reserves, the disruptions of warfare and confiscations, and finally the uncertainties and costs associated with the Native Land Court process, all appear to have significantly weakened Maori ability to raise the capital required for investments in new developments. In addition Maori found that much of the new development was intended to meet settler rather than their economic needs.<sup>76</sup>

Legislative provisions for public works takings of Maori land had begun as a wartime measure in 1864, and were continued in the Immigration and Public Works Act 1870, although in a less confrontational manner.<sup>77</sup> They were progressively extended in subsequent years in response to the requirements of public works programmes. In terms of participation in decision making, it seems that during the 1870s, while trying to hasten road building without sparking further Maori resistance, the Government did adopt a policy of consultation and negotiation over roading work involving Maori land and through locations particularly important to Maori communities. This meant that at times Maori were able to negotiate terms for roads that protected valuable resources. For instance, in negotiations over roads to be built west of Lake Rotorua in 1871, the Government agreed as part of the deal to prevent trespass by Pakeha in the pigeon-trapping season.<sup>78</sup> Maori appear to have agreed to

74. Belich, *Making Peoples*, pp 374–375

75. Marr, *Public Works Takings of Maori Land*, p 93

76. For example, Marr describes criticism the allocation of roading funding in the Auckland Province in 1871. *Ibid*, p 102

77. *Ibid*, p 82

78. *Ibid*, p 92

new economic initiatives especially when it seemed they would be consulted and there was a chance they might participate in future economic benefits.

However there is also evidence of increasing Maori concern that consultation was being abandoned or downgraded. Many public works such as roads also seemed solely designed to benefit Pakeha settlement and were much less likely to be made available when Maori communities requested them, a problem exacerbated by the issue of rate paying on Maori land.<sup>79</sup> There appears to be a question of good faith with some of the negotiations under Donald McLean who by the 1870s had ministerial responsibility for Public Works as well as Maori Affairs, Defence and Land Purchase. He seems to have followed a similar pattern with these negotiations as he had set in earlier land purchases. He and his officials engaged in long negotiations over roads, often raising expectations and making promises in verbal negotiations with Maori, which then went largely unrecorded in official documents.<sup>80</sup> As the threat of warfare receded so did Government willingness to consult Maori, aided by legislative provisions that made it relatively easier to acquire Maori land for public works purposes.<sup>81</sup>

The early 1870s experience with public works indicates that it was possible for the Crown, especially when central Government was taking such a leading role in promoting development, to establish systems of consultation and cooperation with Maori that may have enabled Maori some effective participation in decision making over flora and fauna. Instead the Crown increasingly abandoned this process as soon as it no longer seemed a practical necessity. Instead the Crown delegated increasing management powers to forms of largely Pakeha-controlled local government established as districts were settled. Following the wars, Pakeha attitudes to Maori hardened and became increasingly antagonistic, but the Crown appears to have done little to protect Maori against this or require local governments to take account of Maori interests even as they were being given increasing powers. Local bodies were therefore allowed to use their powers to act almost exclusively in the interests of Pakeha settlers, and projects were undertaken to further settler interests while little attention was paid to the potential impact on Maori. This can be seen in the fate of various legislative initiatives in the early 1870s. The Highways Board Act 1871 was passed with general settler politician commendation for the principle that roads boards should have rights to take land for

79. *Ibid.*, p 98

80. *Ibid.*, p 94

81. *Ibid.*, p 97

drainage and other purposes for roading and apply rates to pay for it over Maori as well as European land. The highway boards were described as doing the 'great work of colonizing the country, and preparing it for the reception of a large population, by making roads'. Settler politicians argued that Maori should have to bear the duties of property ownership 'which entailed large responsibilities', and as the Treaty provided Maori with the same rights and privileges as English subjects, Maori should be treated similarly.<sup>82</sup> The Act only initially applied to Maori land occupied by other than Maori, but this still meant that Maori leased land was now subject to Road Board powers of rating, land taking, and drainage works, and this applied to even leased reserves that had originally been chosen to protect resources such as swamps and eel fisheries.<sup>83</sup>

At the same time McLean sponsored the Native District Roads Boards Act 1871 whose object was to assist in the 'settlement and pacification of the colony' by authorising and encouraging Maori to build roads and other public works through the establishment of roads boards controlled by Maori in districts where Maori were a majority of the population. However the Government decided that the proposed boards would only be able to control customary and not freehold Maori land. This effectively extended rating to customary land while undermining Maori control over works in their community by excluding Crown-granted Maori land. Maori comment on the proposal indicated they preferred an organisation where they could work cooperatively with Pakeha in a district, 'a Native and European Runanga which should be empowered by the Government to settle disputes, and to assist Magistrates in enforcing the law'. Maori rejected proposed boards 'unless the property belonging to both races is amenable under the same Act'.<sup>84</sup> However, even this small attempt to encourage Maori participation in local government lapsed through lack of support in Parliament. McLean did urge local authorities to co-opt chiefs onto boards in disturbed areas such as Taranaki, and to accept Maori labour on roads in lieu of rates, even assisting some authorities with payments from the general fund in recognition of the alternative forms of support Maori paid, such as customs dues and land taxes. However these policies appear to have been largely interim measures in unsettled districts, while long term, the Crown appears to have accepted the contention of local authorities that cash payments, although often beyond the means of Maori communities, were the only acceptable means of meeting rates requirements. Maori inability or refusal to pay rates was

82. Ibid, pp 100-101

83. Marr, 'Crown-Maori Relations in Te Tau Ihu' p 94

84. AJHR, 1872, vol 2 F-4, pp 4-6, cited in Marr, *Public Works Takings of Maori Land*, p 102-103

then used to justify the lack of attention authorities paid to the needs of Maori communities.

Other legislation, such as the Municipal Corporations Waterworks Act 1872 vested water rights in corporations without regard to customary Maori rights.<sup>85</sup> Provisions for local authorities were strengthened further after the provinces were abolished in 1876. The Public Works Act 1876 confirmed the Crown's delegation to local authorities of powers to take Maori land, including Maori customary land. Local authorities and special purpose authorities such as roads boards, drainage boards and harbour boards, were given increasing authority over land, foreshores, waterways and associated resources, largely to facilitate the development of land for settler purposes. County Councils, for instance, gained substantial powers for taking land to improve existing drainage operations and build new ones.<sup>86</sup> Under the 1876 Public Works Act any natural watercourse, including any non-navigable river or lake outlet, could be declared a 'public drain' and placed under the control of a local authority. The Act also empowered the Government to build drains through any lands in the colony.<sup>87</sup>

The hardening of settler attitudes to Maori rights can also be seen in judicial developments from the 1870s that rejected international theories concerning customary aboriginal rights. This began with Chief Justice Prendergast's finding in *Wi Parata v Bishop of Wellington* 1877 that in 1840 Maori did not have the legal capacity to enter into binding international treaties. Therefore insofar as the Treaty of Waitangi purported to cede sovereignty, it had to be regarded as a 'simple nullity'.<sup>88</sup> This meant that Maori claims of customary rights based on the Treaty could not prevail against the Crown. The status of the Treaty was further defined by the Privy Council in 1941 in *Hoani Te Heuheu Tukino v Aotea District Maori Land Board* where it was held that while it was a valid treaty of cession; as such it had no enforceable status in municipal law until recognised in statute.<sup>89</sup> It is only relatively recently, beginning with a 1987 Court of Appeal decision in *New Zealand Maori Council v Attorney General*, that the Courts have begun to give serious consideration to Crown actions in relation to Treaty principles.<sup>90</sup>

The Crown also established a new Court for determining Maori entitlements in land and transforming customary title to tenure based on Crown grants. The Native Land Court became fully operational from

85. Marr, *Public Works Takings of Maori Land*, p 90

86. *Ibid.*, pp 86–89

87. Public Works Act 1876, ss 168, 176; White, *Inland Waterways*, p 11

88. *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jurist reports (New Series) p 72, 76

89. *Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] NZLR 590

90. *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641

1865 and its impact on Maori authority over flora and fauna is covered in more detail in chapter 8 below. It is sufficient to note here that the Native Land Court was an integral part of Crown land policies in providing a successful new system of facilitating the alienation of Maori land and with it resources such as flora and fauna to Pakeha ownership and control. Under the Native Land Court process, the Crown abandoned its general right to pre-emption although, when necessary, effective Crown pre-emption was re-introduced in various districts where the Crown wished to control land purchasing, for instance in the central North Island between the late 1870s and 1900.

As Pakeha interests were increasingly allowed to predominate and Maori participation in forms of management was marginalised, the drive to develop land for farming with little regard for protection of indigenous flora and fauna went largely unhindered. Indigenous forests and swamps were generally regarded as an obstacle to progress, requiring clearance and drainage in order to properly 'open up' the country. The 'bush' as opposed to usable 'timber' was regarded very much as an impediment to progress. The actual term 'bush' to describe forests seems to have been insisted on at first by Maori, having learned the word from escaped Australian convicts living in New Zealand before 1840. For instance, New Zealand Company Surveyor, Frederick Tuckett, found Maori insisted on the term in 1843 in Nelson. He recorded informing Golden Bay Maori he intended surveying in the bush, 'as they call the forest, (getting the name from the Australian runaways'.<sup>91</sup> However the term 'bush' became useful to Pakeha settlers and was widely adopted to describe dense vegetation cover with which they were unfamiliar.<sup>92</sup> The initial pleasure in seeing luxuriant, green, tropical-like vegetation turned to dismay when trying to move through it or clear it for farm development, especially when it was widely believed that the most fertile soils must lie under the most luxuriant growth. As Pakeha were faced with more extensive forest clearance from the 1870s, the term 'bush' seems to have become increasingly derogatory. Pakeha settlers found the forests difficult to live in, inhospitable and largely impenetrable. Large areas of bush still prevented easy communications between many Pakeha settlements and it was feared that it might hide and sustain rebellious and still threatening Maori. Most of all, the bush and swamps stood in the way of the settler vision of a tame, tidy and prosperous countryside supporting largely mixed farming. This pos-

91. Frederick Tuckett papers, vol 2, letter, 13 November 1843, in ATL, ms 0246-2

92. Judith A Johnston, 'The New Zealand Bush: Early Assessments of Vegetation' in *NZ Geographer*, April, 1981, p 19

sibly encouraged the 'mania' to drain and clear land even well ahead of the actual needs of settlement, land that was often never going to be suitable for farming.

The creation of a communications infrastructure and new technologies enabled large areas of indigenous forest to be cleared throughout New Zealand. In the Nelson district, for example, there was extensive milling and clearing of lowland forests in Tasman and Golden Bays in the 1870s and 1880s. Timber mills followed the gradual extension of the railway west from Nelson as the rail opened up previously inaccessible areas and provided transport for machinery and timber.<sup>93</sup> In Auckland Province the kauri timber industry also received encouragement from the developments of the 1870s. The industry had operated from the late 1820s, but really only became a major industry from the 1870s stimulated by the strong growth in domestic demand for the timber for housing, as well as the traditional export markets. As the easily accessible coastal forests were exhausted the kauri bushmen had to penetrate more remote rugged areas until by the 1910s the major kauri forests were exhausted.<sup>94</sup> Some bush areas were simply cleared without concern for timber. Pastoralists encouraged into the Nelson interior by cheap Crown pastoral leases, found the simplest and often only practical means of clearing bush was to burn it. These fires were difficult to control, often spreading out of the lease area and destroying large areas of adjoining forest. This experience was not limited to Nelson. Settlers directed to dense bush in many parts of New Zealand found burning the easiest method of clearing land for farming. The period of the 1870s and especially the 1880s is known as the great 'bush burning' period of New Zealand history.<sup>95</sup>

Settlers were often directed to bush areas through the efforts of Provincial Governments attempting to use central Government assistance to develop their own regions and therefore bring about the progress and prosperity that was widely expected to follow. The special settlement system revived in the 1870s offered a means of selecting, directing and controlling immigrants enabling settlement to be directed to more remote parts of districts. Central Government assisted these by providing a capitation allowance, providing funding for public works, and making available Crown waste lands on generous terms.<sup>96</sup> The General Assembly also assisted Provincial Councils with a number of legislative provisions empowering the Councils to establish special settlements. These included for example, The Wellington Special Settlements Act 1871, Otago Settle-

93. Marr, 'Crown-Maori Relations in Te Tau Ihu', p 77

94. Duncan Mackay, 'The Orderly Frontier: The World of the Kauri Bushmen 1860-1925' in *New Zealand Journal of History*, vol 25, no 2, October 1991

95. See for example, Rollo Arnold, *New Zealand's Burning: The Settlers' World in the Mid 1880s*, Wellington, Victoria University Press, 1994

96. R P Hargreaves and T J Hearn, 'Special Settlements of the South Island of New Zealand', *New Zealand Geographer*, 1981, vol 37, no 2

ments Act 1871, Hawkes Bay Special Settlements Act 1872 and the Nelson Special Settlements Act 1872. Lands for settlements were also provided for in various Waste Lands Acts.

One of the special settlements was established at Karamea in the Nelson district in 1874. After much persistence the Nelson Provincial Council persuaded the General Government to advance £420,000 to help finance the settlement and public works employment. It then sought immigrants from Government schemes to clear and settle the dense bush of the Karamea region, of which it insisted at least three quarters had to be natives of the United Kingdom.<sup>97</sup> The immigrants were promised full-time employment on public works road building schemes for the first month, and then half-time work for the next six months. They were also provided with tools, equipment and rations for the first seven months at cost price. They were assisted to acquire the freehold of sections allotted to them through being able to rent them cheaply for 14 years, after which time they received the freehold. It turned out that the best land at Karamea had already been alienated to absentee owners, and the new settlers were located on poor soils that they had to abandon after two years of wasted effort. They settled further up the river but the settlement was rife with discontent over conditions, the running of the Government store, the area's isolation, and the lack of continued public works employment. After receiving a petition on the subject, Parliament appointed a commissioner to investigate. The commissioner recommended further assistance including public works employment.<sup>98</sup> The population of the settlement declined considerably, and although it was never totally abandoned, it struggled to survive, until the development of dairy farming in the area in the 1890s.<sup>99</sup>

Special settlements were also directed to the great bush area of the central North Island, excluding the Rohe Potae (King Country) where Maori successfully resisted attempts to purchase and 'open up' the land for Pakeha settlement until after 1890. By 1870, the principal tracts of forest land deemed suitable and available for Pakeha settlement in the North Island were located in North Auckland, Taranaki, Manawatu and Wairarapa/Hawkes Bay. One of these was the great lowland forest that lay across the hinterlands and separated the settlements of Wellington, Taranaki and Hawkes Bay. A large part of this located between Hawkes Bay and Wellington was known as the Seventy Mile Bush. It had been considered as a possible confiscation after the wars, but was eventually

97. *AJHR*, 1874, D-5, p 32

98. *AJHR*, 1877, D-7

99. Rollo Arnold, *The Farthest Promised Land*, pp 304–305

purchased. This was greatly assisted by the Native Land Court process, particularly the individualisation of title that enabled land to be partitioned between sellers and non-sellers. The purchase process during this time was also notorious for the dishonourable methods used and the pressure brought to bear on individual right holders by land purchase agents.<sup>100</sup> This undermined Maori attempts to keep and use their own land, and the resources associated with it. The Seventy Mile Bush sale was finally concluded in 1871 enabling the area to be set aside for special settlements, and enabling legislation was passed in the form of the Wellington Special Settlements Act 1871 and the Hawkes Bay Special Settlements Act 1872.

The Government, recognising existing settler aversion to tackling the bush, brought in groups of Scandinavians to undertake the job, as they were believed to have the necessary attributes to clear the bush and develop farms for themselves. This was supported by the Superintendent of Hawkes Bay Province, who although a large runholder himself, believed the province need to develop small farms to end its isolation and promote more economic development. He planned a series of Scandinavian villages, the first two to be located at Norsewood and Dannevirke. In 1872 a group of immigrants was sent to be the road builders and settlers of the Forty Mile Bush, (being that portion of the Seventy Mile Bush located south of the Manawatu River). The group was transported just north of Masterton and set to work cutting and forming the road north. Later groups of immigrants were taken to the northern edge of the Seventy Mile Bush. The general plan was to locate groups at various points throughout the forest, clearing the trees and then building the main trunk road and railway. The public works wages were intended to sustain them while they also cleared their own farms. It was expected that by the time the works finished the farms would have become productive. The immigrants were allocated forty-acre sections for their farms, the freehold to be acquired by deferred payment subject to conditions such as improvements being carried out each year.<sup>101</sup>

The usual method of developing the land was to fell as much bush as possible during the winter months, let it dry through the hot summer months and then burn it off during February and March. When the autumn fires had burnt out, the ash-covered land was surface-sown with coarse pasture for cattle. Where land was required for crops, the stumps left behind by the fires had to be hauled out, heaped and burnt again. The

100. Ward, *National Overview*, vol 1, pp 129–130

101. Petersen

cleared land was then planted with grain or root crops. The natural potash fertiliser produced good crops in the first years, but the soil quickly lost fertility.<sup>102</sup> Forest clearance, through felling and then fire, completely transformed the landscape and associated indigenous forest ecosystems.



Deforested landscape with bush railway, c 1910. Photographer S C Smith. From the SC Smith collection, photograph courtesy of the Alexander Turnbull Library (1/2-071686)

Groups of Danes and Norwegians were also directed to the western areas of the great bush. A group brought to Wellington in 1871 was dispatched to the upper Manawatu via the port at Foxton. Each family was allotted a bush section of forty acres near the planned township of Palmerston, later renamed Palmerston North. The immigrants were given work building the road and bush tram link between Foxton Port and the township, facilitating the development of timber milling in the district. Another group of Scandinavians settled between Palmerston North and the Manawatu Gorge. They were given work building the road through the gorge to Woodville where it was intended it would join the main road between Wellington and Napier. The townships of Palmerston North and Fielding established in 1870 and 1874 respectively, relied on a period of intensive timber milling for survival before farms were cleared and became productive.<sup>103</sup> The settlers became expert bushmen in clear-

102. Ibid

103. Ibid

ing their own farms and when road and rail work ran out, they often survived by taking on timber felling contracts that destroyed still more bush. For example, the later Woodville township site was planned in early 1875 but was initially bought up by speculators rather than settlers and developed only slowly. Nevertheless much of the land around Woodville was cleared of forest by contract.<sup>104</sup> All told, around 3,500 Scandinavian immigrants were recruited by the Colonial Government for special settlements. Other immigration ventures were also encouraged by Government policies, such as the Katikati settlement established between 1875 and 1884.

For some years after the farms were cleared, the bush settlers found it very difficult to make more than a subsistence living from them. As noted, most schemes provided for quite small farm lots of about forty acres for each family, as Government policies were still apparently based on the model of English-style mixed farms. However such farms were generally too small, given they were often located on poor hill country and settlers had to rely on supplementing farm produce with wild pigs, cattle, and honey; as well as eels, and native birds. Dairy farming was developing but was generally still struggling through the 1880s. There were new developments in these years such as early moves to adopt more scientific principles in farming. In 1881 the Government offered a bonus for the production of large quantities of butter or cheese produced on the 'American principle'. This model was based on strict quality control, and factory collection and processing of milk. Refrigerated shipping was developed from 1882, and some trial exports of frozen meat made, but these developments were retarded with economic recession from the mid-1880s. Through the 1880s most small farming remained barely at subsistence level. Nevertheless, the process of clearing and developing land for farming opened great inroads into the indigenous forests and associated ecosystems through timber felling, destruction by fire and swamp drainage.

Although bush clearances had probably the most spectacular impact, flora and fauna also suffered from many of the more intensive methods now employed in other important industries such as pastoralism and gold mining. By the 1870s for example, pastoralism through processes such as continued pasture burning, had caused erosion, loss of soil fertility and the destruction of grassland habitats. The need to poison intro-

104. Arnold, *The Farthest Promised Land*, p 313

duced pests such as rabbits also resulted in the poisoning of birds such as weka, while biological pest control such as stoats and weasels were introduced even though it was known that they would more than likely decimate wild bird populations.<sup>105</sup> The more intensive forms of gold mining such as stamper batteries and sluices, and the use of cyanide to extract gold, also impacted on the environment in localised areas.<sup>106</sup> Improvements in technology and transport routes also enabled timber mills to reach previously inaccessible areas of forest. In all these developments, significant Government assistance and legislative provisions were primarily targeted at encouraging and facilitating the expansion of Pakeha settlement and the immigrant ideal of small farm holdings, to the detriment of Maori interests in and authority over indigenous flora and fauna. Maori were also faced with the full meaning of the legal transfer of ownership of large areas of their land to the Crown and settlers, as settler expansion finally made real the exclusion of Maori from continuing to harvest and manage flora and fauna on such land.

The impact of European settlement upon Maori access to indigenous flora and fauna is apparent in reports and correspondence of Alexander Mackay concerning Maori in the northern South Island. In an 1872 report on the political, economic and social state of Maori in the region, he observed that:

Since the sale of most of their lands to the Crown, the Natives have been mostly confined to their reserves, which, although large in the aggregate for the number of persons to whom they belong, are small in comparison to the extent of land owned by them in former years, over which they could hunt or fish without hindrance or fear of transgressing some unknown law; now they can hardly keep an animal about them, without its becoming a source of anxiety, lest it involve them in some trouble with their European neighbours.<sup>107</sup>

Mackay also made similar remarks with respect to the southern Ngai Tahu reserves:

In former years, before the country was occupied by Europeans, they could roam all over it in search of edibles, but now they are hemmed in by civilization, and have no chance of obtaining the necessary supplies should the few acres they cultivate fail to produce a sufficiency. Every year as the settlement of the country progresses, the Natives are neces-

105. For example, H B Martin 'Objections to the Introduction of Beasts of Prey to destroy the Rabbit' in *Transactions and Proceedings of the New Zealand Institute*, 1884, vol 17

106. Tony Nolan, *Historic Gold Trails of Nelson and Marlborough*, Wellington, Reed, 1976, especially p 88

107. A Mackay, 'Report on the Condition of the Natives in the Provinces of Nelson and Marlborough and the County of Westland, for the Period ended the 30th June 1872', 18 July 1872, AJHR, 1872, F-3, p 17, cited in Grant Phillipson, *The Northern South Island*, vol 2, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p 19

sarily restricted to narrower and narrower limits, until they no longer possess the freedom adapted to their mode of life. The settlers hunt down, for pastime or other purposes, the birds which constituted their food, or, for purposes of improvement, drain the swamps and water-courses from which they obtained their supplies of fish; their ordinary subsistence failing them, and lacking the energy or ability to supplement their livelihood by labour, they lead a life of misery and semi-starvation.<sup>108</sup>

In 1883, Mackay again reported to the Native Department on the plight of Ngai Tahu, observing that the 'increase of civilization around them, besides curtailing the liberties they formerly enjoyed for fishing and catching birds, has also compelled the adoption of a different and more expensive mode of life'. He went on to state that:

In olden times the Natives had control of these matters, but the advent of the Europeans and the settlement of the country changed this state of affairs and destroyed the protection that formerly existed, consequently their mahinga kai (food-producing places) are rendered more worthless every year, and, in addition to this, on going fishing or bird-catching, they are frequently ordered off by the settlers if they happen to have no reserve in the locality.<sup>109</sup>

The period of the 1870s and 1880s ended with another economic recession as industries such as pastoralism and gold mining began to experience real decline. Land prices had boomed with the expectations of the progress industry and Government encouragement to runholders to exercise their pre-emptive rights to freehold land, such as time limits set in the Land Act 1877. However declining returns in the main industries and the barely subsistence incomes of many small farmers could not support high levels of speculative debt, and the boom collapsed. The banks reacted with a severe credit squeeze and the struggling economy could no longer sustain the continued population increase through immigration. From the late 1880s to the mid-1890s, the New Zealand economy experienced a severe downturn.<sup>110</sup>

108. A Mackay to Under Secretary of Native Department, 24 June 1874, AJHR, 1874, G-2c, p 2, cited in Phillipson, *The Northern South Island*, vol 2, pp 20–21

109. A Mackay to Under Secretary of Native Department, 6 May 1881, AJHR, 1881, G-8, p 16, cited in Phillipson, *The Northern South Island*, vol 2, p 25

110. W J Gardner, 'A Colonial Economy', p 75

## 6.4 1890s -1912

The period 1890 to 1912 coincided with a lengthy period of Liberal Government beginning in 1890 and finally ending with defeat by the Reform party in 1912. Land policies were an important reason for the initial Liberal election victory, especially promises to facilitate closer land settlement as a means of ending the recession and creating new prosperity. The Liberal promises to 'burst up the big estates' and 'put the small man on the land' were very popular with struggling Pakeha settlers in 1890, who found their aspirations of eventually owning some land receding in the 1880s recession, while relatively small numbers of large runholders appeared able to keep most of the best and easily developed land in the colony for themselves. There was nothing particularly new in the Liberal belief that closer settlement of land would be the main means of revitalising the economy. Historians have shown that there was a widespread consensus among settlers, even including many of the large runholders, that closer settlement was desirable because it would benefit the whole settler economy through ending isolation, creating jobs, stimulating economic development and bringing about economic prosperity and greater social cohesion.<sup>111</sup> The points of difference in political debates were more over how closer settlement might be achieved, with major differences over whether land tenure should be by freehold or through Crown leasehold, and how taxation systems might be applied to encourage closer land settlement. Liberal views on what land reform might include, ranged from minority support for nationalising all land in favour of Crown leasing, to more pragmatic majority views favouring benevolent Crown leases where necessary, but not radically altering the system of freehold tenure. The Liberals also supported a graduated land tax intended to reduce land speculation and persuade landowners to reduce their large holdings.<sup>112</sup>

The Liberal preference for benevolent Crown leasehold tenure had significant popular support following the experience of recession. 'Just' and 'fair' Crown leases characterised by long terms, low rentals and security from eviction, seemed preferable to acquiring freehold tenure by borrowing from rapacious private lenders or becoming dependant on unsympathetic banks. Low rentals also enabled settlers to save some of their small amounts of capital to spend on stock and improvements rather than investing it all in purchasing land. The Liberal response was to introduce a new form of tenure that was claimed to combine all the best features of

111. For example, Len Richardson, 'Parties and Political Change', in W H Oliver (ed), *The Oxford History of New Zealand*, Wellington, Oxford University Press, 1981, and Tom Brooking, 'Use it or Lose It: Unravelling the Land Debate in Late Nineteenth-Century New Zealand', *New Zealand Journal of History*, vol 30, no 1, 1996

112. Richardson, pp 200–201

freehold and leasehold tenure. This was the 999-year Crown lease-in-perpetuity without revaluation, introduced in 1892 by John McKenzie, the Minister of Lands. The new tenure was optional, and selectors could still choose alternatives of either paying a higher rental and retaining a right of purchase, or buying Crown land outright.<sup>113</sup> This kind of compromise was politically popular as it offered assistance to obtain land, without undercutting freehold. The move was even welcomed by some large runholders as being ideal for the large high country runs.

The other main features of the Liberal land programme were to make cheap credit available to farmers to allow them to establish and improve their farms, and an expansionist rural policy designed to more closely settle land that was believed to be under-utilised or idle. Cheap credit was essential to closer settlement and was made available to farmers through the Advances to Settlers Act 1894. This enabled farmers to borrow from the State on security at reasonable rates, the state raising money required through overseas loans. In effect, such advances tended to go to the more established farmers, more able to provide security for them.<sup>114</sup> Maori were effectively excluded from these cheap loans, as their land tenure was not regarded as adequate security. Cheap credit also encouraged the belief that hard work plus a little capital could make any land payable, encouraging the development of farming on marginal land that may have been economically and environmentally better used for other purposes. Allied with this were further public works programmes designed to service the rural economy, especially railway, road and bridge building necessary for closer settlement, and measures to improve the standard of farming.

In making land available for closer settlement that was considered to be under-utilised or idle, the Liberals made much of their promises to break up the large estates, and the subdivision of estates such as Cheviot in the South Island were very popular. However, historians have noted that compulsion was rarely necessary in these types of subdivision, nor did the Liberal land tax have much real impact on the pastoralists. Instead, there had already been moves to voluntarily subdivide some of the large estates even before the 1890s, driven largely by economic changes. This impetus slowed with the economic downturn from the mid-1880s because owners could no longer find buyers at reasonable prices. From the 1890s, with an upturn in land prices and Government willingness to buy, owners took advantage and sold. Between 1893 and 1906 only 1.3

113. *Ibid*, p 201

114. Tom Brooking, 'Economic Transformation', in W H Oliver (ed), *The Oxford History of New Zealand*, Wellington, Oxford University Press, 1981, p 238

million acres was made available for closer settlement through the Liberal lands for settlement policy. Compulsory repurchase (from absentee owners) was only invoked thirteen times between 1892 and 1910 and although used as a threat, full compulsory powers were used only four times. At the same time over two million acres were made available through voluntary subdivision. McKenzie's 'victory' over the large runholders was therefore 'largely political and symbolic rather than economic'.<sup>115</sup> Most runholders sold up because it was in their interests to do so and rising land prices and a willing purchaser made selling attractive.

At the same time, the large South Island runs had ceased to be the main focus of economic activity in the colony. Instead by the 1890s, attention was turning to the North Island, where the small family farm was at last becoming economically viable and therefore the demand for assistance with closer settlement was becoming greatest. It was here, where most remaining Maori land was located, that Liberal land policies proved to be really coercive to landowners. The technology that was most important in making family farms viable was the use of refrigeration to develop export markets for, in particular, meat, butter and cheese. The Government assisted with this by encouraging the application of scientific standards to farming and quality control of farm products. Acts in 1892 and 1894 for example encouraged higher standards for export produce through Government inspections, grading and coolstores. McKenzie also established the Department of Agriculture in 1891 to assist with improving farming methods. The economic importance of arable farming and mixed cropping declined, as farming became more intensive. Whereas before 1890, a farmer needed large numbers of sheep or cattle to make a surplus, after 1900 the trend to more intensive family farms became firmly established. There was a correspondingly sharp growth in dairy and mixed wool and fat lamb farming, particularly in the North Island. For instance, statistics showed a tiny number of dairy farmers in 1891. Numbers had risen to 5000 by 1901 and trebled by 1911 when about one third of all farmers classed themselves as dairy farmers.<sup>116</sup> The shift in economic focus to the North Island was matched by population changes, with the North Island population outnumbering that in the South Island from this time.

The Liberal Government supported this change by not only encouraging higher farming standards, but by providing more land for would-be Pakeha farmers in the North Island. Large-scale alienations of Maori land to Pakeha farmers whether by lease or purchase, became an integral part

115. *Ibid.*, pp 237–238

116. *Ibid.*, p 239

of the Liberal land settlement programme. Some 3.1 million acres of Maori land was purchased for example, between 1891 and 1911, most of it in the decade of the 1890s.<sup>117</sup> This included the great interior King Country district where Crown land purchasing began in 1890 and over one third of the district was purchased within ten years.<sup>118</sup>

The Liberals did make efforts to reform the worst abuses of land laws relating to Maori. Provisions were passed to reduce the worst of fraud and a Maori Appellate Court was finally established under the Native Land Court Act 1894. Liberal legislation also had some paternalistic features, although these often appeared to be more concerned with ensuring Maori did not become a burden on the state than with meeting Maori interests. Brooking has noted for instance that the Native Land Purchases Act 1892 was designed to prevent money from land sales being squandered by requiring it to be invested in the Public Trustee, even though this paid much lower interest rates than the private market.<sup>119</sup> The Liberals also took some steps to recognising Maori aspirations to control and develop their own land. The Mangatu no 1 Empowering Act 1893 introduced the principle of incorporating multiple owners as a single legal entity, providing an alternative to the difficulties of fragmented title.<sup>120</sup> Incorporation was not a complete solution and it would still be some decades before incorporations and consolidations of Maori land received significant Government support, but incorporations did begin to provide a legal environment whereby Maori could at last begin to manage their own land and on the East Coast for example, Maori incorporations began commercial ventures involving pastoralism and forestry.

In general however, historians such as Brooking have found that Liberal legislation involving Maori land was overwhelmingly 'coercive and punitive' during this time.<sup>121</sup> The Liberals also catered to Pakeha, rather than Maori needs for development, with Brooking noting that McKenzie's legislative programme ensured that Maori farming 'could never become a serious competitor to the heavily subsidized, tightly regulated and scientifically instructed white settler farmer'.<sup>122</sup> Some Liberal legislation was overtly coercive, for example provisions relating to Native Townships and takings of Maori land for public purposes. The Native Township concept was introduced in areas where difficulties were found in purchasing Maori land, and it was decided that it was necessary to establish small strategically placed Pakeha settlements, using compulsory measures, in order to begin the process of more extensive Pakeha

117. Tom Brooking, "Busting Up" the Greatest Estate of All, *New Zealand Journal of History*, vol 26 no 1, 1992, p 78

118. Cathy Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea block)*, vol 1, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p 128

119. Brooking, "Busting Up" the Greatest Estate of All, p 83

120. Ward, *An Unsettled History*, p 152

121. Brooking, "Busting Up" the Greatest Estate of All, p 84

122. *Ibid*, p 88

settlement. The Native Townships Act 1895 provided for the compulsory creation of these small townships from Maori land in the North Island, with the preamble describing the objective as being to 'promote the Settlement and Opening-up of the Interior of the North Island'. The townships were often located in areas with some industry potential, often based on flora and fauna, such as tourism or timber milling and in the process such opportunities were transferred from Maori to Pakeha control. The Native Township legislation provided for Maori to occupy some land while the remainder was leased to Pakeha settlers. There was no provision for compensation to be paid when land within the townships was taken for streets and reserves. Subsequent legislative amendments diminished Maori participation in managing the township lands and a 1910 amendment enabled leasehold township lands to be freeholded.<sup>123</sup>

As part of its programme to provide services to assist with closer settlement, the Liberals also retained and extended many of the compulsory measures related to public works takings of Maori land. New compulsory measures were also introduced that were to have a major impact on Maori authority over areas of flora and fauna that had survived the onslaught of farm development. In the 1890s, for example, some Pakeha began to raise concerns that continued farm development was beginning to threaten even the last remnants of indigenous flora and fauna, and campaigned for areas to be set aside, preserved as evidence of the past. This movement was given impetus by the demands of the tourism industry, both domestic and international, which was becoming a significant part of the economy of some districts by this time. In response, the Government passed legislation such as the Tongariro National Park Act 1894 providing for the establishment of the Tongariro National Park from lands gifted by Te Heuheu Tukino of Ngati Tuwharetoa in 1887. This Act included compulsory provisions enabling the Government to add to the gifted lands more area it desired for the park, but had failed to purchase from unwilling Maori owners, on the payment of compensation. The Act described this land as 'residue' of 'no benefit to the Native owners'.<sup>124</sup>

The Scenery Preservation Act 1903 enabled the taking of Maori land under public works provisions, found to be of scenic or historic interest or containing thermal springs. A 1910 amendment included provisions that enabled the Governor to grant Maori the right to take or kill birds that were not protected in any reserve that had previously been Maori land. The Governor could also vary or withdraw such permission at any

123. Marr, *The Alienation of Maori land in the Rohe Potae (Aotea block)*, vol 1, pp 135–143

124. Marr, *Public Works Takings of Maori Land*, p 118

time. The Maori Land Claims Adjustment and Laws Amendment Act 1907 also enabled Maori reserves, other than papakainga reserves, to be taken for scenic purposes by agreement between the Minister and the Maori Land Board with 'due regard to the interests of beneficiaries'.<sup>125</sup> These measures as well as being compulsory in nature, tended to most affect those relatively few areas of land, Maori had managed to continue to exert authority over precisely because they were considered worthless for farming, such as offshore islands, remaining forest strips along waterways and bush, wetlands and estuaries located in more inaccessible areas. Many of these contained the few areas left suitable for traditional harvesting and management of flora and fauna and these measures also tended to transfer such authority to the Crown and Crown agencies such as the wildlife service or were delegated to settler controlled authorities such as Parks Boards.

The Liberal Government also made extensive legislative and administrative provisions designed to facilitate the alienation of large areas of Maori land through sale or lease to Pakeha control. Many of these provisions were also of a decidedly coercive nature. In line with their overall land policies, the Liberals were not adverse to the concept of Maori leasehold land. This was a promising policy development for Maori as they had long shown a preference to lease rather than sell their land. In theory, leasehold offered the opportunity to make an income from rentals that could then be put towards protecting and developing remaining land. Leaseholds also offered the possibility that leased land could be resumed once a rental period ended and that even though leased, Maori still retained overall control of the land and its resources through ownership rights. However, the Liberals were determined that Maori leased land should be required to facilitate Pakeha settler needs. As a result Liberal legislative provisions regarding Maori leased land tended to favour the interests of lessees, rather than the Maori owners. For instance, in 1893 the Liberal Government made provisions that the Public Trustee, charged with leasing over 300,000 acres of reserves created after the Taranaki confiscations, could grant leases in perpetuity or even sell the land in certain cases.<sup>126</sup> Even where leases were not perpetual, provisions such as requirements to pay compensation for improvements often had a similar effect, as Maori received very low rentals and were often unable to pay for improvements and therefore had to roll over the leases. Leases were also

125. Ibid, pp 116-119

126. Ward, *An Unsettled History*,  
p 142

often regarded as simply a preliminary step to obtaining freehold and the Liberals proved themselves amenable to pressure from Pakeha lessees to assist with freeholding Maori leased land. The Liberals amended the Native Townships Act in 1910, for example, to permit the freeholding of leased township lands in an effort to shore up declining Pakeha electoral support.<sup>127</sup> As a result, the advantages of leasehold often proved illusory for Maori, as legal and administrative provisions effectively denied them management rights over such land and its associated resources.

In spite of their leasehold sympathies, the Liberals also proved to be willing to become actively involved in purchasing large areas of remaining Maori land. Measures introduced to facilitate this also often had the appearance of coercion. In the 1890s the Liberals took advantage of the virtual market monopoly created by the reintroduction of Crown pre-emption in large areas of the central North Island through legislative measures such as the Native Land Alienation Restriction Act 1884. The Government then used its monopoly to enforce a campaign of secret purchasing of individual interests at low prices, using tried and true procedures such as trapping individuals into debt, targeting those with financial difficulties or lesser interests in a block and using partitions to divide land between sellers and non-sellers. Once some interests were acquired in a block, then agents would gradually buy up more as opportunities arose, acquiring interests in a piecemeal fashion until either the whole block was acquired or sufficient interests obtained to have an area partitioned equivalent to the interests purchased.<sup>128</sup> Using this process, about two million acres of Maori land was acquired cheaply in the decade.<sup>129</sup> The prices paid for such land averaged six shillings four pence an acre, in comparison to the average 84 shillings an acre paid for the 1.3 million acres made available through the break-up of the great estates under the Lands for Settlement Scheme.<sup>130</sup> The Liberals also streamlined administrative measures to facilitate Maori land purchasing, including abolishing the Native Department in 1892 and the transfer of the Native Land Purchase Office to the Department of Lands and Survey to enable purchasing to be more closely aligned with land settlement policies. A Validation Court was also established under the Native Lands (Validation of Title) Act 1892 in order to hasten and streamline the settlement of invalid or disputed titles resulting from purchases of Maori land. Ward has noted that since the breaches had often arisen from a failure to com-

127. *Ibid.*, p 157

128. Marr, *The Alienation of Maori land in the Rohe Potae (Aotea block)*, vol 1

129. Ward, *An Unsettled History*, p 153

130. Brooking, "Busting Up" the Greatest Estate of All, p 78

ply with safeguards designed to prevent fraud 'the validation proceedings came close to legitimating dishonest dealings'.<sup>131</sup>

Some of the consequences of the methods of Crown land purchasing for Maori authority over flora and fauna during the 1890s can be seen in the official records of the purchasing campaign in the King Country. In that district, in the 1890s Crown purchase agents targeted virtually any land 'free' of Maori settlements, cultivations or waahi tapu.<sup>132</sup> This left little opportunity for Maori to retain either land required for traditional harvesting of flora and fauna or for new economic opportunities such as farming or timber milling. In an effort to break down Maori resistance to purchasing, agents also bought interests in virtually any block they could, again mitigating against rational planning for either Maori or the Crown. In the process, very little consideration was given to Maori requirements for sale reserves, with reserves being refused in some blocks to compensate for what the Government felt was too high a purchase price, and many reserves lost through subsequent purchases.<sup>133</sup> There is evidence that land purchase agents tried to prevent leasing in some blocks in order to cut off alternative sources of income for Maori who might otherwise have to sell land to raise much needed cash.<sup>134</sup> Crown agents also insisted on determining the price to be paid for blocks based on the estimated agricultural or pastoral value of the land, excluding any resources such as timber or minerals that might be located on it. Although they refused to acknowledge the value of timber when buying land, purchase agents complained when Maori sold timber from land they intended to buy, on the grounds that this would reduce the on-sale price the Crown might obtain from Pakeha settlers. Agents also tried to buy up blocks of Maori land before developments such as roads reached them, or discouraged roads being built to them while in Maori ownership, in order to avoid paying higher prices based on improvements.<sup>135</sup> These procedures combined to deprive Maori of land ownership rights and therefore legally recognised control of associated flora and fauna, as well as limiting Maori to small, scattered, often uneconomic blocks, cut off from access to flora and fauna for traditional uses and denied commercial opportunities that may have been available if they had been able to retain larger, more rational areas and more adequate sale reserves.

In embarking on these measures, the Liberals were reflecting the widespread Pakeha view that only those who 'properly' utilised their land deserved to own it. This view can be traced back to the old notions common

131. Ward, *An Unsettled History*, p 153

132. Marr, *The Alienation of Maori land in the Rohe Potae (Aotea block)*, vol 1, p 77

133. *Ibid*, pp 88–89

134. *Ibid*, p 91

135. *Ibid*, pp 91–92

at the beginning of colonisation, that cultivation and settled land occupation conveyed a 'superior' right of ownership compared with mobile, seasonal harvesting. It had combined with a sense of superiority as a result of the apparent success of scientific improvements and developments in farming to find expression in the dominant Pakeha view of the time, that those who were willing to use the land productively (in the sense of developing it for farming) had the strongest moral claim to ownership of it, or as Brooking has described it, the view that owners should 'use it or lose it'.<sup>136</sup> This had nothing to do with legal principles concerning private property, as Brooking has noted.<sup>137</sup> Nor was it applied exclusively to Maori. The proponents of this view also questioned the rights of absentee land owners and land speculators to be allowed to retain their land. However given the demand for North Island lands, the focus of attention rapidly turned to the large areas of Maori land that appeared to be 'idle' and 'unproductive'. It was widely accepted by the 1890s that Maori did have rights of land ownership, but it was argued that if they did not use land 'properly' then they did not deserve to keep it. The settler idea of the 'proper' use of land was a relatively narrow one during this period and for some time afterwards. It was primarily concerned with livestock farming, while even other possible commercial opportunities received little consideration. The potential of horticulture was generally ignored, for instance, unless to supply urban areas. Otherwise crop growing tended to be concentrated on producing stock food, rather than as an alternative economic enterprise. The development of commercial forestry was still some way off, while large stands of timber continued to be indiscriminately burned and there was no serious attempt at reforestation for conservation purposes until the 1920s. The rich coastal fisheries around New Zealand were not seriously considered as a major resource by Pakeha until well into the twentieth century and only introduced species such as trout and salmon were regarded as having economic potential in inland fisheries. The idea of progress through land development also took little account of the economic wastefulness of trying to clear and farm marginal land, or the necessity of properly managing marginal country. The recognition of problems such as erosion, silting and catchment control were still some way off. Importantly this view certainly did not accept as a 'proper' use of land, the traditional forms of land and resource use still important to Maori, such as seasonal harvesting of indigenous flora and fauna. While there was some grudging acknowledgement of the grandeur

136. Brooking, 'Use It or Lose It: Unravelling the Land Debate in Late Nineteenth-Century New Zealand'

137. *Ibid.*, pp 144–145

of indigenous flora and fauna, this was not to be allowed to hinder the development of productive land. For example, A D Willis who took over John Ballance's seat in Wanganui, described the bush as 'pretty' with beautiful scenery, but quite 'useless'.<sup>138</sup> Premier Richard Seddon also proclaimed in debates, that, 'every tree felled meant the improvement of the public estate of this country'.<sup>139</sup> It was a short step to declaring that Maori owners should not be able to interfere with the 'national good' by holding onto and using land in ways that denied its full 'productive' potential. Thus in 1893 the Minister of Lands, McKenzie, declared that, 'The time has come, when the Natives must be called upon to make up their minds as to whether they would make good use of their land, or allow use to be made of it by the government', while going on to suggest that Maori lacked the capital, expertise and administrative machinery to be able to farm their land effectively themselves.<sup>140</sup>

The Minister's suggestions that Maori were unable to farm land themselves revealed another common assumption held by Pakeha settlers by this time, that Maori were unable or unwilling to become 'good' farmers. The memory of flourishing pre-wars Maori agriculture and trade had quickly faded and instead the practical consequences of Crown land policies, including the Native Land Court process, was widely seen as evidence that Maori were not capable of being good farmers. Crown purchase and reserves policies had left Maori economically marginalised with little capital for farm development. The expensive nature of the Native Land Court process, along with the exclusion of Maori from sources of cheap credit added to this. As well, the fragmented title created by the Native Land Court process made it very difficult for those Maori who held on to land to develop or use it productively. As Ward has noted, 'individualisation of title' had not meant the creation of individual family farms, but the creation of easily sold paper shares in land. On the ground, these shares were often widely scattered over many blocks, making it impossible for families to obtain sufficient land in one area to use economically.<sup>141</sup> In some cases Maori want to retain land in an 'undeveloped' state for traditional purposes. This is evident in Maori ensuring that reserves set aside for them when the Crown purchased their land was suitable for traditional economic activity. An example of this is George Grey's 1847 blanket purchases of Ngati Toa's interests in Porirua and the Wairau valley. Major Richmond stated of the purchases that Ngati Toa were only willing to alienate the lands because of the 'ample reserves' made.<sup>142</sup>

138. NZPD, 1894 vol 86, p 200

139. *Ibid.*, p191

140. NZPD, 1893, vol 81, pp 512–513

141. Ward, *An Unsettled History*, p 138

142. Richmond to W Wakefield, 23 March 1847, NZC 3/7, NA Wellington, cited in Grant Phillipson, *The Northern South Island*, vol 1, p 91

Phillipson records how Grey felt obliged to justify the large extent of the reserves. 'He informed Earl Grey that Maori needed more than just land for cultivation, including habitats for fernroot, fishing, eels, birds, and "extensive runs" for wild pigs, and that they could not be confined to small pieces of land for cropping until their economy and farming practices had undergone further change'.<sup>143</sup> Similarly, maintaining access to their mahinga kai was what motivated Ngai Tahu to request extensive reserves in the negotiation of the 1848 Kemp purchase – requests that by and large were not given effect to.<sup>144</sup>

But it seems clear that in many other cases Crown policies effectively prevented Maori from developing and utilising the land they did wish to develop for farming or forestry purposes. The result, however, was that Pakeha settlers overwhelmingly viewed Maori ownership as a 'bar' or 'block' to the productive use of land, justifying measures necessary to alienate it into Pakeha control. Premier Seddon explained in 1900:

I believe I am voicing the desire of the great majority of the people of the colony when I say we do not wish to see the Maori disappear, nor do we wish to see them a burden upon the ratepayers. We do not wish to see them landless, but we do desire and we do insist that the land owned by them shall be made productive, and that this keeping back from settlement valuable lands in the colony, which has been the case for so many years must be put a stop to...<sup>145</sup>

After a decade of intense land purchasing in the 1890s, the Liberals apparently changed their policy in 1900. Section 3 of the Native Land Laws Administration Act 1899 stopped all new Crown purchasing of Maori land, although purchases already 'begun' in a block could be completed. The 1900 Maori Lands Administration Act then introduced a new system of making Maori lands available for settlement through leasing by district Maori Land Councils. Initially Maori could voluntarily transfer their lands through deeds of trust to the Councils to manage on agreed terms. The Councils could at first lease these lands, known as vested lands, but not sell them.<sup>146</sup> Maori members could also theoretically form a majority of Council membership, although the president had to be a European. Provisions in the Act also enabled reserves for papakainga, birding, fishing, urupa or other purposes to be created and made inalienable on vested lands. The Councils also had to approve all proposed sales of Maori land in a district and first ensure that sufficient reserves were

143. Phillipson, *The Northern South Island*, vol 1, p 91 (quoting G Grey to Earl Grey, 7 April 1847, in GBPP 1847–1848, p 16)

144. Waitangi Tribunal, *Ngai Tahu Report*, vol 2, chapter 8, especially pp 410, 477, 480. When further reserves were made in 1868, Ngai Tahu requested a 50 acre reserve on the Opihi River in South Canterbury for the purpose of weka hunting (vol 3, p 942).

145. NZPD, 1900, vol 114, p 511

146. Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea Block)*, vol 2, p 3

created before any sales could proceed. The Councils could also undertake all the powers of a Native Land Court, including ascertaining title, partition and succession, although not unless directed to do so by the Native Land Court. Although private sales were possible under the Act, it was assumed that leases would be the main form of alienation.

The new system owed something to the efforts of James Carroll to slow the sales of Maori land and to give Maori sufficient protections and time to begin developing their own land. However there also seem to have been practical concerns motivating the change, not least the bottleneck the Native Land Court had become in releasing land with adequate title for immediate Pakeha settlement. The Native Land Court process had proved extremely effective in alienating Maori title. However, the very means necessary for this success, including the acquisition of many individual shares, the partitioning and surveys required, the allowance for re-hearings and appeals, and the process of consolidating many scattered pieces of land into usable blocks for settlement, appears to have caused the system to collapse under its own weight, with only a very slow trickle of 'good' titles and blocks ready for actual settlement coming out the other side. The creation of the district Maori Land Councils seemed to offer a means of side-stepping this process and freeing up the disposal of Maori land to meet the demands of settlement, even if only by lease. The 1907 Stout Ngata Commission of Inquiry into unutilised Maori lands, noted for instance, that vesting land in the Maori Land Boards (that succeeded the Councils in 1905) overcame such problems and delays with title. This was because when land was vested, the Board became the 'legal owner' and it could then 'guarantee the successful applicant a perfect title'.<sup>147</sup>

Maori initially welcomed the new system of district Maori Land Councils insofar as they appeared to offer more self management, Crown purchases were stopped, vesting was voluntary and the emphasis was on leasing, rather than the sale of lands. Maori were wary of Government intentions however and especially of losing authority over their lands through vesting them in the Councils. As a result, relatively little Maori land was vested voluntarily.<sup>148</sup> When the system did not release the anticipated flood of Maori land for settlement, subsequent legislative provisions increasingly removed powers of Maori self management from the Councils (and later Boards) and became correspondingly coercive while Carroll and Ngata were fully employed attempting to ameliorate the ex-

147. AJHR, 1907, G-1c, p 6

148. Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea Block)*, vol 2, pp 5-7

tent of such measures. Subsequent measures transferred ultimate powers of control to the Pakeha members of the Councils/Boards, protections for Maori land and reserves were removed, and there seemed to be an official assumption that vesting land was simply a forerunner to transferring the control of such land to Pakeha settlers, either through perpetual leases or eventual freeholding.<sup>149</sup>

The Maori Land Settlement Act 1905, for example, changed the Councils into Boards, reduced Maori representation to a minority of one, and replaced the partially elected membership with wholly Government appointed members. There were provisions for compulsorily vesting land in the Boards and restrictions on alienations were removed. Under section 20, the Government was also enabled to resume purchasing of Maori land. A 1906 amendment further enabled lands to be compulsorily vested where noxious weeds were a problem or where the Minister considered land was not being 'properly' occupied by Maori. More coercive measures such as the Native Land Settlement Act 1907 moved from voluntary vesting to the compulsory vesting of identified unutilised Maori land in the Boards, half of which then had to be leased, and the other half sold.<sup>150</sup>

Measures also tended to transfer authority over vested land from Maori to the Boards, which were generally concerned to facilitate settlement rather than meet Maori concerns. This helped establish the situation where from 1909 to the early 1920s, as Tom Bennion has noted, the Maori Land Boards together with the Native Land Court were the 'facilitators and promoters of the alienation of Maori land'.<sup>151</sup>

The Stout Ngata Commission was established by the Liberals in 1907 to investigate Maori land and to identify which parts of it Maori required and which of the 'surplus' could be leased or sold for the 'public good'. The commission consulted with Maori and was sympathetic to many Maori aspirations. While it identified large areas of Maori land that could be leased, it recommended relatively little for sale. It did, however, favour 'progressive' Maori who wanted to farm their land, and was unsympathetic to those who wanted to be left to use it in traditional ways possibly because Ngata believed this would never be tolerated by Pakeha. The commission noted the many practical difficulties Maori faced in trying to utilise their land productively, including the disruptive impact of Crown purchases and the fragmentation of title resulting from the Land Court process. It also recognised that the low prices paid by the Crown for land and resources had combined with crippling and often punitive Court and

149. *Ibid.*, chapter 1

150. Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea Block)*, vol 2, p 11

151. Tom Bennion, *The Maori Land Court and Maori Land Boards 1909–1952*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1997, p 40

survey expenses to prevent Maori from developing and farming their own land. The report also noted the punitive impact of the Liberal land tax measures on multiple-owned Maori land, difficulties Maori faced with gaining an income from leasing, and the hostility of local authorities over rating issues.<sup>152</sup>

The Commission's work was undermined by the passing of the Native Land Settlement Act 1907 which had the effect of requiring much more land to be sold than had been recommended. At the same time the Government began purchasing Maori land again from 1906. As Pakeha farmers became more established and the memory of recession faded, they began to increasingly demand freehold rather than leasehold tenure. The Liberals faced growing electoral pressure to facilitate the sale rather than lease of Maori land. The demand for freehold and for free access to Maori lands became an important plank of opposition policies to the Liberal Government. The New Zealand Farmers Union was established in 1899 with policies that strongly supported freehold tenure. This was very popular with North Island farmers who possibly stood to gain the greatest benefits in obtaining freehold tenure. The necessity of clearing bush to develop farms meant there was a correspondingly greater difference between unimproved and improved values for the land and they wanted to be able to realise such gains. Like Maori, they also found it difficult to secure credit on leasehold land. The Liberals increasingly bowed to pressure to encourage freehold, facilitating land purchases and the freeholding of leased land. The 1909 Native Land Act as well as being a major consolidation of land law, also introduced new measures to encourage private purchasing of Maori land that would eventually result in private purchasing of Maori land far outstripping that of the Crown. However the Liberals introduced the measures too late to forestall political opposition and they lost power to the Reform party in 1912.

## 6.5 Conclusion

In conclusion, it seems that Government land policies in the period between 1840 and 1912 had an important impact on Maori authority over indigenous flora and fauna. This was in spite of such issues often not being explicitly addressed in official land policies, largely because the application of British legal concepts resulted in interests in flora and

<sup>152</sup>. AJHR, 1907, reports at G-1a, G-1b, G-1c

fauna being considered subordinate to rights of land ownership. In addition land policies reflected Crown and Pakeha settler assumptions that land use where people settled permanently and cultivated and farmed their land, were superior to seasonal and mobile harvesting of resources. Although the focus of Crown land policies changed in the three periods outlined, underlying this there appears to be a discernible pattern of Crown policies that facilitated the needs of Pakeha settlement and large scale colonisation, while limiting and undermining Maori authority over indigenous flora and fauna. There is evidence that while Maori clearly wanted to be able to protect some forms of traditional use and management of flora and fauna, they also appreciated that some changes were necessary to engage with new commercial opportunities. They were willing to accept some new form of recognised title for land to be used commercially for instance and to allow Pakeha settlement and commerce. There were times when it seemed the Crown might encourage processes that would take account of Maori wishes in this respect. Maori also appear to have believed, especially in the first decades of settlement that the Crown was committed to ensure that this would happen. However, especially as Maori became marginalised, increasingly the Crown seems to have abandoned these attempts and instead catered primarily to Pakeha concerns.

The major policies by which Maori authority was undermined appear to have been those that facilitated the legal transfer of land ownership from Maori to Crown and Pakeha control and then policies that delegated governance over land and flora and fauna to forms of settler government while marginalising Maori. The loss of legally recognised ownership of land had a major impact on Maori because rights in flora and fauna were, by British notions of property ownership, considered part of land ownership, and legally transferred with the land. Maori often appear to have continued using land that they had sold. But as areas became more closely settled, they were increasingly confined to their reserves or what other lands they had retained. This had the effect of limiting Maori access to indigenous flora and fauna for traditional purposes, as well as crippling Maori ability to take part in new economic opportunities based on flora and fauna. The loss of legal ownership also had implications for Maori participation in new forms of management of flora and fauna as many of these, such as local government authorities, were based on land ownership rights, particularly rights that did not have

the complications of title imposed on Maori land. In addition it appears that it was often assumed that because Maori had willingly sold land, they had also willingly given up any further interest in associated flora and fauna. While the Crown delegated authority over flora and fauna to Pakeha dominated forms of local government and interest groups such as acclimatisation societies and Park Boards, Maori were not generally recognised in the same way. The result was that within seventy years Maori were effectively marginalised from authority over indigenous flora and fauna and new economic opportunities such authority might provide.