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KĀHUI MAUNGA



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# **KĀHUI MAUNGA**

## **The National Park District Inquiry Report**

Volume 2

Wai 1130

Waitangi Tribunal Report 2013



The cover photographs show the mountains Tongariro, Ngāuruhoe, and Ruapehu in the Tongariro National Park. The top photograph is by Glen Coates, the lower one by Daniel Talbot.

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## ABBREVIATIONS

AEE	Genesis Power Ltd, <i>Tongariro Power Development: Assessment of Environmental Effects</i> (Manukau: Genesis Power Ltd, 2000)	no	number
AJHR	<i>Appendix to the Journal of the House of Representatives</i>	NZED	New Zealand Electricity Department
app	appendix	NZFS	New Zealand Forest Service
ATL	Alexander Turnbull Library	NZLR	<i>New Zealand Law Reports</i>
CA	Court of Appeal	NZPD	<i>New Zealand Parliamentary Debates</i>
CFRT	Crown Forestry Rental Trust	OIC	Order In Council
ch	chapter	OTS	Office of Treaty Settlements
CNI	central North Island	p, pp	page, pages
comp	compiler	para	paragraph
doc	document	PC	Privy Council
DNZB	<i>The Dictionary of New Zealand Biography</i> , 5 vols (Wellington: Department of Internal Affairs, 1990–2000)	PEP	Project Employment Programme
DOC	Department of Conservation	pt	part
DTHR	Department of Tourist and Health Resorts	repr	reprinted
ECNZ	Electricity Corporation of New Zealand	RMA	Resource Management Act 1991
ed	edition, editor, edited by	ROI	record of inquiry
fl	flourished	ROLD Act	Reserves and Other Lands Disposal and Public Bodies Empowering Act
FMC	Federation of Mountain Clubs	s, ss	section, sections (of an Act of Parliament)
fn	footnote	SC	Supreme Court
fol	folio	sec	section (of this report, a book, etc)
ha	hectare	sess	session
LHAD	land history alienation database	SOE	State-owned enterprise
LINZ	Land Information New Zealand	SPB	Scenery Preservation Board
ltd	limited	TBZ	Taumarunui Borough Council
MA	Department of Maori Affairs file, master of arts	TNP	Tongariro National Park files
MOW	Ministry of Works	TNPMP	Tongariro National Park Management Plan
NCC	Nature Conservation Council	TPD	Tongariro Power Development
NIWA	National Institute of Water and Atmospheric Research	TTC	Tongariro Timber Company
NLC	Native Land Court	TTCMS	Department of Conservation, <i>Tongariro/Taupo Conservation Management Strategy, 2002–2012</i> (Wellington: Department of Conservation, 2002)
		TVZ	Taupō volcanic zone
		WAS	Waimarino Acclimatisation Society
		vol	volume

‘Wai’ is a prefix used with Waitangi Tribunal claim numbers.

Unless otherwise stated, endnote references to claims, papers, and documents are to the Wai 1130 record of inquiry, a select copy of which is reproduced in appendix iv.

## LAND ISSUES AND THE ESTABLISHMENT OF THE TONGARIRO NATIONAL PARK

Land is central in part III. Chapter 5 opens with the operation of the Native Land Court in the National Park district during the nineteenth century. The court came relatively late to this inland district, but when it came it transformed the lives of ngā iwi o te kāhui maunga. Large blocks were processed by the court from 1886 onwards. The Crown sought a land title which was court determined, surveyed, and alienable, and which would enable it to purchase interests from the individuals named on the title.

Important developments took place after our hearings were complete. Crown, claimant, and Crown Forestry Rental Trust historians working on the adjacent Whanganui inquiry held a series of meetings to establish a consensus on the court issues. They subsequently issued a position paper which has also been accepted by the parties to our own inquiry. That has had the benefit of enabling us to shift the balance in our chapter from generic issues, to more specific questions about the operation and the impacts of the Native Land Court in this district.

In chapter 6, we turn to Crown purchasing. Pastoral farming came in advance of Crown purchases and the Native Land Court. Māori leased land, or entered into partnership agreements, with Pākehā investors. The Crown sought active involvement from 1874, buying the lands and leasing to pastoralists.

Large-scale Crown purchasing, with a view to subdivision and settlement, took place from the 1880s when the very large Taupōnuiātia and Waimarino blocks were purchased. The Native Land Court began hearings in Taupō in January 1886 (Taupōnuiātia) and in Whanganui in March 1886 (Waimarino). Crown purchase agents were especially active at this time. The Crown has argued, vigorously, that the primary reason for purchasing land in this inquiry district was the creation of a national park. The claimants argue, with equal vigour, that land purchases were part of a wider purchasing programme, designed to acquire as much land as possible, at the minimum price. Detailed evidence was brought to us, and we explore these very different contentions as the chapter progresses.

Chapter 7, which concerns the ‘gift’ of te kāhui maunga and the creation of the Tongariro National Park, occupies a central place in our report. The Crown was intent on establishing a national park, while Maori were intent on retaining ownership of te kāhui maunga. Horonuku Te Heuheu, te tino rangatira of Ngāti Tūwharetoa, and John Ballance, Native Minister, met face-to-face, kanohi ki te kanohi, in Rotorua in January 1887. This

is an event surrounded by controversy, by documentation in English and in Māori, by oral tradition and mythology. Some of the mythology has found its way into glossy publications commemorating the establishment of the park.

The assurances and undertakings made at this meeting, and the world views and aspirations of each party, are pivotal to what follows and are subject to careful scrutiny and analysis. Much hinges on the concepts of 'tuku' and 'gift' and on what each party thought had been agreed to.

Twentieth-century Crown purchasing is the subject of chapter 8. In 1900, Māori held almost half of the land in the district; by 2000, that figure had dropped to less than 15 per cent. The Crown purchased land for agricultural settlement, for timber, and for conservation and tourism. Crown purchases are considered here, public works takings in chapter 10.

The Crown's motivation for purchase changed as the century progressed. In the opening decades the frontier of Pākehā settlement was still expanding, lands here became accessible from the North Island Main Trunk Railway, and government policy was to purchase, subdivide, and settle all lands suitable for farming. Agricultural settlement was the Crown's first priority, but lands unsuitable for settlement, with a high conservation value, were sought-after for scenic reserves or national park. These agendas ran in parallel, especially in the decades between the 1900s and the 1930s when there were still large areas of land in Māori hands. At that time, there was a tension between the desire of the owners to utilise the forest resource commercially and the Crown's growing interest in conserving it.

Chapter 9 examines Māori lands which were retained by their owners, and the Crown's role in developing those

lands. The Crown wanted Māori lands brought into the productive economy. Māori land development programmes were initiated nationally in 1929 but were less important here since the population was smaller and few blocks were suitable for farming. In 1939, certain lands were taken into a Taurewa development scheme, where they remained under Crown control until 1991.

Exotic forestry proved to be a viable economic activity on marginal lands in the central North Island. In the 1970s, the Crown, seeking a constant supply of timber for the forest industries, considered Māori lands. The interests of the Crown and Ngāti Tūwharetoa converged and the Lake Rotoaira Forest Trust was formed in 1973. More than 16,000 hectares were leased by the Crown and 9,000 hectares were planted in pine forest. The first crop was harvested in the 1990s.

Chapter 10 on public works takings spans the nineteenth and twentieth centuries. Such takings go to the heart of the Treaty relationship and have been discussed in previous Tribunal reports as requiring consultation, fair compensation, and informed consent and have often brought the Crown and Māori into direct conflict. Our district is no different and we examine public works takings in National Park against this backdrop.

Māori land was taken for roads, the railway, and scenic reserves from the 1890s onwards. The largest takings were for the army, and the most numerous were for the TPD in the 1960s and 1970s. Close to 6,000 hectares were taken. The Ōtūkou quarry and shingle pit were taken to provide metal for the TPD. The grievance there was so profound, and so deeply felt, that we present it in the form of a case study.



CHAPTER 6

## CROWN PURCHASING IN THE NINETEENTH CENTURY

### 6.1 INTRODUCTION

Crown purchasing operations in the nineteenth century commenced relatively late in our inquiry district. The remoteness and marginal nature of much of the land, the legacy of the land wars, and the increasing resistance of Māori to land sales meant substantive purchases only began in the 1880s. The Crown's initial focus was the southern blocks of our inquiry district. By the middle of the decade, however, the Crown commenced operations in the large Taupōnuiātia and Waimarino blocks. Those operations continued and expanded into the 1890s, so that by the turn of the century, the Crown had acquired just under 50 per cent of the land within our inquiry district.<sup>1</sup> Private purchasing was not significant. In fact, only 1,805 acres, or 0.5 per cent of total purchases in the district during the nineteenth century, were bought on behalf of private parties.<sup>2</sup>

In chapter 5, we examined claims relating to the operation of the court. We now examine Crown purchasing during the nineteenth century to determine if the government's policy and practice breached its Treaty obligations. Approximately 73 per cent of the land in our inquiry district originally formed part of the original Taupōnuiātia master block, the remaining 37 per cent comprising what could be broadly termed the upper Whanganui region. Our analysis of purchasing in these two distinct, yet overlapping, areas serves as important context for the issues in connection with the creation of the Tongariro National Park. In the present chapter, though, we deliberately avoid analysing the Crown's acquisition of blocks comprising the three mountains, Ruapehu, Ngāuruhoe, and Tongariro. Those particular blocks were the subject of high-level political negotiations between Māori and the Crown during the 1880s and are the focus of chapter 7.

### 6.2 CLAIMANT SUBMISSIONS

All parties in our inquiry district collaborated to present us with combined 'generic' submissions about nineteenth century land alienation. Some claimant counsel also submitted further claims on issues specific to their iwi or hapū. While we rely substantively on the generic submissions, these further submissions are addressed where applicable in this summary.

#### 6.2.1 Crown reasons for purchasing in the National Park inquiry district

The claimants in this inquiry district acknowledged that the creation of a National Park was a 'unique feature' of the Crown's land acquisition in this district in the nineteenth

century. Nevertheless, they argued that the Crown was primarily motivated to acquire as much land as possible in the central North Island area, and the idea of an area of land for the purposes of a National Park was only an ‘added bonus’.<sup>3</sup>

The claimants’ joint generic submissions on the ‘gift’ of the maunga will be examined in more detail in the next chapter, but here we note that counsel, too, regarded the notion of the park as being an ‘added bonus’ to the Crown’s land acquisition plans. Counsel contended that the sequence of events has been distorted by the Crown: ‘it was not a case of the government being resolved on setting up a national park, and then acquiring land to do it; rather the prime objective was *getting title to the land*’ (emphasis in original).<sup>4</sup> In fact the timing of the land acquisitions is central to the claimants’ submissions. Counsel told us that:

It is often assumed that Te Heuheu’s ‘gift’ of the peaks created the core or nucleus of the National Park, and that the other areas were subsequently added to this core. This is completely incorrect. The blocks that Te Heuheu had partitioned and then ‘gifted’ came towards the *end* of the Crown’s acquisition process. [Emphasis in original].<sup>5</sup>

In counsel’s submission, Crown acquisition of land in the district was part of a much wider process.<sup>6</sup> Counsel argued that it ‘needs to be stressed that Crown purchasing in the Taupō-Kaingaroa region as a whole was on a massive scale’ and therefore the ‘National Park inquiry district purchases of the 1880s should be seen as part of this massive purchasing process in the Central North Island at this time.’<sup>7</sup> This wide-scale purchasing scheme appeared to the claimants to be constituted of ‘policies and practices that were specifically designed to facilitate the Crown acquisition of as much Māori land as possible and at the minimum price.’<sup>8</sup>

The Crown acquired a vast amount of land in the inquiry district over the period from 1886 to 1887, with many purchase negotiations continuing through the 1890s. However when the park was first gazetted in 1907,

its boundaries were confined to the original maunga and outer maunga blocks as set down when it was first proposed in parliament in 1887. The claimants submit that this ‘shows that the government was not acquiring land primarily for a national park.’<sup>9</sup> Rather, the claimants contend that, while some parliamentarians were ‘certainly serious advocates of national parks’, in the main,

establishing a national park in the middle of the North Island was not the Government’s prime objective, which was, as always, the expansion of effective sovereignty and the frontiers of settlement.<sup>10</sup>

Nevertheless, claimant counsel did not deny the uniqueness of the situation in our inquiry district. Although arguing that the Crown was ‘very focused on acquiring land throughout Taupōnuīātia’, counsel acknowledged that the Crown’s ‘focus on acquiring land for the Park impacted upon where the Crown chose to obtain land, namely, as close to the mountains as possible.’<sup>11</sup>

### 6.2.2 Overall purchasing methods

As further evidence for their position that the park was not the primary motivating factor, the claimants submitted that the majority of the land that eventually became National Park lands was ‘acquired via the usual Crown purchasing methods’. They pointed out, for instance, that when the Crown obtained Ōkahukura, the large land block to the west of the mountains, there was nothing at the time to indicate that it was being purchased specifically for the Park.<sup>12</sup> They did acknowledge, however, that it could be ‘deduced from context’ that the Park was ‘undoubtedly a key motivation.’<sup>13</sup>

Counsel likewise submitted that, aside from the ‘gift’, it was the case that ‘[o]verwhelmingly, the region has come into the Crown’s hands under the all too familiar system of monopoly purchasing.’<sup>14</sup> Ngāti Rangī reinforced this contention, submitting that their tupuna’s experience was that the Crown’s purchasing practices ‘were no different to those practices conducted in other parts of the country.’<sup>15</sup> Counsel’s submission summarised the overall picture:

On close examination the sad truth is that the Crown acquired most of the mountains and the surrounding lands not as the outcome of any generous and noble gift but through its standard-fare, routine, grinding and oppressive Crown purchasing system with all its repellent features with which we have become all too familiar: survey costs, the purchasing of undivided shares based on ownership lists created by the Native Land Court, repeated partitions, cheap skate prices, unchallengeable valuations grossly lacking in transparency and monopoly purchasing rights.<sup>16</sup>

Counsel contended that this 'system as a whole was a breach of the Crown's Treaty-based duty of active protection.'<sup>17</sup> Specific submissions on these various aspects of the Crown's purchasing policy are outlined below.

### 6.2.3 Advance payments

Noting the 'very close interconnection' between title investigations and Crown purchasing in the Taupōnuīātia lands, the claimants pointed out instances of advance purchasing in the inquiry district.<sup>18</sup> Under the provisions of native land legislation, such practices were not illegal for the Crown. However, the claimants argued that the way that these purchases were conducted constituted a breach of the Treaty of Waitangi.<sup>19</sup> Citing the evidence of historian Tony Walzl, Ngāti Rangi claimants, for instance, submitted that 'the Crown advanced large sums of money for purchasing and survey' of the Rangataua block before it came before the court for title investigation in 1880.<sup>20</sup> The claimants told us that advance purchasing by Crown agents also occurred in the large Ōkahukura block to the west of the mountains in 1874, well before the 1886 Taupōnuīātia title investigation. They further stated that the payments were ultimately returned 'in protest' by the rangatira involved.<sup>21</sup> Ngāti Waewae and Ngāti Hikairo submitted that the Grace brothers then made additional advance payments amounting to £309 3s 13d against the Ōkahukura block between May 1878 and 1880.<sup>22</sup> In the claimants' submission, moreover, these advances may have been accepted by the rangatira under a misunderstanding, in that they likely viewed them as 'advances of

income to be generated by the lease partnership rather than by some future sale of land'.<sup>23</sup>

Payments made to individuals after the court had awarded title in favour of a hapū but prior to a list of owners being accepted by the court were similarly seen by the claimants as a form of advance purchasing tactics.<sup>24</sup> Counsel argued that it 'should not have been up to the purchase agent to make an independent decision over who was entitled to receive those payments and on what grounds'.<sup>25</sup>

The claimants maintained that the close relationship between Crown purchase agents and the title investigation process meant that agents were in a position to influence which names ended up on the lists of owners; counsel for the claimants contended that the agents were

in a perfect position to ensure that the purchase payments they had already expended were 'made good' by the name of the willing seller being inserted as owner on that block.<sup>26</sup>

### 6.2.4 Crown pre-emption

The claimants submitted that one of the key aspects of the purchasing system was that

The Crown privileged itself as purchaser by imposing Crown pre-emption over the National Park district for much of the crucial Crown purchasing period over the latter 1880s and the 1890s.<sup>27</sup>

A succession of laws was enacted through the 1880s and 1890s, the effect of which was to 'place a very significant proportion of remaining Māori land in the North Island under a pre-emptive regime'.<sup>28</sup> Throughout the period of nineteenth century Crown purchasing in the National Park inquiry district, the Crown had exclusive purchasing powers.

The key implication of the pre-emption regime for Māori owners was that it removed private purchase competition from the picture, thus 'driving prices down'.<sup>29</sup> The claimants saw the purpose of pre-emption as a 'means of

preserving to the Crown the ability to make purchases of Māori land, unhindered by competition from private land purchasers'. Ultimately therefore, this regime 'placed the Crown at a significant advantage'.<sup>30</sup>

Citing the *Ōrākei* report, the claimants submitted that Crown pre-emption carries with it certain responsibilities, arguing that 'the idea of concomitant obligations toward Māori when the Crown has put itself in a privileged position, is one that should be adopted by the Tribunal and developed further'.<sup>31</sup>

### 6.2.5 Undivided share purchase

The claimants also made submissions on the Crown's practice of purchasing undivided shares, arguing that individualisation of interests was critical to enabling the Crown to purchase the interests of land owners that remained undefined on the ground. The effect of this practice, they said, was to pressure potentially vulnerable owners into selling. It also hastened land loss because after the Crown had purchased the undivided shares, it sought to have them partitioned out. Furthermore, the claimants submitted that Crown agents had influence on the process of having particular names placed ownership lists, which Ngāti Tūwharetoa said undermined 'any shred of fairness or neutrality there may have been in the process'.<sup>32</sup>

### 6.2.6 Survey costs

Awarding specific parcels of land to the Crown to discharge survey debt or, alternatively, granting liens over land as security for unpaid debt were common practices in the nineteenth century. In the claimants' submission, the issue of survey costs is an important factor in the Crown purchasing system in the National Park inquiry district, and in particular with the Taupōnuiātia lands.<sup>33</sup> Citing the findings of the Pouakani Tribunal, counsel described the process by which surveys were made and charged in Taupōnuiātia as 'messy and complicated'.<sup>34</sup> The claimants also pointed to 'excessive amounts of land' being taken for survey costs in the 1886 to 1887 period, such as a large part of Taurewa 1, Ōkahukura 7, and the Rangipō North 1A to 7A blocks.<sup>35</sup> A major concern for the claimants was the almost total control that the Crown had over the survey

process: 'the Crown decided how much it cost to survey the land per acre, and how much the land to be alienated to pay for the survey was worth'.<sup>36</sup>

Where land was given a low value, 'more land would be swallowed up to cover the costs of survey'.<sup>37</sup> Thus, the claimants submitted, Māori were being 'squeezed' at both ends of the process. In effect, the costs of surveying 'trapped Māori in a downward spiral of debt and land alienation'.<sup>38</sup> Counsel for Ngāti Tūwharetoa submitted that, furthermore, many did not see the point of the surveys, given that the boundaries had been already been supplied by rangatira to the court. 'The evidence', she said, 'indicates that Ngāti Tūwharetoa were unprepared for the loss of land through survey costs'.<sup>39</sup>

### 6.2.7 The price paid

Building on their submissions about the unfairness to Māori owners of the Crown's purchasing monopoly in the region, the claimants further alleged that the Crown took advantage of its purchase monopoly to pay prices for Māori land below what was considered a fair value at the time. Given that there were no legislative provisions for setting minimum prices until 1905, the Crown was in the privileged position of valuer and purchaser throughout the nineteenth century. Māori owners were in a position of taking or leaving the Crown's price offer, and given they were often 'vulnerable' to selling, they sometimes did not even have a choice.<sup>40</sup>

The claimants cited evidence of several situations where they said land in the inquiry district was intentionally valued lower than it was worth.<sup>41</sup> They argued that it 'is obvious that a purchaser in a monopoly position commands the ability to dominate a market and drive prices down' and that the evidence shows, 'the government certainly was willing to do so'.<sup>42</sup> The claimants urged the Tribunal to consider whether the prices that the Crown paid for land were fair. In the claimants' opinion, the evidence pointed to

both a low price per acre having being paid (and with the Crown's knowledge that the price was below value), as well as a coercive legislative environment in which Māori never

had the opportunity to challenge the Crown's nominated price, receive independent advice, or assess by comparison with other prices being offered whether the Crown's price was fair.<sup>43</sup>

### 6.2.8 The role of the Crown agents

The claimants alleged that the methods used by the Crown's land purchase agents in acquiring land in the inquiry district were corrupt.<sup>44</sup> It was submitted that Crown land agents, most notably William, John, and Lawrence Grace, were 'conflicted in their official roles by their personal interests' and that this was 'at the expense of Māori'.<sup>45</sup> The Graces were tied to the people and the land through business and personal interests. Ultimately, the claimants blame the Crown for exploiting the Graces' links to the region. They allege that the Crown was not only well aware of the conflicts of interests but used them to serve the Crown's own ends. Despite an 'extensive number of complaints', about the Graces' activities, the Crown 'failed to do anything material' about addressing the concerns expressed.<sup>46</sup> In the claimants' submission,

the principles of the Treaty of good faith conduct and active protection were breached both by the actions of the government agents and the Crown failure to address the concerns.<sup>47</sup>

The claimants' allegations about the role of the Crown agents in the region are closely tied to their concerns about the extent to which the court process and Crown purchasing process seemingly worked 'in tandem' to ensure that the Crown could acquire as much land as possible. In the claimant's view, the 'conflicted' agents were the key to a 'managed and manipulated process'.<sup>48</sup> Ngāti Hikairo and Ngāti Waewae both submitted that the Crown was responsible for the actions of its agents and as such was in breach of its fiduciary duties by 'permitting such unfair purchasing tactics and by subsequently failing to remedy the prejudice caused by them'.<sup>49</sup> In addition to the activities of these agents in particular, said the claimants, the Crown purchasing method of paying commission based on acreage purchased was in breach of its duty of active protection.<sup>50</sup>

### 6.2.9 Conclusion

Overall, the claimants sought to stress that in the inquiry district Māori were often given no option but to 'alienate vast tracts of their land to the Crown at low prices'.<sup>51</sup> This land was purchased as part of a much wider purchasing process throughout the North Island in the 1880s and 1890s. While the National Park is a 'unique feature' of this inquiry district, most of the land purchased through this period was not earmarked for inclusion in the park until the twentieth century. By and large, the claimants argued, the lands in the National Park inquiry district were acquired using the usual and sometimes dubious purchasing practices of pre-emption, advance purchasing, the purchase of undivided shares, imposition of survey costs, and unfair valuations and purchase prices.

## 6.3 CROWN SUBMISSIONS

### 6.3.1 Crown reasons for purchasing in the National Park inquiry district

The Crown acknowledged in its submissions that the overarching reasons for land purchasing in New Zealand during the last third of the nineteenth century were colonisation and the economic development of the colony.<sup>52</sup> That said, the Crown said that in this inquiry district its primary reason for purchasing Māori land was the creation of a national park. It argued that:

almost the entire Crown purchase programme in this Inquiry District was directed toward preserving the mountains and surrounding lands as an inalienable public reserve, ultimately a national park.<sup>53</sup>

This purpose, the Crown argued, makes the land purchases unique and is 'the distinction that sets the Inquiry District apart from the adjacent regions'.<sup>54</sup> The Crown contended that there was 'widespread political support for establishing a National Park' by the early 1880s, although the 'legislative and administrative details took time to evolve as did determination of the final boundaries'.<sup>55</sup>

In the Crown's submission, Māori were aware of the Crown's aim of establishing a national park in the district

and actively cooperated in this venture. Highlighting Horonuku Te Heuheu's gifting of the mountain as evidence, Crown counsel noted that 'while the significance of the gift should not be overstated in terms of the actual area involved, it remains a matter of fundamental importance when considering what Māori and the Crown were trying to achieve'.<sup>56</sup>

According to counsel, the unique nature of the Crown's purchasing aims in the inquiry district is demonstrated by the fact that 'the vast majority of land acquired . . . is now part of Tongariro National Park or the Tongariro Conservation Area'. The majority of remaining land, said counsel, is still in Māori ownership – his implication being that where land was not wanted for the park or for conservation, the Crown had no other need for it.<sup>57</sup> A further unique feature of the inquiry district is that it has never been an area 'of permanent occupation or cultivation'.<sup>58</sup>

Defending its purchasing regime in the inquiry district, the Crown said it was important for the park to be in public ownership in order to preserve the 'natural beauty and character of the area'. Private ownership would have posed a significant threat to the future use and management of the land.<sup>59</sup>

### 6.3.2 Advance payments

In the Crown's submission, the evidence 'does not indicate that the Crown encouraged a system of advance payments' in the inquiry district. Indeed, a change in policy in 1879 saw the Crown 'stop opening new negotiations for land that had not passed the Native Land Court'.<sup>60</sup>

That said, the Crown accepted that, prior to the change in policy, advance payments were made against the Rangataua block.<sup>61</sup> When the Crown's initial plans to purchase the whole block fell through, however, it found it was unable to recover those advances and so had its interests partitioned out.<sup>62</sup> The Crown submitted that this practice was within the legislative parameters of the Native Land Amendment Act 1877.<sup>63</sup> According to the Crown, there was no evidence put before the Tribunal that advance payments were made against any Taupōnuīātia blocks within the National Park inquiry district.<sup>64</sup> It was acknowledged that while 'some payments may have been

made before the final award in September 1887, these payments were not made without the benefit of interlocutory orders setting out owners'.<sup>65</sup>

### 6.3.3 Monopoly purchasing

Outlining the development of Crown land purchasing policies in relation to Māori land in the North Island, including the National Park inquiry district, Crown counsel submitted that 'the imposition of monopoly powers of purchase was not in itself a breach of the Treaty' and there were 'legitimate Article 1 interests for doing so' – namely 'to minimise the risk of land speculation and to control and regulate settlement'.<sup>66</sup> The Crown's ambition to 'promote and revitalise settlement of the entire colony' depended on the 'acquisition of a significant amount of Māori-owned land for new agricultural development'.<sup>67</sup> Therefore, it was imperative that Māori land be protected from purchasing by private speculators.<sup>68</sup> The Crown also pointed to the Liberal government's policy of 'closer settlement' and the strategic importance of the main trunk railway as further rationale for its pre-emptive policies over land in central North Island, particularly in the enactment of the Native Land Alienation Restriction Act 1884.<sup>69</sup> However, given the disposition of Tribunal inquiry boundaries, issues around the railway were best left to neighbouring inquiries.<sup>70</sup>

In terms of the impacts of Crown policies and legislation, counsel submitted that the evidence before the Tribunal was largely insufficient to come to any conclusions. In particular, it is:

unclear from the evidence to what extent proclamations were used between 1874–1900 (with the exception of 1876) and whether the Crown acted unreasonably or in bad faith when it asserted those rights over Māori land to the prejudice of Māori owners.<sup>71</sup>

### 6.3.4 Undivided share purchase

The Crown did not make direct submissions on the practice of undivided share purchasing, but said that where title had been awarded to a block, it was the Crown's practice to deal with the named owners identified by the

court. This ensured that it was dealing with the appropriate people.<sup>72</sup>

### 6.3.5 Survey costs

The Crown acknowledged that the issue of fair application of survey costs is ‘complex and difficult’.<sup>73</sup> It argued that the usual principle to apply is that the party that is going to benefit from the survey should bear the costs. Surveying enabled owners wishing to engage in transactions over their land to secure legal title, and the cost could then be recovered when the land was sold or leased. Furthermore Māori were aware that surveying worked to improve the value of their land in that it opened up more choices as to what could be done with it.<sup>74</sup> The Crown did acknowledge, however, that surveys were a particular burden to some Māori, especially when the land surveyed had low economic value. It also acknowledged there were ‘sometimes inflated survey charges because of the economic risk assumed by the surveyors’.<sup>75</sup> It is difficult, in the Crown’s opinion, to separate out those owners who were planning to gain legal title and retain the land for their own use, and those who were going to sell it. In relation to the former group, the Crown acknowledged that it ‘could have taken further steps (that is beyond those actually taken) to ease the burden of survey costs’.<sup>76</sup> In relation to those who went on to sell land, the Crown acknowledged that ‘survey costs often involved significant amounts’ and that ‘in some cases Māori did have to alienate land to satisfy survey costs’. Counsel, however, urged caution when assessing the extent to which survey costs actually caused or contributed to the alienation of land.<sup>77</sup>

In the Crown’s submission, the cost of surveys in the National Park district – varying from 8 to 25 per cent of the block’s value – was ‘not unreasonable compared to the situation nationally’.<sup>78</sup>

### 6.3.6 The valuation and purchase price

The Crown pointed out that the historical evidence suggests that the science of land valuation was still ‘relatively unsophisticated and undeveloped’ in the nineteenth century, but there is nothing to say that the system used was not fair and reliable.<sup>79</sup> Given the lack of technical evidence

on the subject, the Crown submits that the claimants have little basis for claims that the Crown’s purchase prices were too low.<sup>80</sup> The Crown accepted that it sought to purchase land as cheaply as possible, as it was prudent use of public funds. This strategy was not, in the Crown’s opinion, in breach of the Treaty principles. Furthermore, low prices ‘do not necessarily signify under-payment’.<sup>81</sup>

In the Crown’s submission, it cannot be assumed that, because private parties were excluded from purchasing in the district, the Crown’s valuations and prices paid were artificially low. Indeed, without a private market it is very difficult to ascertain what a ‘market rate’ might have looked like. Instead, the Crown argued, other factors which affected the purchase price included:

- › the type of land being purchased;
- › the area of land being purchased;
- › the location of the block; and
- › international and national economic factors, such as the economic depression in the 1880s.<sup>82</sup>

### 6.3.7 The role of the agents

In response to submissions that the Grace brothers were personally conflicted in their role as agents in the National Park district, the Crown said that many of these claims ‘are over-stated’.<sup>83</sup> The Crown accepted liability for the actions of William and John Grace in their capacity as Crown officials, but rejected responsibility for their actions as private citizens.<sup>84</sup> In the case of Lawrence Grace, the Crown denied liability for his actions, arguing that because he was a member of parliament at the time of purchasing he could not have been acting as a Crown agent.<sup>85</sup> Challenging the claimants’ reliance on Stirling’s evidence, the Crown argued that ‘the evidence does not indicate that the Crown was using the Grace brothers to manipulate the Taupō-nui-a-tia process, or that there was any improper collusion between the Grace brothers and the Crown’.<sup>86</sup> The Crown also rejected the claim that it turned a ‘blind eye’ to the Grace brothers’ personal interests in order to facilitate land purchases in the inquiry district.<sup>87</sup> Regarding purchasing in particular, the Crown said ‘there is no evidence of any specific promises of benefit for Māori being made by Crown purchase agents’.<sup>88</sup>

#### 6.4 SUBMISSIONS IN REPLY

In response to Crown criticism, claimant counsel downplayed the significance of the gift of the peaks. In terms of the ambitions of both Māori and the Crown, counsel clarified that he had certainly not meant to ‘suggest that it was an unimportant event’ or that a proper analysis of Crown and Māori motivations was unimportant. Rather, the point was that the gift was indeed a ‘special event’ and, as such, was ‘just one part of a much bigger process of acquisition, and needs to be seen in that light.’<sup>89</sup> This process of acquisition was achieved through standard purchase practices common at the time, throughout the North Island, of undivided share purchase and partition.<sup>90</sup>

Claimant counsel also reinforced their central argument that, by and large, purchasing in the National Park inquiry district conducted over the period from 1886 to 1887 was ‘aggressive’ in that ‘very large areas were acquired with great rapidity, leaving many owners bewildered and puzzled as to what was happening.’<sup>91</sup>

In response to the Crown’s submissions on pre-emption policy and practice, the claimants accepted the Crown’s summary of the relevant legislation, but asked the Tribunal to focus more on the issues most pertinent to the National Park inquiry district, namely the ‘rapid partitioning and massive Crown acquisitions in Taupōnuiatia itself.’<sup>92</sup>

The claimants also responded to the Crown’s position that there was insufficient evidence put to the Tribunal to assess claims about whether the valuation system and purchase prices were fair.<sup>93</sup> Accepting that this topic is indeed very difficult to determine, the claimants reiterated a number of factors at play in the valuation system which had significant influence on the outcome. Notably, they emphasised that, prior to 1905, there was no law setting minimum payments for land, and in that context the Crown held a privileged position as both purchaser and valuer. Counsel submitted:

Given that the context of Crown purchasing was . . . so coercive as to come very close to de facto compulsory acquisition, the lack of a transparent valuation process posed obvious risks to owners.<sup>94</sup>

In the claimants’ view, Māori were in a disadvantaged position as sellers, having no real valuation or price comparisons available to them at the time. This was largely due to the exclusion of private purchase competition in the district.<sup>95</sup> Counsel acknowledged the difficulties in assessing the fairness of valuation but concluded that there is ‘scattered’ but ‘sufficient’ evidence to ‘indicate that the Crown paid low prices and that it was government policy to do exactly that.’<sup>96</sup> Counsel also flatly rejected the Crown’s excuse of rationalising these low prices because of the government’s financial position at the time. The Crown was, in the claimants’ opinion, ‘obliged to pay Māori a fair price and establish a fair and transparent land-purchasing process.’<sup>97</sup>

#### 6.5 TRIBUNAL ANALYSIS

Having set out the submissions of parties, we now turn to our analysis. This is framed around four key questions:

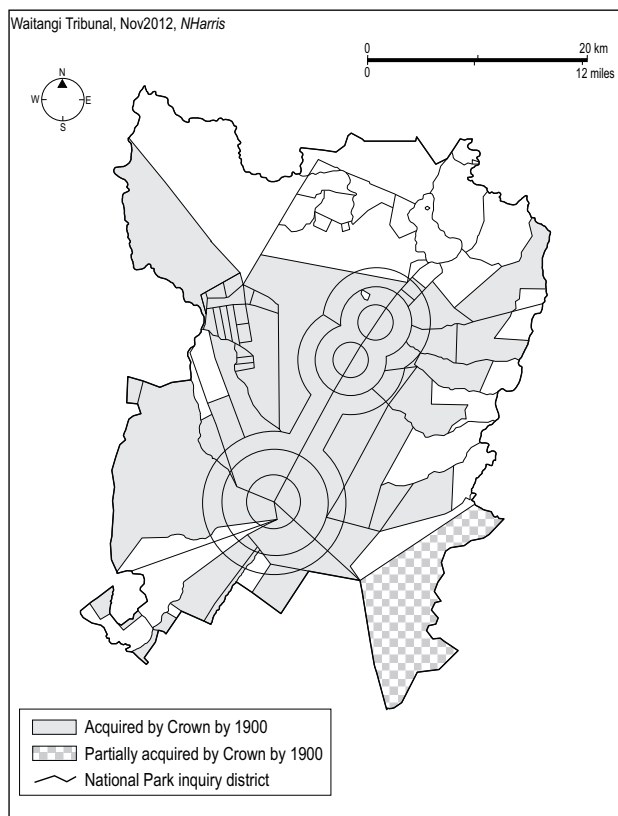
- ▶ What land was purchased in the nineteenth century, over what period, and who was involved?
- ▶ Was ‘almost the entire Crown purchase programme’ in our inquiry district directed towards obtaining lands for the National Park?
- ▶ If not, why did the Crown purchase lands in this inquiry district during the nineteenth century?
- ▶ Did the Crown’s land purchase policy and practice in this inquiry district breach its Treaty obligations during the nineteenth century?

At this point, we turn to our first key question.

##### 6.5.1 Nineteenth-century land purchasing

In the last two decades of the nineteenth century, the Crown acquired just under half of the landholdings of ngā iwi o te kāhui maunga in this inquiry district – a total of 173,052 acres out of the 348,605 acres.<sup>98</sup> In the 1880s, 89,217 acres were acquired, and in the 1890s, the figure was 83,834 acres.<sup>99</sup> Of these Crown acquisitions, 82 per cent were through straightforward purchases, while the other 18 per cent was via Crown survey awards and cessions.<sup>100</sup> This was by far the most intense period of Crown purchasing in the district, and as we shall see in later chapters,





Map 6.1: Blocks acquired and partially acquired by 1900

its legacy lasted well into the first half of the twentieth century.<sup>101</sup>

In this section, we begin by setting out the key facts of what land was purchased, when it was purchased, and the key people or groups involved in the alienation. In doing so, we attempt to overcome the evidential gap that parties drew attention to in their closing submissions. We look at the situation regarding leasing in the 1870s and early 1880s (mostly in the southern blocks), then move on to the period of intense Crown purchasing activity in the Taupōnuiātia and Waimarino blocks between 1886 and 1887. Lastly, we turn to purchasing in the 1890s, a decade which saw the Crown essentially ‘mopping up’ its interests in the southern blocks and Taupōnuiātia blocks.

### (1) *The 1870s to the early 1880s: mainly leasing activity*

From the late 1860s through to the 1880s, land negotiations in the National Park inquiry district were characterised by increasing competition between Crown and private agents for interests in the same blocks. The first significant land dealings during that period were leases on blocks in the Murimotu lands – two of the four blocks concerned (Rangipō–Waiū and Rangiwaea) lying wholly or partly within our southern boundary. By the early 1870s, these lands had still not passed through the court and it was clear that Māori in this area favoured leasing over the sale of their lands, and also favoured working with private parties rather than with the Crown.<sup>102</sup> Late in 1873, competition intensified between the Crown and private parties – leading to a September 1874 agreement between the Crown and Māori owners which effectively gave the Crown a monopoly over leasing arrangements in all four Murimotu blocks.<sup>103</sup> The Crown was then able to sub-let areas to the private parties in return for the private agents agreeing to back out of purchasing competition.<sup>104</sup>

Before the Crown could formalise its leasing and sub-leasing regime in these blocks, however, it had to wait for the court to determine title. The detail of this arrangement and its impact on Māori owners has been explored more fully in chapter 4. Negotiations over the Rangipō–Waiū block were characterised by competition between groups and their respective allies. The title investigation for the block began in Taupō in April 1881 and the court finally awarded in favour of Ngāti Waewae, Ngāti Rangī, and Ngāti Tama.<sup>105</sup> A week or so later, on 31 May, the Crown entered formal leasing contracts with the owners and worked toward formalising a sub-lease arrangement with private agents John Studholme and associates.<sup>106</sup>

In the Rangiwaea block, however, the government and the private agents decided, in the early 1880s, not to pursue leases, and the block did not pass through the court until 1893.

There was also leasing activity during the 1870s and 1880s in the large Ōkahukura block in the north-west of the inquiry district. In the late 1870s, a partnership emerged between financiers Morrin and Studholme, John and Lawrence Grace, and local Māori. The purpose of the



Sir James Henry Gunson and John Cullen outside a haunted whare at Tongariro National Park, circa 1925. The whare was used by Māori shepherds who worked on a sheep run developed during the late 1800s. The run was managed by a group of Māori owners and Pākehā businessmen that included the Grace brothers.

partnership was to develop the block as a sheep farm. The terms of the partnership were that Morrin and Studholme would provide the starting capital. The Māori owners would supply the land – initially rent free but later at a nominal rent – and the labour. Profits would be shared. The Māori owners were to repay Morrin and Studholme their half of the original capital from the farm's income and once it was paid they would share equally in the profits.<sup>107</sup> Lawrence and John Grace were to act as managers, mediate between Morrin and Studholme and the Māori owners, as well as share in any profits. All three parties would, therefore, benefit from the partnership.<sup>108</sup>

In September 1882, the Graces sought and gained approval from the Māori owners, on behalf of Morrin and Studholme, to convert the partnership into a formal leasing arrangement by having the boundaries of the land surveyed. The survey was completed in June 1883. The Graces then applied to have the customary ownership of the block determined by the court because it was hoped the land could be purchased from the owners instead. However, before the Graces were able to achieve this aim the Crown enacted the Native Land Alienation Restriction Act 1884 and private purchasing in the Taupōnuīātia district was prohibited. This Act declared a regionalised

**James Booth**

?–1900

*James Booth arrived in New Zealand on Christmas Eve 1852, travelling in connection with the Church Missionary Society. After returning briefly to England, he settled in 1856 at Pipiriki in the upper Whanganui, where he farmed and taught. In 1864, Pai Marire Māori travelled through the area on their way to attack Whanganui township, and Booth and his wife and children were all taken prisoner. The Booth family lost everything except the clothes they wore, and they survived only because Hori Patene, the son of a Whanganui chief of the same name, helped them to escape in a canoe.<sup>1</sup>*

*Booth was put in military control of the upper Whanganui, and he was part of an effort that defeated the 'Hauhaus'. In September 1865, Booth was appointed resident magistrate of Wanganui, despite Te Keepa's protests that he would not allow Booth to set foot in the river district.<sup>2</sup> The following year, Booth became a judge of the Native Land Court.*

*In 1876, he became a commissioner for the Native Land Purchase Department, and he reported that in that year he completed the purchase of more than 58,000 acres of land in the Wellington and Wanganui districts for the government.<sup>3</sup> During the 1870s and 1880s, he was involved in countless negotiations for land, which included Rangataua, Murimotu, and Ōkahukura.*

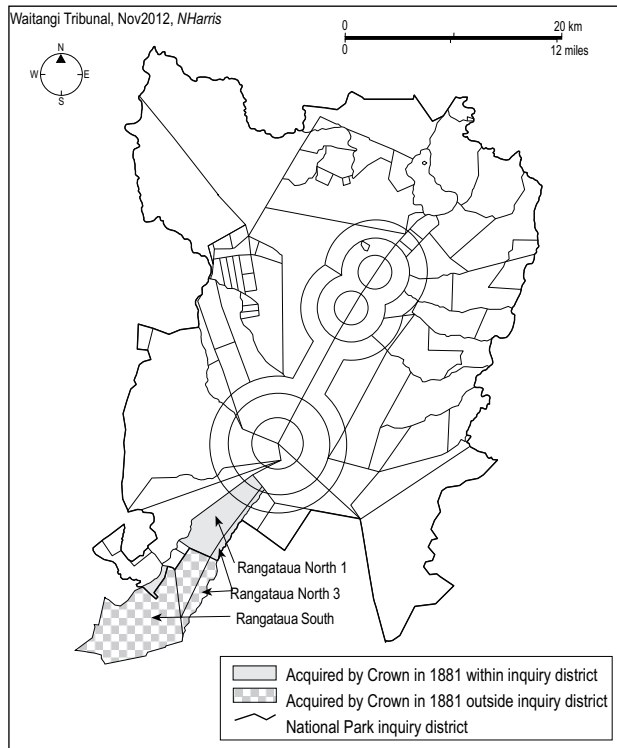
*In 1878, Booth was suspended for interfering with land blocks that were intended for Crown purchase; he was accused of securing land for private purchasers, including his brother. However, following an inquiry the same year, Booth was exonerated of all charges.<sup>4</sup> He was appointed a magistrate in the Poverty Bay district in 1883, a position he held till his death. His obituary described him as having 'played his part well and nobly in the struggles and trials of New Zealand colonisation.'<sup>5</sup>*

pre-emptive regime over a large area of land (around four million acres) along the confirmed route of the main trunk railway from Te Awamutu in the north down to Marton in the south.<sup>109</sup> The imposition of pre-emption prevented Morrin and Studholme from completing any purchase of the Ōkahukura block prior to 1886, when the Taupōnuiātia block came before the court. The Māori owners eventually discharged their debts to Morrin and Studholme through the sale of Ōkahukura 7 in 1887 (see section 6.5.4(7)(iii)).<sup>110</sup>

Around the same time that these leasing negotiations were occurring, the Crown was also engaged in purchase negotiations for Rangataua – a block to the west of the Murimotu lands and which only partly falls within our inquiry district. Portions of the Rangataua block were the first Crown purchases completed in the National Park inquiry district. Crown purchase agent James Booth began making advance payments to chiefs on the block in

1879. One year earlier, Booth had been suspended from his position for allegedly 'being a party to two transactions in Native lands in direct defiance of his instructions, and of his duty as a public officer.'<sup>111</sup> But a commission of inquiry was established to investigate the charges and Booth was completely exonerated.<sup>112</sup> He was soon reinstated and remained the chief land purchase officer for the Whanganui district until 1883 when he was appointed resident magistrate in the Poverty Bay district.<sup>113</sup>

As discussed in chapter 5, title to the Rangataua block was heard on 6 August 1880 but it was the subject of counter claims and was reheard in August and September 1881. On 9 September 1881, it was subdivided, and the court subsequently awarded three subdivisions to the Crown as its purchased share of the interests. The subdivisions were Rangataua North 1 (5645 acres), Rangataua North 3 (852 acres), and Rangataua South (529 acres).<sup>114</sup> All three are partly in the National Park inquiry district.



Map 6.2: Blocks acquired in 1881

### (2) Purchasing in Taupōnuiātia and Waimarino, 1886–87

Following the initial lease and purchase negotiations made mostly in the southern blocks, the second phase of Crown activity was between 1886 and 1887 and encompassed the purchase of large areas of land, some of which was earmarked by the Crown for inclusion in a national park. These purchase negotiations resulted from title determination over Taupōnuiātia lands in 1886, and the Waimarino block (also in 1886). We deal first with the Taupōnuiātia blocks.

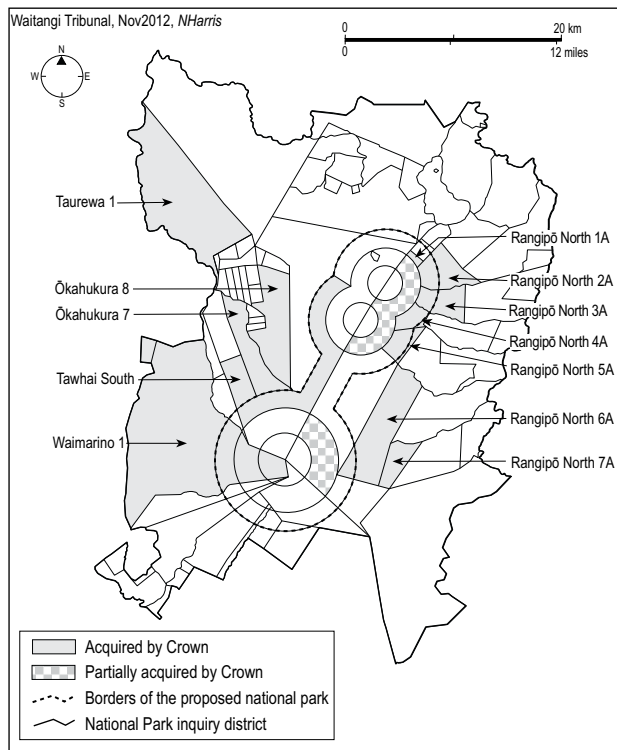
(a) *Taupōnuiātia*: Ngāti Tūwharetoa made its application to have the Taupōnuiātia lands put through the court on 31 October 1885. The political background to their application has been assessed in chapter 4, and the context of the court hearing is covered in chapter 5. The initial hearings

commenced in Taupō on 14 January 1886 and subdivision hearings into areas that fall within our inquiry district began on 3 February. On that day, the two large blocks on either side of the mountains (Ōkahukura to the west and Rangipō North to the east), as well as the large Taurewa block to the north-west of the inquiry district, were put through the court.

The following day, the large Ōkahukura block to the west of the mountains was awarded to Ngāti Tūwharetoa and its associated hapū, and was subdivided into 10 blocks. These subdivisions included the mountain blocks of Tongariro 1 and Ruapehu 1. Chapter 5 has already discussed the land court proceedings which broke the Taupōnuiātia lands up into alienable blocks though the period from 1886 to 1887. The court sat from January to April 1886, recommencing in January 1887 and breaking again in June 1887. When the hearings recommenced in September 1887, the court made final orders on the remaining blocks.

In all, blocks purchased by the Crown between 1886 and 1887 were:

- ▶ Tāwhai South (2,000 acres): Between May and September 1886, the Crown made payments totalling £400 (four shillings per acre) to the owners of this block. Crown ownership was not confirmed until February 1894.<sup>115</sup>
- ▶ Taurewa 1 (17,600 acres): The Taurewa parent block was heard on 6 April 1886 but not settled until 2 June of that year, when it was awarded to 452 owners. The Crown made payments totalling £1,605 (three shillings per acre) for undivided interests in this block between May 1886 and May 1887.<sup>116</sup> When the block was subdivided on 24 September 1887 the Crown was awarded Taurewa 1 (17,600 acres). This acreage represented the shares of the 154 sellers (13,629 acres) and land acquired from the non-sellers for survey costs (3,971 acres).<sup>117</sup>
- ▶ Ōkahukura 7 (10,000 acres): Title to the Ōkahukura parent block was determined on 3 February 1886 and 8 partitions were made on 4 February 1886. The Crown made payments totalling £2,500 (five shillings per acre) for the Ōkahukura 7 block between 17



Map 6.3: Blocks acquired by September 1887

March 1886 and 15 May 1886. Ōkahukura 7 was proclaimed Crown land on 1 July 1886.<sup>118</sup>

- ▶ Ōkahukura 8 (6,766 acres): When the Ōkahukura parent block was divided up, a large part of it became known as Ōkahukura 8. Figures vary, and are confusing, but it seems it must have covered at least 50,000 acres.<sup>119</sup> That block was in turn partitioned between 2 and 4 May 1887. On 9 May 1887, title to 6,766 acres of the block, also designated Ōkahukura 8, was awarded to the Crown as its share of purchases totalling £1,019 (three shillings per acre), formalised by deed dated 20 October 1886.<sup>120</sup>
- ▶ Rangipō North: Title to this parent block was heard on 3 February 1886, and seven subdivisions were made on 19 March. On 12 September 1887 the Crown was awarded 18,875 acres of the seven Rangipō North

blocks to cover survey costs of £1,681 3d for the parent block. These blocks were Rangipō North 1A to 7A, all of which were adjacent to the proposed National Park.<sup>121</sup> We discuss this later in our analysis (see section 6.5.4(7)).

On 4 February 1886, two semicircular blocks encompassing the three mountains were subdivided from the Ōkahukura block on the western side of the mountains: Tongariro 1 (7,000 acres) and Ruapehu 1 (3,560 acres).<sup>122</sup> On 3 March 1886, a further two semicircular blocks were subdivided from the large Rangipō North block on the eastern side of the mountains: Tongariro 2 (6,852 acres) and Ruapehu 2 (4,876 acres).<sup>123</sup>

Together these formed two circles (or part-circle, in the case of Ruapehu), of two and three miles radius respectively, around the peaks of the mountains and formed the basis of the Crown's proposed National Park. The maunga blocks were then subdivided further on 21 September 1887 into one-mile inner semicircles, Tongariro 1A, 1B, 2A, and 2B, and two 1½-mile inner wedge shapes, Ruapehu 1A and 2A. These six peak blocks, totalling 6,520 acres, constituted the area that the Crown was to acquire from the paramount chief of Ngāti Tūwharetoa, Horonuku Te Heuheu in 1887.<sup>124</sup>

The outer radius blocks (Ruapehu 1B, Ruapehu 2B, Ruapehu 3, and Tongariro 1C and 2C) were vested in the same seven owners as each of the parent maunga blocks had been. We discuss the circumstances surrounding the Crown's acquisition of these blocks in chapter 7.

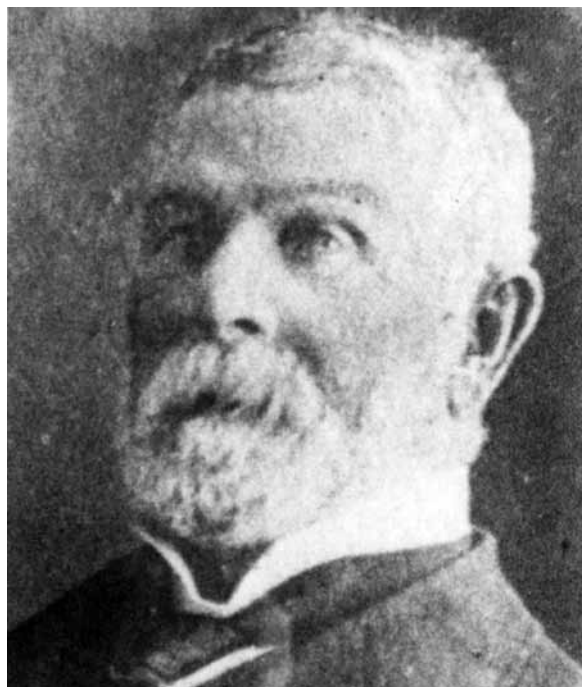
The following year, the Crown acquired, in total, a further 42,641 acres. Combined with the 26,049 acres acquired or under negotiation during 1886, the Crown's holding in the inquiry district had thus increased to 68,690 acres by the end of 1887. However, not all these acquisitions were final, with several not finalised until the 1890s.

As discussed briefly in chapter 5, Crown purchasing in the Taupōnuiātia blocks was carried out by William and John Grace and their associate Henry Mitchell in this period. All were employed just prior to the commencement of the Taupōnuiātia hearings. William and John Grace's brother, Lawrence, also assisted with purchasing

**Henry Walker Mitchell**

1835–1915

*Born in 1835 in Scotland, Henry Walker Mitchell first arrived in Port Chalmers in 1858. After eight years in Invercargill, practising as a surveyor under John Turnbull Thomson (chief surveyor of Otago and, later, surveyor-general), Mitchell moved to Wellington. He joined the service of the Native Land Court in 1867 and was afterwards engaged in survey work between the Bay of Islands and Tongariro. Around 1873, he joined the Land Purchase Department and in the following year settled at Rotorua and married Te Whakarato Rangipahere Taiehu of Ngāti Te Takinga (Te Arawa). Later, he carried on a private practice as an authorised surveyor, often being contracted by the government. As a purchase agent and surveyor, he was involved in purchasing the Taupōnuiatia lands. He represented the Rotorua Riding on the Tauranga County Council for a time, resigning in 1883, and was a member of the Rotorua Licensing Committee. Mitchell and his wife had two sons, Henry Taiporutu Te Mapu-o-te-rangi and James Tireni Niramona.<sup>1</sup>*



in an unofficial capacity. John Grace and Mitchell's contracts ended in July 1886, but William's ended in 1888, with under-secretary of the Native Department, Thomas Lewis, remarking at the time,

I have found him an able and zealous assistant – but he is too much inclined to work after the fashion prevalent in private purchases to be entrusted with responsibility single handed.<sup>125</sup>

However, William was re-employed in 1890 as interpreter for George Wilkinson, a key purchase agent in the Aotea Rohe Pōtae region.<sup>126</sup>

(b) *Waimarino*: The other major land purchasing activity in our inquiry district during the 1880s was in the Waimarino block. A small part of this large 454,000-acre block is situated to the south-west of the National Park inquiry district, the bulk lying within the Whanganui inquiry's jurisdiction. The 32,416 acres within our inquiry district includes a significant portion of the south-western slopes of Mount Ruapehu and its peak, Paretaitonga.

Given that the evidential material relating to the Crown's purchasing practices in the block is substantial, detailed, and complex, we have left the substantive issues over the purchase of this block for the Whanganui Tribunal's consideration.<sup>127</sup> Here, we give just a brief summary of the outcome.

The title hearing for the Waimarino block began on 1 March 1886 in Whanganui and concluded on 16 March 1886. The block was awarded to the 1,010 individuals named on Te Rangihuatau's list placed before the court. The key Crown purchase agent in the area, William Butler, began purchase negotiations before the court sat, and continued these arrangements as the block was being investigated and throughout the rest of March 1886.<sup>128</sup> He was assisted by a private agent, John Stevens, who was paid on commission.<sup>129</sup> Butler, previously a purchase agent in the Wairarapa district and also Minister John Bryce's private secretary prior, took over purchase operations from Booth in 1883.<sup>130</sup> Butler had started making payments to the owners of the Waimarino block from 20 March 1886,<sup>131</sup> but it was not until 10 April that he had been given official approval to commence purchasing.<sup>132</sup>

The Waimarino plains with te kāhui maunga in the background, 1887. The Crown bought part of the southern Waimarino block that year with the intention of creating the Tongariro National Park.



The Crown completed purchase negotiations for the Waimarino block on 5 April 1887, paying a total of £35,000 (1s 8d per acre) for the interests of 821 owners who had sold. This amounted to 417,500 acres, the remainder of the block being partitioned into seller and non-seller reserves.<sup>133</sup>

### (3) *Purchasing in the 1890s*

Crown purchasing in the National Park inquiry district continued during the 1890s. During this time significant amounts of land were purchased in both the Taupōnuiātia block and the southern part of our inquiry district.

(a) *Taupōnuiātia*: Not happy with the way many of the purchase negotiations had been conducted in the wider Taupōnuiātia region or with the actions of agents during the court hearings, a number of Māori filed petitions for rehearing. The majority of the applications were filed at the beginning of 1888 and, as we have seen, all but one was rejected. However, Māori were reluctant to sell until the courts had made decisions on whether the rehearings would be granted. Because of these difficulties, no payments were made to Māori between 1888 and 1889. In July 1888, the new Native Minister, Edwin Mitchelson, reported that the government had not acquired any more of the land for the park beyond ‘the bare tops of the mountains’, and pointed out that ‘the Natives had already refused to part with any more as a free gift.’<sup>134</sup> A year later, little further progress had been made. Mitchelson noted that the Crown had acquired only 6,460 acres of the 62,300 it sought for the park, and more could not be achieved until the Taupōnuiātia Commission had completed its work.<sup>135</sup> In September 1890, Mitchelson again reported that despite ongoing negotiations with Ngāti Tūwharetoa, ‘[h]e was sorry to say that a large number of the Natives interested in the land declined to sell, and others were willing to sell, but at a price which was prohibitive.’<sup>136</sup>

However by 1894, with the passage of the Tongariro National Park Act 1894, the Crown set out to acquire the remaining land within the park boundaries that had been described in the Act. This included Tongariro 1c and 2c, and Ruapehu 1b, 2b, and 3. Some signatures had been

acquired and payments made against these blocks on 2 October 1889, and between 1894 and 1903 the remaining interests in these blocks were purchased. The total price paid for these blocks was £1,239 3s 10d (1s 5d per acre on average). On 17 August 1904, certificates of title were issued for all five blocks.<sup>137</sup>

In the 1890s, the Crown also completed its purchase negotiations on four other Taupōnuiātia blocks. Initially, George Wilkinson, Gavin Park, and William Butler were the key purchase officers involved.<sup>138</sup> Park was eventually dismissed in 1896 after he admitted to embezzling public money, leaving Wilkinson and Butler – with substantial assistance from Lawrence Grace – to lead purchase operations in the Taupōnuiātia.<sup>139</sup> They acquired the following blocks:

- ▶ Mahuia A (1,455 acres): The Mahuia parent block of 2,000 acres was heard on 27 March 1886 and title was awarded to 44 owners. The Crown began purchase negotiations in 1886, gaining the shares of 32 owners by 1899 for £218 5s (three shillings per acre). On 10 March 1899, the block was subdivided and the Crown was awarded Mahuia A.<sup>140</sup>
- ▶ Taurewa 2A (500 acres): On 20 August 1892, the Crown made a payment of £250 (10 shillings per acre) to one of the two owners of the Taurewa 2 block. On 17 February 1894, the block was partitioned, with Taurewa 2A being awarded to the Crown.<sup>141</sup>
- ▶ Taurewa 3 (160 acres): Payments of £40 (five shillings per acre) were made by the Crown on 11 September 1893, and it was awarded the block on 10 February 1894.<sup>142</sup>
- ▶ Ōkahukura 8A, 8A2, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8J, 8K, 8L (total 5,060 acres): The Crown purchased these blocks between 8 July 1892 and 22 February 1894 for a total price of £1,071 (four to five shillings per acre). Title was awarded on 23 February 1894.<sup>143</sup>
- ▶ Ōkahukura 8M1 (16,115 acres): This block was partitioned from Ōkahukura 8M on 17 March 1899. Crown payments totalling £6,890 8s (four shillings per acre) were made against the block between 8 November 1893 and 13 March 1899. Title to the block was awarded to the Crown on 17 March 1899.<sup>144</sup>



**Sir Edwin Mitchelson**

1846–1934

*Edwin Mitchelson was born in Auckland in 1846; his parents arrived from Sydney some six years earlier. As a young man, Mitchelson first earned a living as a carpenter and builder in Northland, but he worked to become a timber merchant and shipowner. By 1876, he was one of the most influential merchants in the region, and in 1881 he was elected to parliament – initially as member for Marsden, and later, in 1887, for Eden. He retained the latter seat until 1896. He served in Atkinson's government as Minister of Public Works from 1883 to 1884, returning to the same office in June 1887. Later that year, he added the Native Affairs portfolio, which he retained until January 1891. Working towards the native department's eventual abolition, he cut expenditure and transferred some of the department's functions elsewhere. Mitchelson's 1888 Native Land Act removed protections against alienating Māori reserves and reinstated direct purchase of Māori lands. After his defeat in the 1896 general election, he first refocused on his business interests, but then he turned to local politics, becoming mayor of Auckland in 1903. He was made a KCMG and appointed to the Legislative Council in 1920.<sup>1</sup>*

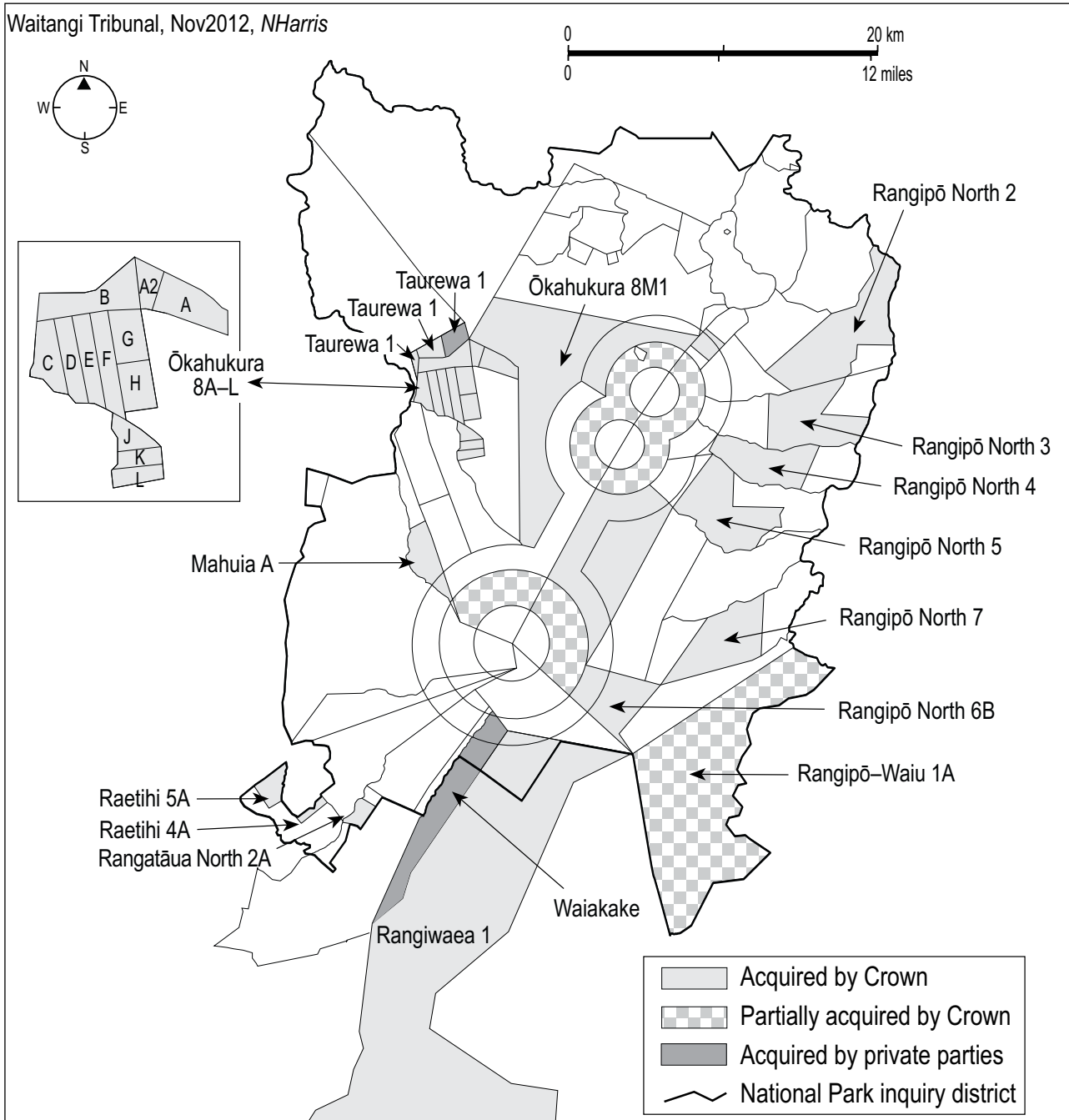


- ▶ Rangipō North 1B, 2B, 3B, 4B, 5B, 6B, and 7B (total 38,377 acres): Between 1887 and 1899, the Crown made payments totalling £7,871 18s (two shillings per acre) against parts of Rangipō North that it had not already acquired. In March 1899, the court made orders so that the Crown's interests could be partitioned out as Rangipō North 1B to 7B. In addition to this, on 31 October 1896 other parts of the Rangipō North blocks had been taken under the public works legislation, without compensation. We have no details of the areas involved in these takings.<sup>145</sup>

The areas of the Taupōnuīātia block that remained in Māori ownership at the turn of the century were predominantly along the northern and eastern boundaries

of our inquiry district. They included the large Taurewa 4 block, some of the Ōkahukura subdivisions in the north of the parent block, and the blocks around Lake Rotoaira: Waimanu, Pāpakai, Waipapa, Tokaanu B, and Ohuanga. Along the eastern boundary, Māori retained portions of the large Rangipō North block after the Crown subdivided out its interests.

(b) *The southern blocks:* In the 1890s, the Crown also worked to clear up its interests in the blocks along the southern border of the inquiry district. The key purchase agents in the field were Richard Gill and William Butler. Outside of the Taupōnuīātia boundary, the Crown completed purchase negotiations on the following blocks:



Map 6.4: Blocks acquired in the 1890s

- ▶ Rangipō–Waiū 1A (21,526 acres): Crown payments made on this block between June 1886 and July 1898 totalled £1,950. Title was awarded to the Crown on 12 December 1900. Rangipō–Waiū 1B remained in Māori ownership until the Crown acquired it for defence purposes in 1942. We discuss this taking in chapter 8.<sup>146</sup>
- ▶ Raetihi 4A (526 acres) and Raetihi 5A (644 acres): The Crown paid £4,300 (five shillings per acre) for 17,200 acres in the Raetihi block on 23 June 1896.<sup>147</sup>
- ▶ Rangiwaia 1 (2,896 acres): The Rangiwaia parent block was heard in 1893, with the court awarding title to 331 owners on 19 April. Between 1893 and 1896, the Crown made payments against the block amounting to £13,600 (five shillings per acre). This amount reflected the Crown's interests in the Rangiwaia subdivisions of 1, 2, and 3.<sup>148</sup> On 16 June 1896, the whole of Rangiwaia 1 (2,896 acres) was awarded to the Crown.<sup>149</sup>
- ▶ Rangataua North 2A (360 acres): The Crown made payments for this block totalling £158 2s od (7s 6d

per acre), between 15 May 1893 and 16 June 1896. Title was then awarded to the Crown on 23 June 1896.<sup>150</sup>

- ▶ Rangataua North 2B1 (115 acres): Between 15 May 1897 and 26 April 1898, Crown payments on this block totalled £74 15s od (7s 6d per acre). Title was awarded to the Crown on 5 June 1899.<sup>151</sup>

Despite this purchasing, not all the southern blocks were obtained by the Crown during the nineteenth century. Those that remained in Māori or private ownership as the new century dawned were:

- ▶ Waiakake (the part within the National Park inquiry district being 1,305 acres): In all, this block totalled 4,500 acres and was privately purchased by John McKelvie on 28 May 1884, for £1,500 (6s 8d per acre). However, there was a great delay over the survey and the Validation Court did not confirm the title until 1893. By this time, McKelvie had died and the land was transferred to his trustees Arthur Amon, James Flockhart McKelvie, and John Hammond.<sup>152</sup>
- ▶ Urewera (the part within the National Park inquiry district being 10,922.5 acres): This block was also

## Patrick Sheridan

1841–1919

*Born in Ireland, Patrick Sheridan worked as a telegraph operator before arriving in Auckland with the 14th Regiment in 1860. He fought in the Waikato and West Coast campaigns, receiving the New Zealand war medal before he left the army in 1869. That same year, he married, and he and wife went on to have five sons and five daughters. In 1872, Sheridan became an accountant for the Land Purchase Department, and in subsequent years he took part in many important negotiations, including those involving Waimarino, Taupōnuia, and the transfer of the maunga. In the early 1890s, Sheridan was appointed chief land purchase officer, a post he retained until he retired in 1909.<sup>1</sup>*

## Richard John Gill

c1825–1910

*Richard Gill arrived in New Zealand in 1862, and was clerk to the magistrate at Tauranga in the late 1860s. He became accountant for the Native Department before being promoted to under-secretary for the Land Purchase Department in 1879.<sup>1</sup> Gill was involved in negotiations over many blocks, including Rangataua. In 1885, he was appointed a judge of the Native Land Court, and he received his pension and supposedly retired the following year.<sup>1</sup> However, he continued to work – attending sittings of the Native Land Court and purchasing a considerable amount of land for the government – until he was forced to stop in 1905, when he lost the use of both his eyes. He died five years later.<sup>1</sup>*

sometimes known as Huriwera or Hurewera. Though the Crown had ambitions from 1887 onwards to include it in the National Park, it did not acquire the land during the nineteenth century.<sup>153</sup>

#### (4) **Conclusion**

Land purchasing in our inquiry district was carried out by land purchase agents acting on behalf of the Crown, under the protection of Crown pre-emption. The early purchasing in the Rangataua block was carried out by James Booth in 1881 and by William Butler in the Waimarino block in 1886. Land purchasing in the Taupōnuīatia blocks was carried out by William and John Grace and their associate Henry Mitchell. Lawrence Grace also assisted once he was no longer a member of parliament. Thomas W Lewis, the under-secretary of the Native Department from 1879 to 1891, directed operations from Wellington, as did Patrick Sheridan, who became chief land purchase officer in the early 1890s after long service as accountant within the Lands Department.

While the bulk of Crown purchase activity in our inquiry district occurred over the last two decades of the twentieth century, the Crown went on to acquire a further 32 per cent of Māori land holdings in the first half of the twentieth century, as we shall see in chapter 8.<sup>154</sup>

#### **6.5.2 Crown purchasing and the park**

As we recorded above, the Crown disputed claimant counsel's thesis that nineteenth-century purchasing in the National Park inquiry district should be seen as part of an overall pattern of aggressive regional purchasing. In closing submissions, the Crown stated:

almost the entire Crown purchase programme in this Inquiry District was directed toward preserving the mountains and surrounding lands as an inalienable reserve, ultimately a national park. This is the distinction that sets this Inquiry District apart from adjacent regions.<sup>155</sup>

Where claimant counsel saw a similar pattern in our district to those 'already intensively scrutinised' by other Tribunals (and found to be in breach of Treaty principles),

the Crown saw difference and uniqueness. The Crown characterised this inquiry district as distinct because, as it stated, purchasing was directed toward preserving the land within as a national park. This, according to the Crown, makes simplistic application of findings from previous inquiries to this district problematic.<sup>156</sup>

To our mind, Crown submissions are underpinned by the idea that its purchase programme requires different consideration in our inquiry district from the 'standard approach' adopted by previous Tribunals. The reason appears to be that the Crown regards its purchasing in this inquiry district as justifiable and beneficent, designed to ensure that the special lands within were protected forever. To provide that protection, the Crown reasoned, public ownership was necessary, as it would ensure that the 'natural beauty' was preserved and public access to this unique landscape maintained for all.<sup>157</sup> 'It is significant', the Crown submitted, that the claimants have accepted that 'the National Park is the most appropriate model' for protection in 'the modern world'.<sup>158</sup> 'Significant', presumably, because the Crown considers that the claimants do not regard Crown ownership of the lands within the Park to be an entirely unsatisfactory result for all concerned. Given the 'vast majority of land' the Crown acquired in the inquiry district in the nineteenth century is now part of the National Park, Crown counsel invited the Tribunal to assess Crown purchasing and its compliance with the Treaty in light of the conservation outcomes for both Māori and Pākehā.<sup>159</sup>

In assessing these arguments, we start with the Crown's proposition that 'almost the entire crown purchasing programme' was directed toward obtaining lands for the National Park, and examine whether the evidence bears out the Crown's submissions on this point.

The evidence shows that by the end of the nineteenth century the Crown had acquired around 173,052 acres of Māori land in this inquiry district.<sup>160</sup> That figure includes Crown acquisitions by purchase, survey award, public works takings, and cession by 'gift'. But of this amount, only around 41,860 acres – or approximately 25 per cent – was for the proposed park<sup>161</sup>, the boundaries of which were first conjectured in February 1887 and then defined in the

Tongariro National Park Bill 1887. (We discuss this further in section 7.6.3(1).) Of that amount, approximately 45 per cent was acquired in the 1880s, the remaining 55 per cent in the 1890s. The Bill, as introduced by Native Minister John Ballance, defined the Park as 62,300 acres, being the area of land extending three miles around the peaks of Tongariro and Ngāuruhoe, and four miles around the peak of Ruapehu. This included land Ballance believed the Crown would acquire by gift, Crown-owned land within the district purchased prior to 1887, and some Māori customary land.<sup>162</sup> Significantly, this area was deemed to be sufficient at the time. Ballance reported to the House:

With regard to the area taken, I have consulted the surveyors and experts, and they assure me that we have taken in sufficient to make the Park complete. A great deal of the land is of a park-like character, and, we thought, ought to be included in the Bill; and therefore the radius is much greater than what was originally intended.<sup>163</sup>

It is difficult to envisage how he could have stated any more emphatically that no further land would be needed beyond the boundary already formulated in the Bill; indeed, the implication is that the stipulated area already included more than a bare minimum. As we discuss further in chapter 7, the Bill did not pass in 1887, but the proposed boundaries remained the same when a revised version was introduced to parliament by the new Minister, John McKenzie, in 1894.

In his speech to parliament in May 1887, Ballance had commented that the Tongariro National Park Act would not come into operation ‘until the whole of the land has been legally conveyed to the Crown.’<sup>164</sup> At that time, the Crown did not own all 62,300 acres selected for inclusion, but agents continued purchasing in the early 1890s with an eye to eventually completing the jigsaw. By 1894 though, when a new Bill was before parliament, there was still more land to purchase, and it was this that McKenzie was focused on, not toward extending the Park’s boundaries.<sup>165</sup> As part of that effort, McKenzie saw fit to include provisions for the compulsory acquisition of land under the Public Works Act 1882 should there remain any lands

outstanding by the time the Park was gazetted. But, as Cecilia Edwards argued, this provision was a ‘last resort measure’, as the ‘preferred method remained negotiation by purchase.’<sup>166</sup>

Purchasing for the Park continued after the Bill was passed into law and was only completed in 1903. By the time the 62,300-acre Park was finally gazetted in 1907, the Crown had acquired around 213,700 acres in our inquiry district. The Park itself, though, comprised only 29 per cent of this total acreage; the remainder not in any way connected to the National Park.

It is true that by the turn of the century, the government was showing an interest in expanding the boundaries. Reviewing the situation in 1898, for instance, the commissioner of Crown lands recommended the following:

The National Park on Tongariro, Ngauruhoe, and Ruapehu being inadequate in area, it is proposed to extend the limits of the same so as to embrace the whole of the Crown lands on the western and southern slopes and plains to the westward of these mountains.<sup>167</sup>

The commissioner also proposed the inclusion of some land on the eastern side of the mountains. ‘I have come to the conclusion,’ he said,

that the National Park should ultimately include the whole of the country . . . bounded, roughly speaking, on the western and eastern sides by the two great railway and road routes from Waiouru to Taumarunui on the one side and to Tokaanu on the other.<sup>168</sup>

But Crown historian Ms Edwards did not find any response to this proposal or any evidence that it was seriously considered at the time. Significantly, several blocks purchased in the nineteenth century, such as part Rangiwaea 1, Raetihi 4A and 5A, and Rangataua North 2A, were not incorporated into the Park until the twentieth century and others, such as Rangipō–Waiū 1A, Taurewa 2A and 3, Ōkahukura 8A2, 8B, 8C, 8D, 8E, 8F, 8G, never included. Further suggestions towards expansion occurred after the turn of the century, but no action was taken prior to

1907.<sup>169</sup> At that time, the boundaries remained the same as Ballance had outlined in his Bill of 1887; 62,300 acres of land around the peaks of the three mountains.

It was not until 1908 that anyone seems to have seriously challenged the boundaries put forward by Ballance. In that year, Edward Phillips Turner and Leonard Cockayne, conducted a survey aimed at ascertaining ‘the value[,] from a botanical, thermal, and scenic point of view, of the region surrounding the great mountains of Ruapehu, Ngauruhoe, Tongariro, and Te Mari.’<sup>170</sup> Their report dismissed the existing boundaries as seemingly arbitrary, describing them as both inadequate and inconvenient.<sup>171</sup> There had been no attempt to follow the lines of natural features, and thus they argued for the redrawing of the boundary and for giving greater consideration to preserving distinctive botanical features when thinking about the function of the park.<sup>172</sup> As we discuss further in chapter 8, they went on to recommend that the park be expanded from the existing 62,300 acres to 137,900 acres.<sup>173</sup> This extension meant that, alongside its existing landholdings, the Crown would have to acquire an additional 25,000 acres of Māori land and 8,000 acres of privately held land to conform to the recommended boundaries.<sup>174</sup>

It is clear from our discussion above, therefore, that we cannot accept the Crown’s contention that in the nineteenth century (or even very early twentieth century), almost the entire Crown purchase programme was directed toward a national park. At the time the park’s boundaries were formulated (and for a decade thereafter), they were believed to be entirely sufficient. The Crown continued purchasing lands for the proposed park in the 1890s, but, as we have shown above, this was only a small proportion of land acquired in our inquiry district in the nineteenth century. The overwhelming majority of lands purchased prior to 1900 were never specifically linked to an expansion of the park and much of the land the Crown already owned at the time was not used to that end. The first suggestions that the park was inadequate in size did not emerge until around the turn of the century, yet such suggestions did not gain traction until Cockayne and Phillips Turner provided specific recommendations to the government in 1908. An expanded park was to become

the focus from 1908 onwards, but it does not account for the widespread and sustained purchasing before then.

### 6.5.3 Other reasons for Crown purchasing

As identified above, 75 per cent – or 131,192 acres – of the land purchased in our inquiry district during the nineteenth century was either purchased before the National Park was conceived or not earmarked for inclusion in the Park before 1907. To determine why the Crown embarked on a much larger purchasing programme than was needed for the park, we agree with claimant counsel that it is necessary to employ a region-wide view of purchasing during the last quarter of the century.<sup>175</sup> In doing so, we consider why the Crown purchased lands in our inquiry district during the nineteenth century. Were the Crown’s primary objectives, for instance, the extension of its sovereignty, the expansion of settlement, railway construction, and the development of a tourist industry, as claimant counsel submitted?

During the period 1871 to 1900, the Crown acquired a total of 7,481,163 acres of land from North Island Māori.<sup>176</sup> Broken down by decade, the figures are as follows:

1871–80	2,520,110 acres
1881–90	2,545,594 acres
1891–1900	2,415,459 acres

Only completed purchases are represented, not those ‘under negotiation’.

This was a sustained and widespread purchase programme, of which the 173,052 acres acquired within our inquiry district formed only a small part. Our assessment of the issues in this chapter, therefore, cannot be viewed in isolation from that wider pattern of Crown purchasing in the nineteenth century, the reasons for which we now briefly discuss.

#### (1) *Economic development and settlement*

Underpinning the Crown’s purchase programme of the nineteenth century was the long-term goal of fostering economic development and settlement. This was aimed, as Dr Donald Loveridge described it, at ‘raising the country

out of depression and accelerating colonial development on [the] wings of borrowed money.<sup>177</sup> The architect of this expansion was colonial treasurer (and later premier) Julius Vogel. Vogel was responsible for initiating immigration schemes to ‘reinvigorate the growth of the Pakeha community in New Zealand.’<sup>178</sup> Large tracts of land were needed in the North Island to facilitate economic growth, and to ‘improve the security of that community by introducing large Pakeha populations into areas that had previously been dominated by Maori.’<sup>179</sup> While it can be argued that by purchasing land the Crown may well have protected Māori, in reality by pre-emption the Crown monopolised the market, which enabled it to purchase large areas of Māori land at a low price and on-selling land to settlers at a higher price, enabling it to fund large scale public works.<sup>180</sup> In short, whether they wished to or not Māori largely facilitated and funded settlement and development.

The Crown’s anxiety about land falling into the hands of private speculators was not unique to the area intended for the National Park. Such sentiment had been expressed since 1840 in relation to most of the North Island. There was a clear need in the government’s view from the 1870s, however, to ‘prevent private land speculators from undertaking transactions that might lock up large areas of Māori land and hinder settlement progress.’<sup>181</sup>

The Crown’s activities in the upper Whanganui district provide a clear example of this strategy in operation. In 1871, Native Minister in the Vogel government, Donald McLean, instructed his purchase agent, James Booth, to determine if chiefs with interests in ‘certain blocks’ between Whanganui and Taupō would sell to the government.<sup>182</sup> McLean regarded this land as strategically important for ‘colonization and settlement.’<sup>183</sup> However, private interests were already on the ground and negotiating with local Māori for the acquisition of their lands. Two partnerships, comprising James Russell and John Howard, and Morrin and Studholme and associates, were negotiating leases for land in the Murimotu district, with a particular focus on the Ruanui block. Competition was intense, with Booth’s assistant, John Buller, noting in 1873 that ‘the bidding will doubtless be high but the stakes are

larger.’<sup>184</sup> The government faced a choice: would they try to secure these strategically important lands, or allow private parties to gain control of the interior.<sup>185</sup> As a result, Booth recommended intervention in the district:

it is of the utmost importance that this block [Ruanui] which is the key to the whole of the interior from Wanganui side and which is also tapped by a road now in course of construction – should be acquired by the Government and whoever acquires this block will have little difficulty in acquiring the rest of the country.<sup>186</sup>

The Wellington Provincial Council agreed with Booth. Its superintendent, William Fitzherbert, warned what the consequences would be if private interests secured the land:

I am of opinion that our operations will be very much impeded in the interior, if Morrin and Studholme succeed in getting hold of the block and stocking it with cattle, which it appears to be their intention to do. The land is of first quality, the road, explored by me and now in course of construction, runs through it and if we get it I can almost join it with the Wanganui district by lands for which I am now negotiating directly with the Natives.<sup>187</sup>

Crown agents went on to vigorously pursue the purchase of land in this region, with McLean defending government actions in the House in 1873:

A short glance at the history of the North Island would prove incontestably that unless the Government had had the means of acquiring lands from time to time, the whole of that Island would have been in the occupation of a few adventurous speculators only, who would have been found dotted here and there, without any attempt being made to secure a proper system of colonisation.<sup>188</sup>

It was this wider vision of a ‘proper system of colonisation’ that led to the imposition of extensive pre-emption measures through the central North Island towards the end of the decade and into the next. Even in areas where

The North Island main trunk railway. With its close proximity to the mountains, the railway provided access to the volcanic region, an area of exceptional scenic beauty. Following the demise of the Pink and White Terraces, the railway's value to tourism was immense.



the Crown had not imposed pre-emption, however, it could still declare lands ‘under negotiation’ – thus prohibiting private parties from gaining interests in Māori land – via section 3 of the Immigration and Public Works Act 1874. This also remained in force during the 1880s via the Government Native Land Purchases Act 1877.<sup>189</sup>

### **(2) North Island main trunk railway**

The vigour with which the Crown pursued land purchasing in the Vogel era stalled toward the end of the 1880s as the long depression set in. Transactions still under negotiation were consolidated, completed, or abandoned and few new transactions were entered into.<sup>190</sup> But the Crown's renewed commitment to one of the largest public works schemes, the North Island main trunk railway, ensured that it did not pull away from land purchasing entirely. In fact, despite financial constraints, the Crown still secured another 2.5 million acres of Māori land over the decade.<sup>191</sup>

Throughout the depression, the construction of the railway was seen as a powerful way of ‘kick-starting the faltering economy’.<sup>192</sup> Crown historian Michael Macky

characterised the Crown's plans for the railway as the ‘catalyst’ for large-scale land purchasing throughout the central North Island. While first considered in the early 1870s as part of the Vogel schemes, the railway did not proceed because of the aukati maintained by the Kīngitanga and the focus on railway construction in the South Island and the Rangitikei–Manawatu and Auckland–Waikato lines.<sup>193</sup> The decision to commence railway construction was made in 1884 under the Stout–Vogel government. Governor Jervois' speech to parliament in August of that year set out the government's objectives and priorities. Jervois stressed that the completion of the main trunk line was ‘a colonial work of vast importance, which must be hastened to a conclusion with the utmost possible expedition.’<sup>194</sup> As part of this work, Jervois emphasised the importance of acquisition of Māori land for the railway construction and for the ‘settlement of a large number of families.’<sup>195</sup> He stated:

You will recognize that it is of great moment [that] the lands in the North Island that are now held by Natives should be put to productive use as rapidly as possible, either by the



Natives themselves or by Europeans. It is therefore very desirable that the best means of enabling the Natives to dispose of their lands, when they desire to do so, should be adopted.<sup>196</sup>

In September, a parliamentary select committee was formed to choose an appropriate route for the railway, which was selected and legislated for in November 1884.<sup>197</sup>

With the route settled, the government passed the Native Land Alienation Restriction Act 1884. The primary purpose of the Act was to provide a revenue base for the government (via the resale of the land purchased from Māori) to service the loans raised to actually build the railway. Of the four million acres of land under restriction from private purchasing (including the entire National Park inquiry district), the estimated acreage needed for the two-chain wide railway line was about 3,360 acres.<sup>198</sup> Imposing pre-emption was to have a profound impact on the Crown's purchasing regime in the central North Island. In Mr Macky's words, it 'catalysed a new wave of Crown purchasing' after 1885.<sup>199</sup>

When Native Minister John Ballance reassured Māori at Kihikihi in 1885 that they would not be forced into selling their land, and that the prices for the land would be decided by arbitration, he was reprimanded by Vogel:

It may have been diplomacy to appear to disclaim any wish to get land but *remember* this: The House, the Colony and common prudence demand that we should get large tracts of land into our hands along the line in which we are going to spend a million and a half – the course you have adopted may bring the natives to you to offer land for sale but it is risky and in my opinion you should set yourself to acquire immediately at least a million acres freehold – and more if practicable. [Emphasis in original.]<sup>200</sup>

Clearly, the government was determined to get as much land as possible in the area that might be called the 'hinterland of the railway', which included the land within our inquiry district.

The substantial loans raised during the 1880s enabled the Crown to achieve its aim. A considerable amount of money for land purchasing in the central North Island

had been secured through loans under the North Island main trunk railway legislation. This legislation enabled the Crown to borrow one million pounds for land purchasing and railway construction in the wider Rohe Pōtae region.<sup>201</sup> The land covered by this legislation was identical to the land described in the Native Land Alienation Restriction Act 1884 and included all the land in our inquiry district. In addition to providing funds for the construction of the North Island main trunk railway and associated land purchases, the legislation also set aside £100,000 to purchase any 'Native or other lands' within that district.<sup>202</sup>

By the end of 1888, most of the money borrowed had been spent. Of the £100,000 set aside for additional land purchasing only £5,571 remained, and some 700,000 acres had been purchased.<sup>203</sup> In 1889 a further £120,285 was raised under the North Island Main Trunk Railway Loan Application Act Amendment Act 1889. Of this sum £100,000 was used to complete land purchases already under way, to purchase further land to enable the completion of the railway, and to purchase land within the district for any other purpose not related to the railway. The remaining £20,285 was to reimburse the cost of purchasing and leasing lands listed in the first schedule of the Act, which included 64,104 acres purchased in the upper Whanganui and southern Taupō districts.<sup>204</sup>

### (3) *Tourism development*

The potential for state-sponsored tourism development was a further influence on the Crown's purchase programme both within our inquiry district and beyond. The increasing importance of tourism nationally and internationally was fundamentally connected to scenery appreciation. Both New Zealand city-dwellers and overseas tourists could be seen to benefit from the beautiful scenery and recreational opportunities that New Zealand could offer.<sup>205</sup>

Initially, tourism activity in the central North Island centred on the Pink and White Terraces, renowned as they were for their scenic and geothermal properties. By the early 1870s, however, the government's road-building programme exposed a wider region of the interior of the



Te Tarata (the tattooed rock), or the White Terrace, Lake Rotomahana, 1863–65. Following the Tarawera eruption and the destruction of the Pink and White Terraces, increasing numbers of tourists visited the Tongariro area.



North Island to tourism development. While the lands within the National Park inquiry district remained difficult to access, their tourism potential was recognised and discussed by industry promoters in the nineteenth century. Thermal areas, in particular, were considered extremely valuable, as outgoing Premier, William Fox, emphasised to his successor in 1874. Fox stressed the economic potential of the 'Hot Springs District', of which te kāhui maunga was recognised as forming the southern section.<sup>206</sup> This district, according to Fox, was destined to become 'the sanatorium not only of the Australian colonies, but of India and other portions of the globe'. Given such lands were 'almost worthless' in terms of pastoral or agricultural purposes, the 'principal groups' of thermal resources, he thought, could 'prove a source of great wealth to the colony':<sup>207</sup>

Portions of it might be appropriated to the use of public hospitals, asylums for the insane, or the inebriate . . . Other portions might be thrown open to private enterprise, which might be invited to undertake the work of establishing hydro-pathic resorts.<sup>208</sup>

While public ownership was the preferred policy, the Crown did experiment with schemes that promoted private enterprise around thermal resources where Māori retained their ownership. In 1881, for instance, the government passed the Thermal Springs Districts Act. This Act, as Professor Alan Ward has outlined, should be seen in the context of the government's attempt to rid Māori land policy of its worst evils. According to Professor Ward, a new pathway emerged in the 1880s that attempted to strike a balance between free trade of Māori land and Crown pre-emption – namely government authorities acting as agents to sell or let land on behalf of the Māori owners. This concept ran through the negotiations for the opening of the Rohe Pōtae in the 1880s, and was at the heart of Ballance's Native Land Administration Act 1886. The Thermal Springs Districts Act 1881 was an example of this in operation at the local level, but where private enterprise played a key role. The legislation ratified an arrangement

between the government and Ngāti Whakaue – under the administration of Chief Judge Fenton – to establish a township around the thermal areas of Rotorua and alienate town sections on long-term lease through public auction. Initially, auctions were very successful, with rents offered being in excess of those previously received, but the scheme soon broke down. Lessees defaulted on rentals in the economic depression and grew resentful to having Māori for landlords. The government did nothing to intervene.<sup>209</sup> Had the scheme been managed well, however, it may have offered Māori a promising avenue towards a controlled engagement with the commercial land market.

With a national park, though, state ownership of the lands and resources was the preferred approach. The government believed that facilitating private enterprise within a national park could prove extremely lucrative to the nation.<sup>210</sup> The Tongariro district featured prominently on the agenda. In 1883, John Kerry-Nicholls wrote to Sir George Grey to suggest that a 'public domain' should be established north of Tongariro on the Te Pakaru plain. Preservation of this area, according to Kerry-Nicholls, would mean New Zealand possessed 'the finest and most unique park in the world'.<sup>211</sup> Then, in 1884, Dr Alfred Newman, the parliamentary member for Thorndon, asked Minister of Lands, John Ballance, whether the area around Tongariro was going to be reserved as a national park.<sup>212</sup> While Ballance responded that the government could not reserve Tokaanu and the three mountains under the Thermal Springs Districts Act 1881, he noted that the government would indeed 'take steps to prevent their falling into private hands'.<sup>213</sup> Concern to secure public ownership of such assets was prompted by the fear that private parties – largely motivated by commercial imperatives – could exploit and damage such assets.

The loss of the Pink and White Terraces, the North Island's most famous tourist attraction, in the June 1886 eruption appeared to increase interest in the Tongariro region. Stephen Percy Smith noted that the eruption of Tarawera would 'send tourists further afield in search of the other countless wonders and beauties hitherto neglected' in the area. Tongariro emerged as a favourable

prospect. By February 1887, the press was foreshadowing what the district had to offer:

here may be opened up a new country for the tourist, comprehending baths and terraces and hot springs of a remarkable character, and also Alpine scenes and wonders of striking grandeur.<sup>214</sup>

This item appeared at the same time that agents were actively purchasing the interests of titleholders identified at land court hearings in Taupō and Whanganui.

Tourism, therefore, was an important influence on the government's purchase programme in our inquiry district. But this mixed with those other, broader, government aims, including the main trunk railway and economic development and settlement. The clearest expression of these separate influences was perhaps best articulated by Lawrence Grace when he wrote to John Ballance in January 1886 reiterating the government's top two priorities for the 'Taupo country':

- (a) The acquirement on behalf of the Crown of lands in the interior of the North Island, as near as possible to the Main Trunk Line of Railway now in the course of construction by the Government.
- (b) That the Ruapehu, Ngauruhoe and Tongariro mountains and the principal thermal springs in the Taupo country be made inalienable reserves.<sup>215</sup>

To our mind, the underlying theme of Grace's statement is Crown control of Māori lands. As we have seen, 75 per cent of the land acquired in the nineteenth century was not earmarked for the park and was, rather, acquired by the Crown for wider aims of settlement, tourism and the railway. We therefore cannot accept the Crown's submission that

almost the entire Crown purchase programme in this Inquiry District was directed toward preserving the mountains and surrounding lands as an inalienable reserve, ultimately a national park.<sup>216</sup>

This statement is clearly wrong and is blind to the Crown's wider objectives for the region.

## 6.5.4 Crown purchasing and the Treaty

We now move to determine how the Crown came to acquire land during the nineteenth century. Our particular focus in this section is to assess the extent to which the Crown's land purchase policy and practice facilitated its objectives within our inquiry district. There are six key dimensions to this topic that we focus on:

- › advance payments;
- › monopoly purchasing rights;
- › undivided share purchase;
- › the role of purchase agents;
- › prices paid and land valuation; and
- › survey costs.

Before we discuss each, however, we explore briefly what might have caused Māori to sell their land in the district.

### (1) *Māori motivations to sell land*

The Crown submitted in closing that 'Māori participation in the alienation of land must be assessed in each circumstance.'<sup>217</sup> While that may be true, the evidence is sparse: as the Turanga Tribunal commented, Māori in earlier times 'did not often record why they wanted to sell land, any more than they do today.'<sup>218</sup> The Crown's submission was that a

variety of motivations are possible for the sale of land and include, for example, the sale of land to raise capital for development or to clear debt, and in this District to protect the land from private ownership.<sup>219</sup>

There are three reasons commonly cited in Tribunal and academic analyses to explain why Māori were motivated to sell land. One reason is that Māori were often compelled to sell land to support immediate needs or for development purposes. Māori, of course, sold their labour, grew crops and raised stock, or let their land to developers. But there were difficulties in all of these: often the

returns were meagre, especially when distributed among multiple owners. Sale of land, therefore, was the only avenue for quickly raising substantial sums of money. Then, too, there were Māori who (like others) came to enjoy the pursuit of money for its own sake: as the 1907 Stout–Ngata Commission pointed out, ‘the taste for good Government cash or cheques once cultivated easily becomes a passion’. Stout and Ngata were of the view that this had sometimes been the case in the Whanganui region, commenting that, in such circumstances, ‘The purchase money has generally gone in litigation and riotous living’. They further implied that it was a tendency that had sometimes been exploited by the Crown: ‘This weakness has been known for a generation, and ministered to whenever there is an outcry for the settlement of the waste areas of the colony.’<sup>220</sup>

Another key factor which led Māori to sell their land was to clear debts – for example, against goods purchased from Pākehā shopkeepers, or debts from surveys undertaken in order for their land to go through the Native Land Court process.<sup>221</sup> Claimant counsel has argued that the ‘overwhelming impression’ from his research into the Native Department’s files is that debt was a far more common reason for Māori to sell land than because they were starving or living in poverty.<sup>222</sup> Indeed it was a common case that ‘the costs of surveying a block in order to take it through the Land Court were such that the owners could be left with no option but to sell’.<sup>223</sup>

Then again, land sales could be strategic. For example, Māori sometimes sold the land least critical to their needs in order to raise funds for the development of other land that they wished to retain. Similarly, Māori may have hoped that the strategic sale of some of their less-critical land assets to the Crown would satisfy the Crown’s land hunger and protect the lands they saw as most essential. In 1885 Lawrence Grace informed Ballance:

the Ngati Tuwharetoa tribe would be willing to put their extensive territory through the Native Land Court in one large block, afterwards making large subdivisions, firstly, of reserves which they would desire to retain for their own occupation and maintenance, and secondly, of blocks which they

would be willing to cede to the government on reasonable terms.<sup>224</sup>

While this correspondence may record more of Grace’s hopes about the likelihood of land-purchasing than about the willingness of Ngāti Tuwharetoa chiefs to alienate (given what we have already recorded of the events surrounding the Taupōnuīātia application in chapter 4), it does imply that Māori could be expected to think strategically about their land. This strategic thinking is also evident in the way that Māori sometimes sought to manage the purchasing process themselves, initiating sales in a proactive and coordinated manner.

We cannot say with certainty what motivated Māori to sell individual pieces of land in this inquiry district. But as we discussed in chapter 4, the ‘Four Tribes’ were fairly explicit about their desire to lease – rather than sell – the lands in their rohe prior to 1886. Circumstances had changed, though, and Māori began selling large quantities of their land in this district from 1886. The motivations outlined above were obviously factors at play. Irrespective of the exact reasons why a piece of land changed hands, the transaction was affected by the Crown’s laws, policies, and practices. It is to those that we now turn.

## (2) *Advance payments*

The claimants made submissions about purchase agents’ use of advance payments on blocks in our inquiry district. At this point, we will deal with the two instances of what might be deemed ‘non-specific advance payments’.

The use of advance payments on land was a process by which agents paid a deposit in cash or goods to those whom they believed to be among the owners, with a view to securing an interest in that land for the Crown in the future. ‘Advance payments’ are defined as payments made on land that had not yet passed through the court for title determination. Once title to the land was determined by the court, the amount paid in advance would be deducted from an individual’s share in the block when the purchase was finalised. As Māori in the nineteenth century had limited access to cash, the advance payments had often been

spent by the time the title was investigated by the court. The Crown could also apply to the court to have a proportion of the land cut and transferred into Crown ownership via the Native Land Act Amendment Act 1877.<sup>225</sup>

Advance payments were a common purchasing practice in the 1860s and 1870s and were a key way by which the Crown secured interests in land and excluded private purchasers. This practice was not illegal under the native land legislation of the 1860s and 1870s. Rather, it was at the Crown's own risk to enter into these purchases before it knew whether it was dealing with the correct owners of the land. Under the Native Lands Act 1865 and the Native Land Act 1873, such transactions were 'void' but not illegal.<sup>226</sup> Private advance payments were eventually made illegal via section 7 of the Native Land Laws Amendment Act 1883, but this did not apply to the Crown or any person acting on behalf of the Crown.<sup>227</sup>

Regardless, Crown policy toward advance payments had changed at the end of the 1870s. This was due, in part, to the inability of the Crown to recover advances made to individuals who were subsequently not found to be owners in the court's title determination. That could result in considerable sums of money being lost.<sup>228</sup> The initial change in policy was instituted by newly appointed Native Minister John Bryce, who had been strongly critical of the previous system, and was intended to protect both Māori and Crown interests. That said, a major motivation was certainly what Crown counsel has termed 'economic efficiency', in that the payment of sometimes large sums of money on land that had not passed the court potentially 'exposed the Government to the very real risk that the Court might award the land to claimants other than those to whom the Government had paid a deposit.'<sup>229</sup> Economically it was in the Crown's best interests to ensure that it paid advances to the appropriate owners.

A number of Tribunals have discussed and made findings on the use of advance payments by Crown purchase agents. In the neighbouring Central North Island inquiry district, the Tribunal reported on the frequent use of advance payments in the 1870s, describing many aspects of the practice as 'inconsistent' with the Treaty. It cited 'ample

evidence from this region of the dissension and conflict caused by these agents and their advance payments.'<sup>230</sup> The Tribunal also explained in the *Hauraki Report* how Māori came to lose control of the vast Ōhinemuri block through the practice of advance payments.<sup>231</sup> They agreed with the Tribunal in the *Te Roroa Report* that the making of advance payments was 'undoubtedly an established pressure tactic, an unfair practice designed to purchase land as quickly and cheaply as possible, and incompatible with the Crown's fiduciary duty under the Treaty.'<sup>232</sup>

In the National Park inquiry, only two instances of the practice have been brought to our attention, the first in Ōkahukura and the second in Rangataua North. We discuss those now.

(a) *Ōkahukura 1874*: In 1874, Whanganui purchase agent, James Booth, made payments totalling £250 to several local Māori, including Tohiora Pirato, Pine Pirato and Waiari Tūroa, for land in the southern part of the large Ōkahukura parent block.<sup>233</sup> However, £200 of the advance was returned to the Crown the following year by Tōpia Tūroa and Matuaahu Te Wharerangi. The chiefs stated that they were the true owners of the block and the others did not have authority to accept payments for the land.<sup>234</sup> Pine Pirato had already spent £50. There was some confusion about the location of the land that the advance had been made on. Booth claimed the advance was against Hauhungatahi, later part of the Waimarino block.<sup>235</sup> However, when Tōpia and Matuaahu handed back the money to Crown agents Mitchell and Davis, at a hui at Tapuaeharuru, Topia told them:

We are the first claimants and object to the cash. Okahukura is the one for which this cash is paid and we have brought this cash to you, being the first government agents we have met . . . Mr James Booth paid the cash. The land [is] just below Tongariro mountain.<sup>236</sup>

Tōpia further warned them that if the agents did not accept the returned payment, 'there shall be blood paid for it.'<sup>237</sup> The Crown abandoned its attempt to purchase

land in Ōkahukura until the Taupōnuiātia hearings in 1886. Nothing more is recorded in evidence of the £50 or whether it was recovered in land by the Crown.

As the majority of the Ōkahukura advance payments were returned to the Crown by the appropriate chiefs and there was only a small amount outstanding, we will not substantively deal with Ōkahukura as an example of 'advance purchasing'. We will address the claims about undivided share purchase on Ōkahukura later in this chapter.

(b) *Rangataua North 1879*: In early 1879, Booth attempted to secure land in the southern blocks of our inquiry district. There is some confusion in the evidence about exactly which individuals or groups were paid advances for the Rangataua block. In large part this confusion arises because Booth paid advances on what he believed to be two different land blocks, Rangataua and Mangaturuturu; both areas were, however, part of the Rangataua block. Mangaturuturu was also mistakenly called the Ruapehu block in some correspondence. From the evidence available, it appears that Booth paid advances in early 1879 for Mangaturuturu.<sup>238</sup> Dr Angela Ballara also recorded Richard Gill, under-secretary of the Land Purchase Department, paying advances to Nika Waiata and Mētera on the Mangaturuturu block.<sup>239</sup>

To secure the land, the Crown issued an alienation proclamation in June 1879. This prohibited other parties from negotiating to acquire rights to the land. Purchase and title confirmation were then sought by the Crown through the court.

The court hearings into the Rangataua block were held at Whanganui on 6 August 1880, and judgment made on 12 August 1880. In December, Booth informed Gill that some of the owners of Rangataua wanted to complete the sale of the block and be paid the balance of the purchase money. By that point, according to Gill, £968 had been advanced on the block and £8,611 was still outstanding.<sup>240</sup> It is not clear what advance payments Gill was including in his total: certainly it cannot have included the £2,000 paid over by Booth in relation to Mangaturuturu. Nevertheless,

this merely serves to underscore the lack of clarity over boundaries and over who was dealing with whom and about what. With two different purchasing agents advancing large sums of money, there was great risk both to the owners and the Crown.

By 1881, the Crown had placed a temporary halt on its large-scale purchasing programme. On 4 January 1881, Gill wrote to Bryce recommending abandoning the Rangataua purchase and seeking return of the advances, particularly in light of the general inaccessibility of the block.<sup>241</sup> However, the owners were anxious to complete the sale and be paid the balance of the money. In April 1881, Gill informed the owners that the government wished to abandon the purchase of the block and would relinquish its rights under the alienation proclamation imposed on the block in June 1879, as long as the advances were returned to the government.<sup>242</sup>

On 25 May 1881, Booth informed Bryce that he believed there was 'no chance' of obtaining a refund of the money advanced.<sup>243</sup> Indeed, six days later, Turahira Taku wrote to Bryce urgently requesting final payment for the block. Bryce replied that because an application for rehearing into Rangataua had been submitted, no further payments could be made until the rehearing was complete.<sup>244</sup>

The Rangataua rehearing was held in August 1881. Rather than seeking repayment of the advances Booth had made to the owners of the Rangataua block – which would have been problematic as the money had largely already been spent – the Crown sought to partition out its interests in the block. The court agreed and on 9 September 1881 the Rangataua North block was subdivided into three blocks and Rangataua North 1 block was vested in the Crown as its share of interests in the parent block.<sup>245</sup>

In relation to Rangataua, we note that Booth's payments in the area were not an isolated event but rather part of his region-wide attempts to acquire as much land as possible. Advance payments were simply a normal purchase method at the time, and one that was arguably common practice until the Crown brought a stop to it later that year. Dr Ballara is scathing in her evaluation of Booth's activities:



Looked at in their most positive light, the procedures Booth described cannot be regarded as anything other than an improper, corrupt and unsatisfactory process. Booth had not ensured that he had consulted all the owners, admitted that he was dealing with one party while another – obviously interested – was ignorant of his activities, had not ascertained the final boundaries of the land he was ‘purchasing’, and was willing to ‘take chances’ that the blocks did not overlap. Two persons were receiving advances from two different quarters. He said that he ‘had made himself satisfied’ that he was dealing with the right people, yet his own evidence shows this was no assurance at all.<sup>246</sup>

In terms of ascertaining who the correct owners were and precisely what land he was advancing money on in the Rangataua block, Booth was clearly out of his depth. At the land court hearings into the Rangataua block in August 1881, Booth noted that in respect of payments advanced on the land in Rangataua and Mangaturuturu:

Money has been paid on account of this land to Nika Waiata, Metera Te Urumutu and others named. I cannot say to what hapu these people belong; I have always looked upon them as one family.<sup>247</sup>

Nonetheless he claimed that he had done his best to identify the correct owners, placing considerable reliance on Tōpia Tūroa to steer him in the right direction:

These people were introduced to me by Topia Turoa: I knew he had some knowledge of the Country and the people, – and on what he told me I made further Enquiries – I try to ascertain the whole of the claimants in such a case before concluding any bargain.<sup>248</sup>

He further explained:

. . . I made myself satisfied that I was safe in doing so; – and paying money to the right parties – I read over the names of the several parties to whom I had paid money on account of Rangataua South, or Rangataua Proper.

The gazetted claimants on the Southern part of the block, Nika, Metera, & others; did not of course know of my payments on the upper block, because they were not then made. I have no doubt that Nika and Metera were subsequently aware of them from common report; – but I cannot say whether they knew of them before the sitting of the last Court; they must know all about them now.<sup>249</sup>

However, in apparent contradiction to his protestations of thoroughness, he acknowledged that there may have been other people with ownership rights in the part of Rangataua he was making advances on who were not consulted:

Those were the persons present in town, who took part in the negotiations; I cannot undertake to say that there were no others who were interested in the land; but absent at the time.<sup>250</sup>

Booth was also uncertain about the boundaries and locations of the blocks he was making the advance payments on, noting at the Rangataua hearings that with the Ruapehu block he ‘did not certainly know it to be part of this block’ but ‘ran the chance’ of there not being any overlap with the Rangataua block.<sup>251</sup>

There were official concerns about James Booth’s use of advance payments and at some point prior to the Rangataua purchases he had been instructed to cease his use of them. When he was reauthorised, in September 1878, to make such payments, he was informed ‘not to do so recklessly’.<sup>252</sup> Booth was also advised by Native Minister John Sheehan that payments should only be made on lands to which the claimants had asserted their claims in an open meeting.<sup>253</sup> As we have seen in Ōkahukura and Rangataua, Booth did not follow these instructions. It is unlikely that Booth’s actions went so far as to be corrupt. It is clear, however, his methods were, as Dr Ballara argued, ‘improper’ and ‘unsatisfactory’.<sup>254</sup> He failed to consult all the owners involved, made payments to people without ascertaining if they were the correct owners, and did not ensure that the boundaries of the land were correct.

Crown counsel conceded a level of fault in Booth's use of advance payments in Rangataua, accepting that not all of the owners of the Rangataua block were identified before interests were secured by the use of advance payments. However it questioned whether any prejudice arose from its payment of these advances, particularly if the court's subsequent determination of title was not influenced by the payments, which it seems was the case.<sup>255</sup>

When Booth made advance payments in Ōkahukura and Rangataua, he did so in the context of the Crown's overall purchasing policy for the upper Whanganui district. The payments were made in the expectation that they would result in the acquisition of land for the Crown and they were made under Crown authorisation. We note that the Crown did withdraw his authorisation at one point, and also cautioned him against recklessness when his authorisation was reinstated. His own account of his activities, however, is such that it would appear he was not closely monitored. While that may have been the case for his activities in the Rangataua block, we agree with the Crown that there does not appear to have been any prejudice arising from Booth's payments, but only because title was reheard in 1881, which, as we discussed in chapter 5, was a fairer outcome for Māori.

### (3) *Monopoly purchasing*

The imposition of pre-emption or partial pre-emption played a significant role in Crown purchasing throughout the last quarter of the nineteenth century. Purchase monopoly or pre-emption worked by excluding private purchasers, thus giving the Crown the sole right to purchase (and often to lease) land and, significantly, to set prices without competition from other would-be purchasers.

The rationale for re-introducing monopoly purchasing was to regulate land purchasing and to protect Māori from private land speculators. Pre-emption could be imposed by proclamation or direct legislation over the whole country or over certain targeted areas. Following a period of free trade in Māori land from 1865, the Crown brought in regulations in 1877 which allowed for the Crown to proclaim a block as being 'under negotiation'. This meant

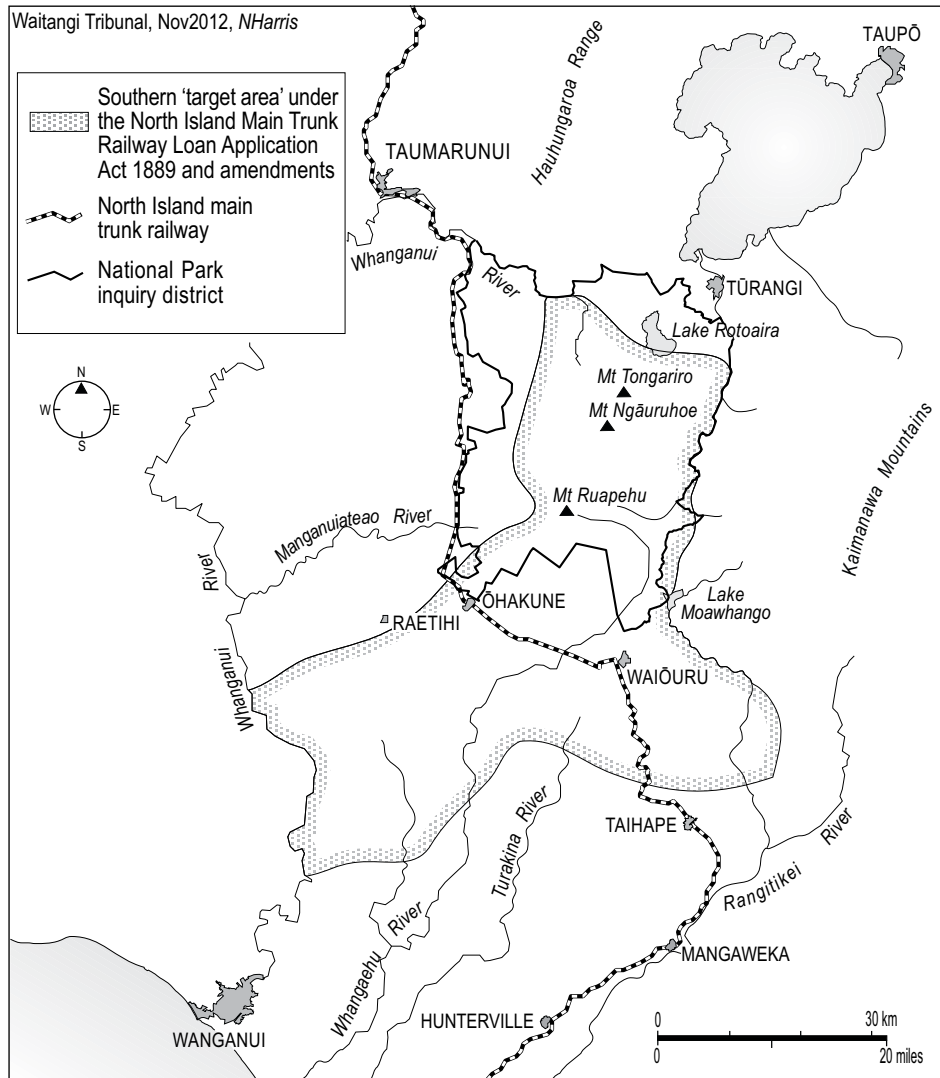
that no other purchaser could negotiate for it, and applied 'whether or not the same lands have or have not passed through the Native Land Court'.<sup>256</sup> The Crown was not required to ever complete the purchase.

Apart from the instances of advance payments discussed above, Crown purchasing activity in the National Park inquiry blocks did not start until the 1880s. Our discussion of Crown pre-emption therefore begins with the regionalised application of pre-emption around the confirmed route of the main trunk railway line, up the western side of the maunga and through the Rohe Pōtae block.

As we discussed earlier in this chapter, when the Stout-Vogel government came to power in 1884, it expedited and confirmed plans to link the rail network between Wellington and Auckland. In order to protect the land intended for the railway from private alienation, the Crown prohibited private purchasing or leasing in the district under the 1884 Native Land Alienation Restriction Act 1884. However, as we noted earlier, the Crown did not limit itself to the 3,000-odd acres needed for the actual railway lines. Rather, the Act placed the prohibition over 4,628,185 acres of land, including King Country lands, upper Whanganui lands, and all of the National Park inquiry district.<sup>257</sup> In short, the legislation must be viewed in the context of the government's desire for what McLean had termed 'a proper system of colonisation', where pushing through the railway was just one piece in the jigsaw. Pre-emption was not only a way of securing land for the railway (which was in turn both a strategic and an economic objective) but it was also directed at providing land for settlement, preservation, tourism, and economic development.

The government's intention was that land purchased by the Crown would help fund the cost of the construction of the railway. Once the railway was complete, land in this district would rise in value and the consequent sales to settlers would offset the shortfall.

Section 33 of the Native Land Administration Act 1886 expanded the Crown's power of pre-emption to the whole country.<sup>258</sup> This Act remained in force until 30 August 1888. Thus, from the time of the previous Act in 1884 through to 1888 the Crown had full pre-emption over all lands in the National Park inquiry district. Over this



period the large Taupōniātia block was put through the court for title determination, and as we discussed earlier the Crown gained significant acreages from purchase negotiations and as repayment for survey costs.

In 1894, nationwide pre-emption was once again restored under the Native Land Court Act 1894 and remained in place for the rest of the nineteenth century.

The period from 1894 to 1900 saw the Crown complete significant purchases in the inquiry district, principally in the Ōkahukura blocks and Rangipō North blocks. It also all but completed purchasing for the maunga blocks, Tongariro 1C and 2C, and Ruapehu 1B and 2B.

In short, between 1884 and the turn of the century, there were only six years when pre-emption could be

deemed not to have applied. During this period (1888 to 1894), Māori were to all intents and purposes able to alienate their lands as they wanted, under the Native Land Act 1888, although subject to the Native Land Frauds Prevention Act 1881 Amendment Act 1888 (which we discuss further below).

Even though the lands in our inquiry district were only marginally affected by the railway itself, they were not outside the sights or scope of the railway purchasing plan. In the 1880s the Crown passed legislation allowing it to draw down large loans, which were to be targeted towards areas earmarked for settlement around the railway. Under the North Island Main Trunk Railway Loan Application Act Amendment Act 1889, the Crown allocated £100,000 towards the purchase of two areas of land: one in the Rohe Pōtae inquiry district, and a southern area which covers a large part of our inquiry district. These areas were defined in schedule 2 of the Act.<sup>259</sup> The legislation also deemed that these lands were 'Native Land' as per the Native Lands Frauds Prevention Act 1881 Amendment Act 1888 (although, as we have seen, Māori land transactions were in any case already subject to the provisions of this Act, under the Native Land Act 1888). 'Native Land', under the Native Land Frauds Prevention legislation, could not be leased or sold to anyone other than the Crown, unless title had been issued to 20 or fewer Māori and the land had been in their ownership for a period of at least 40 days.<sup>260</sup>

The restrictions of the Native Land Frauds Prevention Act essentially remained in force in our inquiry district until 1894, and indeed in 1892 the boundaries of the restriction zone were expanded back out to almost the same size as the 1884 Act.<sup>261</sup> Also in 1892, the Crown enacted the Native Land Purchase Act, strengthening its powers to declare blocks 'under negotiation', and to remove alienation restrictions placed on lands by the Native Land Court.<sup>262</sup>

Thus, even though full Crown pre-emption had been lifted in 1888, a substantial portion of the National Park inquiry district remained under some restrictions throughout the six years from 1888 to 1894. As noted earlier, the Native Land Court Act 1894 then reinstated full Crown pre-emption.<sup>263</sup> The alienation statistics reinforce

the impact of this policy: over the period from 1880 to 1889, all alienations in the National Park inquiry district were to the Crown. In the 1890s, only 1,805 acres of alienated Māori land went to private purchasers.<sup>264</sup>

The Crown's motivation in imposing a purchase monopoly over the Rohe Pōtae and National Park districts is a matter of dispute between the Crown and the claimants. The claimants do not agree that the Crown saw its monopoly purchase powers as a means of protecting Māori land from alienation; rather, in their view, they were aimed at freeing the Crown from private competition.<sup>265</sup> Crown pre-emption, according to the claimants, mostly benefited the Crown by granting it the exclusive right to purchase land in the areas proclaimed. Assuming Crown pre-emption was necessary, however, the claimants highlighted the Crown's responsibilities to Māori. The Ōrākei Tribunal found that the Crown had a 'duty to ensure that Maori people in fact wished to sell' and also that they were left with sufficient land for their 'future maintenance, support and livelihood'.<sup>266</sup>

While the Crown agreed that for most of the latter part of the nineteenth century it enacted and utilised monopoly powers of purchase in the inquiry district<sup>267</sup>, it denied these powers constituted a Treaty breach, arguing there were legitimate article 1 reasons for pre-emption. These were to 'minimise the risk of land speculation and to control and regulate settlement' and were explicit in article 2 of the Treaty.<sup>268</sup>

We agree that the imposition of Crown purchase monopoly in the inquiry district was in part intended to protect Māori from land speculation. However, as previously stated, it created a purchase monopoly for itself. Ms Cathy Marr was clear that the Crown's monopoly purchase created serious responsibilities, stating,

In effectively establishing a Crown monopoly over the railway lands the government was also assuming a very serious obligation to ensure it protected Māori interest and it assured Māori leaders this would be the case.<sup>269</sup>

Whether deployed at a national or local level, monopoly purchasing was the most powerful tool available to the

Crown. Monopoly purchasing gave the Crown the upper hand in all land dealings, not just over private speculators but, in particular, over Māori. This purchase advantage significantly limited what Māori were able to do with their land, often leaving alienation to the Crown as the only option.

The Crown's monopoly purchasing power also had important implications for purchase prices. We discuss further below whether the Crown used its purchase monopoly power in a Treaty consistent manner when considering the price Māori received for their land.

#### (4) *Undivided share purchase*

As we have seen, restrictions against private purchasing, including long periods of Crown pre-emption, were a key feature of land alienation in the National Park inquiry district in the nineteenth century. These measures allowed the Crown to purchase considerable quantities of land free of competition. At this point, we move to consider the Crown's system of undivided share purchase. Undivided share purchase was the primary way that the Crown went about acquiring the vast majority of land in this inquiry district (and indeed throughout the North Island) in the last quarter of the nineteenth century.

As against 'advance purchasing' which we described earlier in the chapter, undivided share purchase occurred after title determination and the issuing of interlocutory orders over blocks. The CNI Tribunal's report offers a useful outline of how the undivided share purchase worked in practice:

This system of purchasing involved land purchasing agents obtaining a list of owners from the court. They would then calculate what an individual share represented in acres, based on the [block] size and number of owners. Blocks of land were identified as suitable for purchase as they passed the court. The Government would set a maximum price to be paid for such blocks, and this was also calculated as a price per acre. Purchase agents would then use the list of owners to calculate a nominal value for each individual 'share' in the block. This was based on the number of individuals, the acreage of the block, and the price as agreed by officials. At times, agents

also had to take account of any court decision about relative interests, where such had been determined. Otherwise, all individuals were presume to have equal shares.<sup>270</sup>

Once the Crown had purchased as many shares as it wanted or was able to, it (or the sellers) could then apply to the court to partition out those shares.

What is highly problematic about this system is that no owner could point to the physical land that represented their interest in the block. Particularly in larger blocks, the quality of land could vary significantly across the block, yet when the Crown made payments, which particular piece of land it was purchasing was not distinguished. This essentially put non-sellers in a situation where they were required to go to court and fight the Crown over which areas of a block they had not sold. This put considerable financial pressure on the non-sellers.<sup>271</sup> Despite their intention to retain their land, non-sellers were also often compelled to pay a share or sometimes all of the partition survey costs.<sup>272</sup>

This system of purchase was enabled by the native land legislation in operation at the time. Under successive pieces of land legislation, various procedures were put in place to facilitate partition and split the land between sellers and non-sellers. Under the Native Lands Act 1873, owners could apply for such a partition. By 1878, the purchaser (whether the Crown or a private interest) could initiate these proceedings.<sup>273</sup> The Native Land Division Act 1882 confined this power to Māori owners again, but this was reversed under the Native Land Court Act 1886.<sup>274</sup> The latter Act specified that '[a]ny Native owner of land, or any person claiming to have purchased an undivided share, may apply to Court for a partition' and the 'Minister of lands may apply when Crown has acquired an interest.'<sup>275</sup>

Recent Tribunals have explored this issue of having land legislation which allowed for the selling of individual shares. The Turanga Tribunal, for instance, found that it was 'destructive of community decision making.'<sup>276</sup> After 1873, 'almost all' decisions about sales to the Crown in Turanga were made at an individual level without reference to the community.<sup>277</sup> Part of the problem was that the system did not provide either a mechanism for group

decision-making or individualised title in the true sense of that term. Because the legislation provided only a ‘virtual’ individual title, no individual owner could point to his or her allotment.<sup>278</sup> Rather, the legislation recognised ‘a form of right held by individuals but the right remained vested in common with all other owners. It was merely a share in a wider hapu estate.’<sup>279</sup> In theory, the undivided individual shares should have been traded or sold only with the agreement of all the other owners or after an individual’s share was formally partitioned and awarded by the court. In practice, however, the Crown (or another buyer, if pre-emption did not apply) was able to enter arrangements to buy undivided shares from individuals without consulting the wider community of owners of the block, and when they had acquired a proportion, the buyer could apply to the court to partition out their interests.<sup>280</sup>

A key aspect of this individualisation was that Māori were far more likely to sell land as individuals than they would as a community. Land-buyers knew this and took advantage of it. The Turanga Tribunal pointed to examples where ‘land buyers knew that individuals in Turanga were prepared to sell to a level that their communities would never sanction.’<sup>281</sup> Essentially the system undermined collective decision-making by making it ‘impossible for community leaders to rally their people around community planning.’<sup>282</sup> The CNI Tribunal pointed out that the Crown, too, benefited from the regime and, under it, Crown purchasing of individual shares ‘took place at an accelerated rate.’<sup>283</sup> This was also the case in the National Park district. In the words of claimant counsel, the ‘individualisation of interests via the Native Land Court process was a key plank in the Crown’s standard land purchasing regime.’<sup>284</sup>

**Table 6.1: Undivided share purchasing in the Taurewa block, 1886–87**

Date of payment	Particulars of payment	Payment (£ s d)	Voucher
4 May 1886	WH Grace – Ripeka Kahuwaero and others o/a	30 0 0	405–407
4 September 1886	WH Grace – Te Rohu te Heuheu and others o/a	390 0 0	1021–1026
8 October 1886	WT Butler – Hereti te Muhu and others o/a	20 0 0	1537–1538
22 October 1886	WT Butler – Tapine Maraenui and others o/a	150 0 0	1604 et al
27 November 1886	WH Grace – Hori Tamaiwhaina and others o/a	100 0 0	1964–1997
27 November 1886	Duty stamp	3 2 0	1974
1 January 1887	WH Grace – Ngarini Ngarinu and others o/a	150 0 0	2175–2189
22 January 1887	WH Grace – Kiekie te Kanawa and others o/a	130 0 0	2260–2271
28 January 1887	WT Butler – Te Ranga Wharetokorua & another o/a	20 0 0	2336–2337
March 1887	WH Grace – Rai Pakau and others o/a	142 10 0	2662–2668 et al
February 1887	WH Grace Pakau Wi Tahana and others o/a	150 0 0	2524–2538
March 1887	Public trustee interest of minors	10 0 0	2606
March 1887	WH Grace – Parekarangi and others o/a	101 18 0	2839–2847
April 1887	WH Grace – Te Mateahiahi te Kangairo and others o/a	60 0 0	97–102
30 April 1887	Public Trustee interest of minors	45 0 0	12
5 May 1887	WH Grace – Ruataka Pateriki and others o/a	85 0 0	225–230

How then did the Crown's system of undivided share purchase work in practice in the National Park inquiry lands? Taurewa serves as a good example. The large Taurewa parent block (47,633 acres)<sup>285</sup> lies in the north-west of our inquiry district. Part of the original Taupōnui-ātia application, this block came before the court for title determination on 6 April 1886. It was awarded in favour of the nine hapū who claimed ownership, and the court ordered that a list of names be handed in.<sup>286</sup> Four days later on 10 April 1886, the court ordered that a certificate of title be issued in favour of the 452 named owners on the claimants' lists.<sup>287</sup> Given that a number of the owners were children, trustees were appointed to act on their behalf.

Between 4 May 1886 and 5 May 1887, William Grace made a series of payments against the block.<sup>288</sup> The claimants characterised this as advance purchasing. However, it took place after the court identified the owning hapū and individual owners.<sup>289</sup> We, therefore, do not regard the sums paid as in fact constituting 'advance payments', but rather as aggressive, and in some ways risky, undivided share purchasing. The details of his payments (plus some by William Butler) are outlined in table 6.1.

In November 1887, William Grace was able to report that he had purchased the shares of 154 of the 452 owners, predominantly through making small payments to individuals or groups of individuals – without apparent reference to, or authority from, the wider group of owners.<sup>290</sup> When the block came before the court for final title determination in September 1887, the block was subdivided and the Crown was awarded its shares in the form of the 17,600-acre Taurewa 1 block (which also included 3,971 acres of land ceded by non-sellers in lieu of survey payment, as we shall discuss later).<sup>291</sup>

This process of undivided share purchase also occurred across the Ōkahukura blocks, Tāwhai South, Mahuia, and throughout the Rangipō North subdivisions. Month by month, through the persistence of its purchase agents, the Crown gradually chipped away at Māori landholdings throughout the National Park inquiry district.

It was a process that would not have been possible without a legislative regime that individualised Māori land ownership, undermining community ownership

and collective decision making. The court gave effect to the Crown's policy in that regard. As the long-serving under-secretary of the Native Land Purchase Department, Thomas Lewis, explained in 1891:

the whole object of appointing a Court for the ascertainment of Native title was to enable alienation for settlement. Unless this object is attained the Court serves no good purpose . . . Therefore, in speaking of the Native Land Court, this test to it must, I consider, be applied – viz, that there should be a final and definite ascertainment of the Native title in such a way as to enable either the Government or private individuals to purchase Native land.<sup>292</sup>

Despite serious misgivings, Māori were obliged to engage with the court because it was the only means for them to secure title to their land. As we have discussed previously, the law did not provide a form of title that enabled community ownership to be recognised. Individualisation of title was all the court could provide under the legislation, thus failing to provide the fundamental protection and accountability that the tribe wished to obtain. Those awarded a title were recognised, not as trustees on behalf of a community, but as absolute owners under the law. Consequently, individuals were given rights that they did not possess in traditional Māori society; the ability to alienate their individual interests without accountability to the community of owners. In such circumstances, tribal taonga were constantly under threat of alienation.<sup>293</sup>

##### **(5) *The role of purchase agents***

Claims regarding the activities of Crown purchase agents in our inquiry district focused overwhelmingly on the role of the Grace brothers and their negotiations with Māori for land in the northern part of our inquiry district.<sup>294</sup> Other claims regarding purchase agents' activities in blocks for which Whanganui Māori have interests will be addressed by the Whanganui Tribunal. The specific claims in our inquiry focus on two key areas: first, the alleged improprieties of the Crown in appointing persons with clear conflicts of interests to conduct purchasing;

and second, the impropriety of employing those same persons on terms designed to negatively affect Maori.<sup>295</sup> As we saw in chapter 5, all three brothers had been heavily involved in the court process in various capacities, including in land purchasing activities. Here, we look in more detail at the latter.

In October 1885, as we saw, John contacted Lawrence with a plea for help. The full text of that plea read:

Do your best re Ballance and organising government operations in Taupo and get, if possible, appointed government agent for this district for we must do something. I can arrange to participate [in] the salary with you, only do it and get Ballance to write me a letter of appointment. Tell him you will support him throughout, only he must endeavour in return as far as possible to satisfy the demands you make on him . . . and provide me with a billet . . . Stick to and worry Ballance and Native Department Under-Secretary Lewis until you get all you want . . . if you work it right you are bound to get in again and be the means of having a large say in [the] settlement of the Maori question and be the means of giving us billets in government land purchasing. I am just hanging on till you return.<sup>296</sup>

As we also saw, Lawrence responded by helping to arrange jobs not only for John but also Henry Mitchell and William in the upcoming Taupōnuīātia purchasing programme.<sup>297</sup> In his view, it was important that

the purchase of lands within the above tribal boundary be entrusted to reliable and experienced persons or agents, who, under control of the Land Purchase Department, would undertake to acquire the land at a commission.<sup>298</sup>

This would ensure, as Lawrence foreshadowed to Ballance, that Māori were guided in the direction ‘most beneficial to the tribal interests and those of the general public.’<sup>299</sup>

The Crown set in place arrangements for purchasing in the district in late 1885. William Grace was the salaried Crown purchase officer with overall responsibility for land purchasing and for the management of associates, Henry



**Brothers John, William, and Lawrence Grace, 1873. The brothers featured frequently in land dealings in the National Park district, where they had connections with local Māori through marriage.**

Mitchell and John Grace. William Grace was required to act under the instructions of the Native Land Purchase Department and its departmental head, Thomas Lewis. Henry Mitchell and John Grace, in turn, were supervised by and followed the instructions of William Grace ‘who would be accountable to the Treasury.’<sup>300</sup>



In this particular case, though, the architect of the Crown's detailed purchase programme appears to have been Henry Mitchell. Mitchell wrote to the Native Minister in early January 1886 outlining an approach to purchasing in the Taupōnuīātia block:

The districts now available for similar operations on behalf of the Crown extend along the shores of the lake on the eastern side up to and including the Kaimanawa ranges and on the western side up to and including Titiraupenga, Hurakia ranges and beyond towards Maraeroa and Te Pou a Kani while towards the south and southwest the country extends to Murimotu and inland Patea including Ruapehu, Tongariro, and the Tuhua lands. Much of this is very desirable country for agricultural and pastoral purposes, and a large area lays contiguous to the surveyed line of trunk railway north and south. I attach herewith a schedule of the Blocks which I consider should be acquired on behalf of the Crown shewing approximate areas and giving a general description of the same for the information of the department.<sup>301</sup>

Mitchell's proposal, which covered about 740,000 acres of the central North Island, was favourably received, with Lewis advising Ballance:

If the lands referred to herein can be purchased at a reasonable rate it would be advisable to acquire them. The price should not however exceed an average of 1/6 an acre. Under the circumstances of this district it will be no doubt the cheapest course for the Govt to buy on Comm[issio]n.<sup>302</sup>

The Minister agreed, accepting Mitchell's proposal and authorising purchasing to commence once land had been through the court.<sup>303</sup> The three men prepared themselves for the activity ahead. Recalling further conversations he had with Lewis at the time, William Grace informed the Taupōnuīātia Royal Commission that his instructions were to 'buy as much land' as he could in Taupōnuīātia.<sup>304</sup> In pursuit of this objective, however, it appears that Grace often exceeded departmental procedures, his actions earning him reprimands on several occasions. In early March

1886, for instance, Lewis informed Grace that 'It is contrary to rule to make advances on lands which have not passed through the Court or without price having been fixed unless under a specific authority in each case.'<sup>305</sup> Then, a month later, learning that Grace had used departmental money to pay for clerical assistance in his purchasing activities, Lewis reported to Ballance: 'I have told Mr Grace that on no account is he to use his impress for other purposes than payments to natives for purchase of land.'<sup>306</sup>

While William Grace's adherence to procedure was less than rigorous, it appears that the direction offered by his superior also left a lot to be desired. Grace complained, for instance, that he was constantly confused and frustrated by Lewis's instructions and management style. Writing to brother Lawrence in June 1886, William noted:

I cannot make Lewis out. He is either purposely trying to annoy me or else he is always in a kind of maze. From the time I entered on my duties I have never received a single letter from him pointing or instructing me what he wanted done. I certainly saw him in Auckland in April last and went over good many things with – in presence of Mitchell with a plan of Taupōnuīātia before us and we discussed the capabilities or quality – I should say of each block and putting a value on each and followed up same with a report in writing which he expressed himself as being satisfied. He used the words after reading it 'That will do very well.'<sup>307</sup>

What Grace regarded as inadequate direction caused him concern, presumably because he expected much greater involvement and oversight from Lewis. Grace became convinced that Lewis was either incompetent or had a vendetta against him. Confiding to his brother again, William commented:

I am positive that Lewis is doing all he can to make things unpleasant or else he is utterly unfit to be under Sec for Land Purchase . . . If you only had a better man at head of Dept we would get on very well.<sup>308</sup>

He even recommended that Lawrence use his influence

to persuade the Minister to remove Lewis from his land purchase responsibilities:

We Mitchell and self have thought over matter and we think that Ballance should place Butler at head of Land Purchase, this we are sure can be done without increase of expense. Lewis still holding his billet as US for Dept but with a quiet hint that Butler is to control or transact the business of the Dept. We think you should lay this before Ballance and use your utmost endeavours to get it accomplished.<sup>309</sup>

The reason for this breakdown in relations appears to have been a serious personal antipathy between the two men. From Grace's statements, it appears Lewis had a low opinion of him as a person. Again, confiding in Lawrence, William explained that he had tried to follow instructions, noting that 'as to Lewis and Sheridan saying that I am careless etc – I have done my best.'<sup>310</sup> However, he felt that there was a definite prejudice against him from both Lewis and other Wellington office personnel:

For the last two months I have religiously stuck to their instructions and have reported on matters more often than I need do, as they expect me to report at the end of every month on forms sent me for that purpose, whereas during May I sent in two reports and on 17th of this month I sent in another and will do so again at the end of present month. Of course I am open to correction if I have at all been neglectful. But they have such a snubbing way of pointing out an error.<sup>311</sup>

Such breakdowns in process and communication between the department and field officers would not appear unique in in the nineteenth century, but the problems were severe in this instance. When, in May 1887, Grace submitted what the department considered an unsatisfactory update on purchase progress in the district, Ballance informed Lewis that he 'ought not to let the matter of Crown purchase at Taupo rest as it is going on or I fear a mess.'<sup>312</sup> The government was clearly dissatisfied with Grace's performance and evidently feared that his purchasing activity was creating problems that would compromise its objectives.

(a) *The relationship between purchase agents and ngā iwi o te kāhui maunga*: We now look at whether the relationship between purchase agents and ngā iwi o te kāhui maunga raised issues of impropriety that the Crown should have been aware of and prevented when making appointments to its purchase operations in the district.

Given that the Graces were related to the people from whom they were purchasing land, the claimants considered that they had clear conflicts of interest which the Crown should have prevented.<sup>313</sup> Underpinning this argument is the idea that their relationship to ngā iwi o te kāhui maunga made it easier for the Crown to secure land within the district. For instance, counsel for Ngāti Tūwharetoa argued that 'people were in the vulnerable position of relying on the guidance and advice of individuals who were acting in pursuit of objectives that were prejudicial to Ngati Tuwharetoa interests . . . [I]t was not in Tuwharetoa interests to sell as much land as they could, and yet it was William and John's role to acquire as much land as they could' in their land purchasing role.<sup>314</sup> At the same time, the Graces were afforded an opportunity to pursue their own private business interests and the interests of their own whānau.<sup>315</sup>

The Crown responded with a cautionary note, suggesting the Tribunal closely analyse these allegations, as they 'raise complex historical issues about how to differentiate the personal, whanau and Crown roles of the Grace brothers.'<sup>316</sup> The Crown did not accept that the actions of the Graces were the actions of the Crown simply because they were at various times Crown officials.<sup>317</sup> It did acknowledge, though, that 'there do appear to have been conflicts of interest involving both John Grace and William Grace' in that both men 'were at times seeking to pursue various interests.'<sup>318</sup> Where they were assisting particular claimants or pursuing their own interests, this would present a conflict of interest with their land purchase role.<sup>319</sup> Nevertheless, the Crown went on to submit that the extent and impact of these conflicts and their relationship to blocks within the National Park inquiry district was difficult to determine on the evidence available to the Tribunal. We have also seen, in chapter 5, that the Crown accepted no responsibility for the actions of Lawrence

Grace, because as a member of parliament at the time of the Taupōnuīātia hearing, Lawrence was not a Crown agent and the laws of agency have no application.<sup>320</sup>

Before we respond to these arguments, we must clarify the nature of the Graces' relationship to the Crown. As mentioned above, William Grace was the salaried purchase officer appointed to lead operations at Taupōnuīātia in 1886. He was assisted by Henry Mitchell and John Grace. As mentioned above, Crown counsel did not accept that the actions of the Graces were automatically the actions of the Crown just because they were employed by the government at various times.<sup>321</sup> We agree with Crown counsel on that point. While William Grace was clearly a representative of the government during his tenure as a salaried purchase officer, the situation for Lawrence and John Grace (and Henry Mitchell) was not the same.

Lawrence had no official role in purchasing from 1886. There is evidence to show that he voluntarily assisted brother John and Henry Mitchell in 1886 and 1887, and then George Wilkinson, William Butler and Gavin Park in the 1890s when he was no longer a member of parliament. For instance, Mr Bruce Stirling reported that in October 1893 Lawrence asked his Auckland lawyer to write to the Land Purchase Department to put forward his claim to one-third of a disputed land purchase commission. This was what he regarded as his share of what Henry Mitchell and John Grace would later claim (without success) for their work since 1887. In submitting this claim, though, Lawrence requested that his lawyer

be careful to avoid conveying the impression that I earned the commission direct from Crown – rather convey the impression (that is, if you cannot avoid it) that the assignment is for money owing by Mitchell to me.<sup>322</sup>

Soon after making this request, Lawrence also offered his services to another salaried purchase officer, Gavin Park:

Let us make a start, even at 2s. per acre I think some would sign at Waihi and if you had time to go with me to Otukou we would get some more there. I have had several conversations with principal people of both kainga and I think you are

bound to get some of the signatures. . . . I will say this, that I will help you all I can and leave it to you and to your Sheridan to give me an allowance to cover my services, travelling expenses, and time. . . . This is how I did it with Wilkinson.<sup>323</sup>

That is, Lawrence's services were not free. In fact, his poor financial situation demanded that he earn money quickly.<sup>324</sup> But he was happy to assist with purchasing and leave it to the salaried purchase officers to recompense him for his work. While this may demonstrate that Lawrence was working with other purchase officers to facilitate Crown objectives, from the government's point of view this relationship had no 'official' status.<sup>325</sup>

The situation for John Grace and Henry Mitchell was different. In advice to his Minister, under-secretary Lewis explained that both John and Henry 'were not officers of the Government', but were 'to cooperate with the officers of the Land Purchase Department in purchasing these [Taupōnuīātia] lands on commission.'<sup>326</sup> This raises the question as to whether they can, in fact, be considered Crown agents. The *Law of Contract in New Zealand* defines agency as 'the relationship that arises where one person is appointed to act as the representative of another.'<sup>327</sup> In this particular instance, John Grace and Henry Mitchell were indeed appointed by the Minister in a representative capacity to deliver a service for the Crown. Although not 'officers of the Government', they were still remunerated by the Crown for services in support of the government. For that reason, they must be considered Crown agents.

Given both William and John Grace were Crown agents from 1886, we must consider if their relationships to people on the ground compromised their roles on behalf of the government. We accept that the Grace brothers' overlapping personal and professional roles and interests is complex and significant. There was indeed potential for conflicts of interest between their official roles as paid agents of the Crown, and their personal, whānau, and financial interests. It is certainly possible that the connections between the Graces and people of the district facilitated and even expedited the alienation of Māori land to the Crown. On the evidence available to us, however, we lack firm proof.

The evidence is also insufficient to determine the extent and impact of such conflicts on ngā iwi o te kāhui maunga. In fact, it should be said that such conflicts operated in multiple directions. For instance, William Grace was not only in a situation of conflict between his personal obligations and his role as Crown purchasing agent, but also between supporting the interest of his brothers' Ngāti Tūwharetoa whānau and the interests of his wife's Ngāti Raukawa and Ngāti Maniapoto whānau. These were often at odds during the course of his purchasing activities, making it somewhat of a challenge to satisfy everyone concerned.<sup>328</sup> In our view, the inherent difficulties in balancing these competing obligations undermine any expectation of William Grace's ability to substantially manipulate events in any one particular direction.

Given that there was scope for issues of impropriety through the appointment of William and John Grace, though, should the Crown ever have appointed them to purchase operations in this region? Counsel for Ngāti Tūwharetoa argued that 'the key issue is that the Crown must have been aware that conflict of interest issues arose' and 'did not take any steps to avoid actual conflicts arising'. This, she argued, should have triggered the Crown's duty of active protection.<sup>329</sup>

It could be argued that the Crown should have been more judicious and appointed agents without any potential for conflicts of interest. But we must consider what was reasonable in the circumstances of the time. To our mind, employing agents who knew the district, the people and who spoke the language was a logical decision. As we have seen, Lawrence Grace had advised Ballance why appointing 'reliable and experienced persons', such as brother John and Henry Mitchell, brought advantages for the government:

These agents would also – having the confidence of the natives generally – be able to advise and guide them [the Māori] in the direction most beneficial to the tribal interests and that of the general public.<sup>330</sup>

The reality was that there was not an endless supply of officers available to the government with the requisite

knowledge and experience. In this particular case, the Graces had both. Furthermore, they had been very proactive in offering their services to the government for months prior to the commencement of purchase operations. In essence, the option of employing William and John Grace was handed to the government on a plate. To expect the Minister or Lewis to employ someone else because of the brothers' relationship to the people on the ground is beyond what can be legitimately expected of the government in the circumstances of the time.

In our view, the key was how well the government managed activities on the ground. We would expect the Land Purchase Department, as employer, to have adequately supervised operations to ensure agents took no action that compromised their role as representatives of the Crown. This concurs with Dr Angela Ballara's view that the Treaty imposed upon the Crown a duty to supervise agents' work and instruct them on the required standard of conduct.<sup>331</sup>

If we accept William Grace's statements (expressed privately to brother Lawrence), the government adopted a lackadaisical approach to supervising the purchase operations he led. Lewis would censure Grace on occasions, but Lewis' approach to explaining departmental procedure and protocol appears to have been quite reactive. This comes through in Grace's statements about never receiving 'a single letter from him [Lewis] pointing or instructing me what he wanted done'.<sup>332</sup> It also comes through in the comment Grace made when explaining how officials in Wellington reacted to his mistakes: 'I am open to correction if I have at all been neglectful. But they have such a snubbing way of pointing out an error'.<sup>333</sup> From the evidence available, departmental guidance on operations left a lot to be desired. Lewis in particular, appeared to intervene only when becoming aware of things he was unhappy with. William Grace and associates were, therefore, left with significant discretion that had the potential to create major problems for the government.

There was little information in the documentary record of Grace's precise duties as the salaried purchase officer with responsibility for brother John and Henry Mitchell's operations. Grace was simply instructed by the government to 'buy as much land' as possible.<sup>334</sup> In performing

this duty, all three men were guided by the plan Mitchell outlined (and Ballance agreed to) in early 1886, reporting progress regularly to Lewis via telegram or post. As outlined above, however, the information getting back to the government caused such alarm that the Minister informed Lewis in May 1887 that he 'ought not to let the matter of Crown purchase at Taupo rest as it is going on or I fear a mess'.<sup>335</sup>

Dissatisfied with the conduct of William Grace and his associates at Taupō, the government, in our view, could and should have done more to bring purchase operations into line at the time. Only a year later, when considering whether to re-appoint William to purchasing operations or not, Lewis would advise his Minister:

I have found him [William] an able and zealous assistant – but he is too much inclined to work after the fashion prevalent in private purchases to be entrusted with responsibility single handed.<sup>336</sup>

This was a frank admission. The Pouakani Tribunal accepted there was no evidence to suggest that William Grace acted illegally or fraudulently and that the practices employed by him were considered normal for the time.<sup>337</sup> But the expression of such concerns by the most senior official within both the Native Department and the Land Purchase Department causes us to question why the government was not more hands-on in its management of these operations. As we discussed above, the government's top priorities for the region were the acquisition of land for settlement, tourism, and the railway.<sup>338</sup> From its point of view, this was the key to the successful development of the colony. A lot hinged, therefore, on the purchasing conducted in the Ngāti Tūwharetoa rohe during 1886 and 1887. Thus, we can only agree with Lawrence Grace when he advised Ballance in October 1885 that 'the purchase of lands within the tribal boundary be entrusted to reliable and experienced persons or agents . . . *under control of the Land Purchase Department*' (emphasis added).<sup>339</sup> No doubt William and his two associates were experienced, but entrusting responsibility to them for delivery of this key government priority appears a great risk unless they

were adequately supervised and directed. On the evidence before us, we consider that supervision and direction left a lot to be desired.

(b) *Paying purchase agents by commission and the Treaty*: In closing submissions, the claimants alleged that the government's appointment of purchase agents on short term contracts, paid by commission based on acreage acquired, encouraged rapid and excessive purchasing. This practice, according to the claimants, was 'a breach of the duty of active protection in that it encouraged land purchase agents to acquire the maximum acreages possible'.<sup>340</sup>

This submission relates principally to John Grace and Henry Mitchell, both of whom assisted with land purchase operations at the outset of the Taupōnuiātia hearings.<sup>341</sup> Responsibility for establishing the terms of their employment lay with under-secretary Lewis, who employed both men on a six-month contract (between January and July 1886), paying a commission of twopence per acre for land purchased once 50,000 acres had been acquired first. Before reaching that milestone, though, Grace and Mitchell would receive an advance of 30 shillings per day to cover their expenses. These advances would then be deducted from the commission paid at the completion of their contract.<sup>342</sup> Although Mitchell had earlier requested a 12-month contract to this work, Lewis set up terms to ensure both men could be dismissed with one month's notice after the six months was up.<sup>343</sup> This established a clear incentive for both Grace and Mitchell to acquire as much land as they could during their six months of employment.

A further incentive was the fact that their employment depended on the lands identified for purchase getting through the court smoothly. Lewis had advised in January 1886 that 'if anything should occur to prevent the Native Land Court dealing with the lands in question the whole arrangements with you necessarily at once falls through'.<sup>344</sup> In other words, any delay in, or impediment to, the determination of title by the court during Grace and Mitchell's six-month term would end their employment relationship.

It is uncertain why the government insisted on such a short period, and why when Mitchell requested an

extension to the original six-month period it was declined. The government may have wanted to capitalise on Māori attendance at the court to conclude as many purchases as possible, and thus avoid drawn-out and costly purchase operations. That explanation would accord with Lawrence Grace's advice to Māori about:

the desirableness of expediting the settlement of their land [claims], if possible at once and [in one] operation, and so avoiding protracted delays and heavy expenses of numerous courts spread over a long term of years, and that this could best be effected by submitting their whole tribal claim for investigation by the Court in one block, and during which, as the investigation progressed, *the establishment of titles, the apportionment of reserves, and cessions of lands to the Crown could all be satisfactorily decided and settled once and for all.* [Emphasis added.]<sup>345</sup>

Adopting this approach to purchasing would ensure the government could realise its railway, settlement, and tourism development policies at the earliest opportunity.

Whatever the precise motivation for establishing these terms, Lewis' decision to pay Mitchell and John Grace on commission is interesting in light of William's terms. William had also pursued employment on a commission basis. Yet, Lewis had argued against it, on the grounds that 'the ordinary salary of a land purchase officer would be cheaper and more satisfactory in many respects.'<sup>346</sup> Why it would be more satisfactory was left unsaid. According to Mr Stirling, Lewis' decision probably reflected 'the disastrous experience' of paying purchase officers on commission in the 1870s.<sup>347</sup> But it is more likely the key factor was the government's need to have operations led by a salaried purchase officer 'accountable to the Treasury.'<sup>348</sup> William was paid a salary of £350 per annum and a further £100 for ongoing expenses.<sup>349</sup> He would be responsible for leading purchase operations in conjunction with the two assistants employed on commission.

While William Grace's terms differed from those of Mitchell and John Grace, this arrangement was not a total exception. Purchase operations in the adjacent

Waimarino block were similar in that they adopted a mix of salaried and on-commission purchase agents. In this case, William Butler led operations as the salaried agent, assisted by a local man, John Stevens, on commission. Like Mitchell and John Grace, Stevens was also employed on a six month contract (though this was later extended to nearer twelve months), at the same commission of two pence an acre. Stevens evidently did very well out of his contract, securing £3,285 2s 6d for a year's work. Although we are unable to say if that included clerical assistance or surveyors' fees, it was still, as Ms Marr noted, 'an enormous amount of money at the time', especially when compared to the earnings of a judge's annual salary of around £600.<sup>350</sup> When compared to the £350 earned by a salaried purchase officer, such as William Grace, Steven's commission appears even more substantial.

So what did John Grace and Henry Mitchell achieve under their contract? Between March and July 1886 both agents made numerous payments against Taupōnuiātia blocks. As early as May 1886, however, Mitchell and Grace requested an extension to their contract. This was in part due to the significant number of owners placed on titles in the court, advising the government that their work would now likely take 'a period of several years.'<sup>351</sup> Mitchell also requested an increase in rate of commission to three pence per acre for their operations. The request was rejected on both counts. At the end of June 1886, Lewis recommended that the agents be given notice of the termination of their contracts, operating on the assumption that William Grace could complete the purchasing work in the Taupōnuiātia blocks.<sup>352</sup>

We get an idea of what the three agents accomplished over those six months from Grace and Mitchell's reports. In June 1886, William Grace advised that of 314,536 acres under negotiation he had acquired a total of 70,731 acres. This included several blocks within the National Park inquiry district: Ōkahukura 7, Tāwhai South, Mahuia, and Taurewa.<sup>353</sup> From the evidence available, however, Ōkahukura 7 appears to be the only block within our inquiry district on which payments were completed in the six months to July 1886.<sup>354</sup> Mitchell would report two

months later that they had acquired a total of 125,000 acres, and that purchases of between 200,000 and 300,000 acres could have been completed had the court not adjourned in April.<sup>355</sup> By that point, though, the government had decided to discontinue its arrangement with John Grace and Henry Mitchell, favouring William Grace to complete any negotiations then in progress.<sup>356</sup>

The government would calculate and pay Mitchell and Grace's commission once the court resumed its hearing in September. In the event, the hearing did not resume until the following year. In the interim, though (and beyond), John Grace and Mitchell continued purchasing in cooperation with William Grace.<sup>357</sup> Mr Stirling found little evidence of the extent to which the government endorsed this purchasing. Presumably Mitchell and John Grace organised it themselves, and William, who was still working on salary, made the actual payments. But the surveyor-general, Percy Smith, would later advise the Minister of Lands that the nature of their employment during the period August 1886 to September 1887 was 'obscure', as there was 'very little documentary evidence'.<sup>358</sup> This became a problem when both men requested £1239 each (less advances of £325 each) as their share of commission earned on less than 300,000 acres of land they claimed to have purchased by September 1887.<sup>359</sup> Percy Smith did agree that Mitchell had a 'moral claim' for this work, but there is no evidence to suggest that the government actually paid Mitchell and Grace this sum, or any commission at all. A short while after Percy Smith provided his advice to the Minister, Mitchell went bankrupt.<sup>360</sup> There is little evidence, therefore, that John Grace and Henry Mitchell derived any significant benefit from their role in Crown purchasing of the Taupōnuiātia block.

In our view, whether the agents were eventually paid is not the real issue here. Of greater importance is whether the conditions of employment, as prescribed by the Crown, breached its Treaty obligations. Previous Tribunals have commented on this practice in other areas of the country. The Hauraki Tribunal assessed the Crown's approach of paying purchase agent, James Mackay, on commission in the 1870s. Evidence presented to that

Tribunal suggested that the practice encouraged indiscriminate purchasing. Mackay essentially dealt with anyone he could and focussed on acquiring as much land as possible with little regard to the quality or to the effect on Hauraki Māori.<sup>361</sup>

The CNI Tribunal described how ineffective the Crown's practice of paying agents on commission had been in the 1870s. In the period 1873 to 1876, for instance, Henry Mitchell and Charles Davis were paid two guineas (£2 2s) per day, and a further £200 for every 100,000 acres acquired for purchase.<sup>362</sup> Although both men advanced a great deal of money to Māori in those three years, they were unable, as claimant counsel identified, to bring a single purchase to fruition.<sup>363</sup> The Crown stood the agents down in 1876, but Mitchell was reappointed five months later, on salary only. From that point on, the Crown appeared to move away from employing purchase officers on commission, favouring salary terms in an effort to gain 'more Government control over agents'.<sup>364</sup> Nevertheless, the government still opted for a commission arrangement with Mitchell and John Grace in 1886.

It seems to us that the contract given to Mitchell and John Grace was deliberately set up in such a way as to offer the worst possible outcomes for Māori. Not only was there incentive for agents to buy as much of their land as possible, but there was limited time in which to do so. Pressure to perform and self-interest were, therefore, likely to have been motivating factors for these agents. As Mitchell pointed out to Ballance upon accepting the terms of his employment, 'the quicker these [purchases] are completed the more satisfactory it will be for us and the government'.<sup>365</sup> In this case, Mitchell and John Grace had to purchase 50,000 acres before they could qualify for the commission of twopence per acre and they had only six months available to them. Imposing a short timeframe would have encouraged hasty and indiscriminate purchasing. In our view, abuses, mistakes, and misunderstandings were an inherent danger in such a course of action, and the Crown must have known (or ought reasonably to have foreseen) what would be the likely outcome of structuring contracts in this way. For that reason, we consider that

the government's decision to employ Mitchell and Grace on these contracts fell short of the standard required by the Treaty. When considering purchase operations in our inquiry district and the role of the Grace brothers in them, we can only endorse what the CNI Tribunal concluded:

it appears that the Government did too little to ensure that its agents acted with propriety. Although we do not have detailed evidence of all transactions, it was clear that the land purchase agents could not satisfy the Government's desire for huge amounts of cheap land while at the same time protecting Māori interests. The Government's failure to monitor their activities properly, to pay them on a basis that would have encouraged fair dealing, and to correct the core problems when identified, and its decision to complete rather than overturn some transactions, was in breach of the Treaty.<sup>366</sup>

## (6) *Prices paid and land valuation*

The claimants in the National Park inquiry district contend that the prices paid for land were set deliberately low, and that the Crown's monopoly purchase powers allowed it to do so. The Crown, for its part, conceded that it sought to purchase land in the inquiry district as cheaply as it could, yet did not see this as a breach of the Treaty as 'low' prices do not necessarily signify underpayment. Rather the Crown argued it used public funds responsibly, limiting undue public expenditure by getting land at as low a price as possible.<sup>367</sup>

Given the scope of the claims before us, the purpose of this section is to assess whether the Crown paid a fair price for the land it acquired within our inquiry district. We start with a discussion of how purchase prices for Māori land were set and then review the evidence of what owners were actually paid for blocks during the nineteenth century. That will enable us to assess what constituted a fair price for land in this district and whether that was reflected in the prices actually paid.

In the 1880s and 1890s, the price paid for Māori land was principally set by officials within the Native Land Purchase Department in consultation with the surveyor-general's office and under ministerial direction, since until 1896 there was no standardised system in place across the

country. Under these rather ad hoc arrangements, purchase officers in the field were then responsible for persuading owners to part with their land at those prices.<sup>368</sup> At this point, we briefly outline how prices were determined for each of the blocks purchased during the nineteenth century. Thomas Lewis, the native under-secretary from 1879 to 1891, was a prominent figure in purchase operations, issuing instructions to the agents about which lands to focus on and determining prices paid in consultation with his officers.

(a) *Rangataua*: As we discussed in chapter 5, the court ascertained title for the Rangataua block in August 1880. With title determined, the government prepared for purchasing in the block. Richard Gill, the Land Purchase Department under-secretary, advised his Minister that:

Rangitaua [*sic*] contains 22,965 acres, price to be paid 7/6 per acre[.] £968 has been advanced on purchase and survey [account] £8611 is required to complete the purchase. This land will be for some years inaccessible by roads. I recommend Mr Booth be instructed to recover the payments made and then the proclamation be withdrawn.<sup>369</sup>

The Minister agreed with Gill's recommendations, but purchasing was interrupted because the chief judge of the court ordered a rehearing to the block only a few months later.<sup>370</sup> We discussed the events surrounding this rehearing in chapter 5.

(b) *Rangipō–Waiū*: In chapter 4, we discussed the circumstances surrounding the government's lease of the Rangipō–Waiū 1 block. It should be recalled that the government and private parties Studholme, Morrin, Russell, and Moorhouse entered into a sub-leasing arrangement for Rangipō–Waiū and Murimotu lands in 1874. This lease could not be confirmed until title had been awarded by the land court, which occurred in 1881. By 1884, though, the Land Purchase Department advised the Native Minister that a favourable opportunity now offers to commence the purchase of the Rangipō–Murimotu blocks.<sup>371</sup> The department further advised that:



Block	Area	Rent per 1000 acres (£)	Annual rent (£ s d)	21-year lease from	Price per acre (s)	Total purchase money (£ s d)	Rent as a percentage of total purchase (%)
Rangipō–Waiū 1	24,126	12	289 10 6	31 May 1881	3	3,618 18 0	8
Rangipō–Waiū	38,000	13	494 0 0	31 May 1881	6	11,400 0 0	4.6
Rangipō–Waiū 2	27,143	13	352 17 0	31 May 1881	6	8,142 18 0	4.6

Table 6.2: Proposal for purchase of the Rangipō–Waiū blocks, 1884

I think a fair price to pay for the Murimotu blocks, the Rangipo Waiu block and the Rangipo Waiau No.2 block, 45,022 acres would be six shillings per acre this would allow £4.6.8 per cent on the rental. The Rangipo Waiau No.1 Block 24,126 acres is not so valuable although the rental is within £1 per 1000 acres, it is not worth more than three shillings per acre (if so much) the price 3/- would allow 8 per cent on the rental . . . The total purchase money at acreage rates [illegible], assuming the whole of the land to be purchased would be £35,125.10.0. If this purchase is approved the money would be required from the Treasury at the rate of about £4,000 per month for the first five months and at a less rate afterwards.<sup>372</sup>

The Department also supplied the following data on each of the Rangipō–Waiū blocks, the Rangipō–Waiū 1 block being the only one within our inquiry district.

The Minister approved the terms proposed.<sup>373</sup> Only a few months later, the under-secretary of the Land Purchase Department instructed his purchase officer that he should acquire interests at 1s 6d an acre in Rangipō–Waiū 1 and three shillings in Rangipō–Waiū 2.<sup>374</sup> There is no documentary evidence to explain why the rates were lower than those outlined in departmental advice to the Minister.

In 1886, local settlers pointed out that the owners of Rangipō–Waiū were reluctant to sell at government prices. Ernest Wright, a Pākehā settler living near Te Reureu (Marton) wrote to the Native Minister in 1886 pointing out that he had heard from ‘Mr Grace’ that ‘the price for

Rangipō Waiū was one shilling six pence per acre’ and ‘the natives do not seem disposed to part at that price.’<sup>375</sup> Wright noted that the Māori owners were each receiving £7 8s per annum for renting the land but that the purchase price offered by the government would individually bring them only £52.<sup>376</sup> According to Mr Stirling, rents were usually based on 5 per cent of capital value, suggesting, in his view, that the owners could have received around £148 each for this land, almost three times what the government was offering.<sup>377</sup>

(c) *Taupōnuiātia*: Prices for Taupōnuiātia lands were initially set in January 1886. At the time, the new under-secretary of the Land Purchase Department, T W Lewis, advised his Minister that it would be advisable to acquire land within this block at ‘a reasonable rate’, but ‘the price should not . . . exceed an average of 1/6 an acre.’<sup>378</sup> The Minister agreed, and purchase officers Henry Mitchell and William Grace were instructed to proceed on that basis.<sup>379</sup> But that limit was unusually low and caused problems for the land purchase officers almost immediately. Only a month after setting a price, William Grace advised Lewis:

Judgment in Okahukura and Rangipo North given, we are holding back lists of names in order if possible arrange purchase for Crown of portions, price in these two blocks will be high, Natives having been offered formerly 6/- per acre for the Mountain portion which we are endeavouring as instructed to make a reserve with good prospects of a general assent,

please state the highest price for the remainder. These blocks comprise some of the best land fit for settlement in the district and lay as you are aware adjacent to the Railway line. It would be well to deal liberally with this part of the district as its acquirement in conjunction with the Tokaanu lands and Township there is one of the first objects to be attained the latter being now fairly well entertained by Maori people.<sup>380</sup>

This was a clear signal to Lewis that the government's price of 1s 6d was too low to allow purchasing to succeed in the Ōkahukura and Rangipō North blocks. Grace's advice appeared to be supported by the assistant surveyor-general, Percy Smith, who informed Lewis that

Rangipō North exclusive of mountain contains about 64,000 acres worth to the Gov[ernment] five shillings per acre. Okahukura 62,000 acres exclusive of mountain worth to Gov[ernment] seven shillings per acre.<sup>381</sup>

Lewis's response was to authorise five shillings per acre as 'the extreme limit' for these 'special blocks' and emphasised that Grace should keep 'as much within that price as possible'.<sup>382</sup> But the under-secretary was not satisfied to let the matter rest. He explained to the Minister:

I think this describes that I should proceed to Taupo as soon as possible with a view of fixing the limits of price to be given for the blocks Mr Grace is engaged in purchasing – I should like if possible for Mr Percy Smith Asst Surveyor General to meet me there so that we may confer on the subject as he has a good knowledge of the lands in the district – The blocks proposed to be acquired are so large that a few pence per acre difference in the price means several thousands of pounds and these and other matters cannot be dealt with by correspondence.<sup>383</sup>

The Minister approved Lewis' request, but it would be some time before the under-secretary made it to Taupō. Mitchell continued to wire Lewis in Wellington expressing concerns at the government's price constraint on purchase operations:

Owing to higher rates having been given of late years both by Govt and private purchasers for Taupo lands, I fear the average stated in your letter of 7 January last cannot be adhered to in our present operation.<sup>384</sup>

Mitchell recommended that the government raise the price to 'an average of say two shilling and sixpence or three shilling'.<sup>385</sup> Not receiving a satisfactory response, Mitchell wrote directly to Ballance to highlight the difficulties of completing purchases within the limit prescribed:

This we find is nearly the minimum rate, and in our negotiations with the land owners of this district, this low price has been our chief difficulty, for one shilling six pence per acre is considered a low rate for any land in this locality, while for better quality of soil and position, from four to six shillings per acre is expected. These rates have been introduced of late years into this country from the operations of private purchasers in the Tatua and Patetere lands, and also from the government having entered into negotiations for the purchase of the Rangatira block in 1883 and 1884 at the fixed rate of four shillings per acre, thus establishing a standard of value which even for inferior quality and position of land takes time to break down.<sup>386</sup>

Mitchell also noted that previous Crown purchases in the region had set a standard rate of four shillings an acre and that owners now expected this price to be the minimum rate for purchases in the district:

These rates [four to six shillings an acre] have been introduced of late years into this country from the operations of private purchasers in the Tatua and Patetere lands, and also from the government having entered into negotiations for the purchase of the Rangatira block in 1883 and 1884 at the fixed rate of four shillings per acre, thus establishing a standard of value which even for inferior quality and position of land takes time to break down.<sup>387</sup>

While the government's preference remained to enforce the price set in January 1886 across the Taupōnuīātia

block, ongoing Māori resistance made this impossible to sustain. In the circumstances, Grace and his associates were forced to offer higher prices to secure land. With respect to the Ōkahukura and Rangipō North blocks, William Grace could report in 1886 that he had successfully purchased the 10,000-acre Ōkahukura 7 block at five shillings an acre but had encountered difficulties in relation to the other block:

The owners of Rangipō would have sold a part of the block for the same price, but owing to the large area of indifferent land, including a portion of the desert, I could not offer them more than one shilling and six pence per acre, which they refused to accept. I believe three shillings an acre would induce them to part with a considerable portion of this block, and which I think would not be too high, provided more of the good portions of the block are included in the purchase.<sup>388</sup>

This was two shillings less than the purchase price that had been recommended by Percy Smith. But the Crown had also acquired Ōkahukura 7 at a rate two shillings less than that recommended by the surveyor-general's office. Despite the under-secretary's admission that the assistant surveyor-general had 'a good knowledge of the lands in the district', Percy Smith's advice about land values in these two particular blocks appears not to have been accepted.<sup>389</sup>

(d) *Waimarino*: With purchasing under way in Taupō-nuiātia, the government prepared for operations in the Waimarino block. In April 1886, William Butler, the government's land purchase officer for the Whanganui region, advised under-secretary Lewis that the acquisition of Waimarino lands would cost the government around £70,000. Of that amount, though, Butler proposed to pay the owners only £50,000 for the owners' shares, the remaining £20,000 being split between expenses for purchase operations, the writing off of previous advances made in the area, and commission payments for Butler's associate, John Stevens. For a block over 400,000 acres, this worked out at 3s 6d per acre. Butler also noted that the

general opinion of those who had seen the block thought that 'it would be cheap at the price named'.<sup>390</sup>

But as Cathy Marr noted, 3s 6d was the cost to the government and not the amount owners received for their shares, which, according to her calculation, worked out at 2s 6d per acre.<sup>391</sup> In her view, that raised an issue as to whether the government supported a 'fair' market price for Māori land. She highlighted Ballance's reported comments at a meeting at Kihikihi in February 1885:

Now, with regard to roads and railways, I suppose that the Natives are governed by the same feelings and the same views as the Europeans upon this point, namely, that nothing is more desirable than to have roads and railways through their land in order to give their land a value. They must know that there are large blocks of land in this country which have really no value at all, because there are no roads or railways through them, and if they had to sell this land at the present moment they would not receive more than three or four shillings an acre, whereas if railways or roads were made through it it would sell for as many pounds an acre.<sup>392</sup>

Ms Marr indicated that the Waimarino lands straddled the railway route and the government planned to build roads there too. There were also valuable stands of timber and other resources, such as gravel for road construction, on the block. For those reasons, Ms Marr contended that Waimarino lands 'certainly appeared to be worth more than 3/6 per acre', speculating that the government had bowed to settler pressure and their own financial advisers to obtain land as cheaply as possible and exclude Maori from the anticipated rise in land values.<sup>393</sup> We discuss this issue further in our assessment of what constituted a fair price for land in our inquiry district.

(e) *Raetihi*: Purchasing in the Raetihi block was a high priority for the government once it had passed through the court in February 1887. Purchase officer Butler informed under-secretary Lewis that the land was 'of first class quality' because of its large native timber forests and its proximity to the main trunk railway. Butler explained that the

majority of the shares within the block could be purchase for four or five shillings an acre, but that

a higher price would probably be demanded by some few whose interests lie at or near Ohakune a settlement situate at a point in the block where the Railway and the Roads from Murimotu and Pipiriki will intersect . . .<sup>394</sup>

The owners, Butler explained, recognised that this would increase the land's value. However, the under-secretary instructed Butler to keep the price 'as low as possible', saying that 'the average cost of the block should not exceed four shillings an acre.'<sup>395</sup>

(f) *Rangiwaea*: The government's view on an appropriate purchase price for the Rangiwaea block was first recorded in 1893. The surveyor-general reported to the Native Minister that, because the quality of the land varied across the 50,000 acres that comprised the block, 'an average price of 5/- per acre would allow our selling it at a profit.'<sup>396</sup> This price was not satisfactory to some of the owners. Mr SH Manson – the husband of one of the owners, Hohi Mātene – wrote to the Minister of Lands informing him that he wished to sell his wife's shares in the Rangiwaea block later that year. He suggested that

the land is well worth 20/- and we could get that price if we were allowed to sell to other than the Government. I am well aware of the injustice on the part of the Government, but we are at your mercy. I ask you to give us something near the value and be kind enough to inform me as soon as convenient.<sup>397</sup>

When the Land Purchase Department responded that he could choose not to sell to the government on the terms offered, Manson responded:

I am not asking for any favour, I only want something like fairplay, I am well aware that a considerable portion of the block is quite equal to the Awarua which you have paid 25/- an acre for, give me something like fair play I do not ask any favour.<sup>398</sup>

Other owners were also dissatisfied at the price offered for Rangiwaea lands. One group even argued that 'there is no better land in New Zealand', which they claimed could be proven if only the government would send an expert to examine the block.<sup>399</sup> Purchasing in the block continued, however, at a rate of five shillings an acre until it was completed in 1896.

(g) *Purchase price data for blocks in our inquiry district*: Having outlined how purchase prices were formulated in the nineteenth century, we now examine what the owners were actually paid for their lands. From the evidence before us, we were able to establish a picture across the inquiry district. The evidence tabulated opposite is taken principally from the land history alienation database block histories for the National Park inquiry district and it is arranged in order of when purchases were completed.

What this table demonstrates is that, in the majority of cases, the prices paid to owners were either in the lowest part of the range identified by officials, or (in 14 instances, representing 53 per cent of all cases) below it. In only two known cases did the price paid reflect the upper limit of the range, and in only one did the price actually exceed that limit. We discuss this evidence further in our next section.

(h) *A fair price for land and the price paid by the government*: It is inherently difficult for this Tribunal to determine what might have constituted a 'fair' price for land acquired during the nineteenth century. Prior to 1896, when the Valuation Department was established, there was no formal independent land valuation system in operation. This changed when the Government Valuation of Land Act was passed in 1896. The Act was specifically applied to Māori land via the Māori Land Settlement Act 1905. Section 25 of this latter Act stated the Crown could not purchase Māori land at less than the assessed capital value under the 1896 Act. Claimant counsel explained what impact this had on purchase negotiations:

From then on it was standard procedure to obtain a valuation from the Valuation Department before proceeding with

Block	Year purchase completed	Total area (acres)	Area in inquiry district (acres)	Government's indicative price per acre (s d)	Price actually offered or paid per acre (s d)	Total price actually offered or paid (£ s d)
Rangataua North 1	1881	8,448	5,643	7 6	6 6	2,748 0 0
Rangataua North 3	1881	2,112	851	7 6	7 6	792 0 0
Rangataua South	1881	11,127	530	7 6	8 6	4,728 19 6
Ōkahukura 7	1886	10,000	10,000	5-7 0	5 0	2,500 0 0
Ōkahukura 8	1887	6,766	6,766	5-7 0	3 0	1,019 7 6
Taurewa 1	1887	17,600	17,600	Unknown	3 0	1,605 0 0
Waimarino 1	1887	417,500*	32,407	3 6+	1 8†	35,000 0 0
Ōkahukura 8A, 8C, 8D, 8E, 8F, 8G, 8H, 8J, 8K, 8L	1894	3,868	3,868	5-7 0	4 0	773 12 0
Ōkahukura 8A2	1894	300	300	5-7 0	5 0	75 0 0
Ōkahukura 8B	1894	892	892	5-7 0	5 0	223 0 0
Tāwhai South	1894	2,000	2,000	Unknown	4 0	400 0 0
Taurewa 2A	1894	500	500	Unknown	10 0	250 0 0
Taurewa 3	1894	160	160	Unknown	5 0	40 0 0
Rangataua North 2A	1896	360	360	7 6	5 0‡	158 2 0
Raetihi 4A	1896	526	526	4-5+ 0	5 0§	131 10 0¶
Raetihi 5A	1896	2,063	644	4-5+ 0	5 0	515 15 0**
Rangiwaia 1	1896	54,400	2,896	5+ 0	5 0	13,600 0 0
Ōkahukura 8M1	1899	16,115	16,115	5-7 0	4 0	6,890 8 0
Rangataua North 2B1	1899	115	115	7 6	Not available††	74 15 0
Mahuia A	1899	1,455	1,455	Unknown	3 0	218 5 0
Rangipō North 1B	1899	577	577	5 0	2 0	153 6 0
Rangipō North 2B	1899	7,173	7,173	5 0	2 0	1,218 10 0
Rangipō North 3B	1899	5,004	5,004	5 0	2 0	680 12 0
Rangipō North 4B	1899	3,809	3,809	5 0	2 0	586 18 0
Rangipō North 5B	1899	5,213	5,213	5 0	2 0	1,576 6 0
Rangipō North 6B	1899	12,069	12,069	5 0	2 0	2,080 0 0
Rangipō North 7B	1899	4,489	4,489	5 0	2 0	1,576 6 0
Rangipō-Waiū 1A	1900	21,526	21,526	3 0	1 6	1,950 0 0

\* This figure was quoted by William Grace in May 1887 (as cited in doc A56(a), p 206).

† This figure was provided by Ms Marr based on the information contained within the purchase deed: 821 shares acquired for 35,000. As Ms Marr noted, this was well below the 3s 6d – 2s 6d in real terms – proposed by purchase officer Butler in April 1886. It was also well below the indicative value Ballance stated inaccessible lands in the interior were worth: doc A43, p 346–348, 482.

‡ The price is recorded as 4s 6d in the annual return of 'Lands Purchased and Leased from Natives in North Island', AJHR, 1897, G-3, p 4.

§ Ibid, p 4, records the price as four shillings per acre.

¶ This is an estimate based on a calculation from the unit price.

|| The price is recorded as four shillings per acre in the annual return of 'Lands Purchased and Leased from Natives in North Island', 4 October 1897, AJHR, 1897, G-3, p 4.

\*\* This is an estimate based on a calculation from the unit price.

†† The price is recorded as 4s 5d per acre in the annual return of 'Lands Purchased and Leased from Natives in North Island', AJHR, 1899, G-3, p 6

Table 6.3: Purchase prices in the inquiry district

a purchase. Now there was no room for haggling; individuals were entitled to the government valuation divided by the value of their shareholding, no more, no less.<sup>400</sup>

Following the passage of the Māori Land Settlement Act 1905, prices for Māori land immediately increased. Dr Donald Loveridge noted that Crown purchases in the period between 1905 and 1910 cost almost twice as much per acre as purchases in the nineteenth century. Although contexts were quite different, Dr Loveridge observed that the requirement under the Act for the Crown to purchase at not less than the assessed capital value may have been an influence on those prices.<sup>401</sup> We agree.

Under the 1905 Act, therefore, Māori had an objective process of valuation by which they could ascertain whether prices being offered by the government were fair and reasonable. In addition, a minimum price was set by an independent authority that the government had to abide by, and Māori were able to refer to this body for guidance on prices. In the nineteenth century, however, this independent advice was not available to Māori and, as we have seen, the Crown did not abide by the advice it received from its own officials: in 53 per cent of cases examined in our district, the government paid less than the range of prices proposed by its officials at the time. In short, the system of purchase under Crown pre-emption denied Māori access to market value.

At the completion of hearings for the Whanganui district inquiry, the Crown made an important concession relating to this point. In respect of the Waimarino purchase, a block that straddles both the National Park and Whanganui inquiry districts, the Crown conceded that ‘it did not comply with the high standards expected of it as a privileged purchaser’ and that ‘its purchase of the Waimarino block failed to meet the standards of reasonableness and fair dealing that found expression in the Treaty’. In particular, ‘in setting the price for the block, it failed to comply with its Treaty duties.’<sup>402</sup>

The Waimarino purchase was only one of the cases where the price owners received for their interests fell well below the value specified by officials. In 1886, the assistant

surveyor-general advised that the Ōkahukura block was worth seven shillings an acre and the Rangipō North block five shillings. But the government purchased these blocks well below those rates. In fact, only Ōkahukura 7 secured a rate of five shillings an acre, Lewis’s ‘extreme limit’ for such ‘special blocks.’<sup>403</sup> To demonstrate what this meant in terms of outcomes for owners, we explore one example. At seven shillings an acre, owners of Ōkahukura 8 would have received £2,368 2s for this block (or £1,691 10s at five shillings an acre), but in fact they received only £1,019 7s 6d, a difference of £1,349.

A further example is the Crown’s purchase of the Rangipō–Waiū 1A block. As outlined above, the Land Purchase Department indicated that Rangipō–Waiū 1 was worth three shillings an acre in 1884. By the turn of the century, however, Crown agents had acquired 21,526 acres of this block at a rate of 1s 6d an acre. That netted approximately £1,614 for the owners. If the Crown had paid the owners a rate of three shillings an acre, they would have netted twice that amount.

In our view, the Crown’s concession with respect to the Waimarino purchase should, therefore, apply equally to the Ōkahukura 8, Rangipō North 1B to 7B, and Rangipō–Waiū 1A blocks. Prices in these particular blocks were artificially low and unfair to the owners at the time.

The Crown gave three reasons to explain why purchasing land as cheaply as possible could be justified at the time. The first was that, because of the economic depression in the 1880s, the Crown had to be fiscally responsible. The Crown’s land purchasing and railway construction programmes were funded by substantial loans. Therefore, the less money spent on acquiring lands in this district, more would be available to cover the cost of capital works.<sup>404</sup> The second reason the Crown sought cheapest prices was the perceived quality of land in the district, much of which was regarded by the Crown as being of little pastoral value.<sup>405</sup> The third reason was that the Crown had a large area of land in its sights in the North Island, and had to be careful about setting price precedents that were too high. For example, as noted earlier, in March 1886 (referring to the Taupōnuiātia lands) Lewis advised

Ballance that, given the extensive area being sought, the government should be careful about ‘fixing the limits of the prices as a difference of a few pence per acre could result in an extra cost of thousands of pounds.’<sup>406</sup>

During the nineteenth century, the government clearly understood the economic value of this region to the nation. Although much of the land could not sustain a pastoral economy that did not mean its value was insignificant. Indeed, it is to be assumed that the nature of the land was already factored into the prices proposed by the assistant surveyor-general and other Crown officials. This region was valuable because of its proximity to the main trunk railway, its exceptional scenic qualities, the health benefits of its unique hot springs, and its economic potential for future tourist ventures. In 1887, John Ballance explained that the proposed National Park was

worth ten times more to the colony than if it was agricultural or pastoral land. If it were known in other parts of the world that these mountains would be submitted for sale there would be a large company formed at once for the honour of acquiring them.<sup>407</sup>

Ballance also noted that ‘the indirect advantages to the colony at no distant date will be enormous’ because a large number of tourists would be attracted to the area to explore what was on offer.<sup>408</sup> These were reasonably categorical statements about the value of land within our particular inquiry district.

We accept the Crown had a duty to spend public funds responsibly. But there was a concomitant responsibility on the Crown to pay a fair price for Māori land. Given the government’s awareness of the real value of this land to the nation, we would expect the prices paid in the nineteenth century to reflect that real value. That was what the Treaty required and in our view the Crown’s monopoly purchase powers only heightened this responsibility. The CNI Tribunal stated:

What was required was that if the Crown was operating in a monopoly situation, it took care to use any mechanisms

available to it for ensuring that it acted fairly and that its prices were adequate.<sup>409</sup>

We agree. But we also consider that ‘value’ is a concept that is complex. For Māori the mountains and the surrounding land were taonga of immense significance and of great value. They supplied a variety of essential food and material resources, the hot springs provided unique and priceless health benefits, and the maunga were the source of their identity. Today, the Crown rightly acknowledges this. But it also acknowledged it in the nineteenth century. Ballance stated to parliament that while the land within the Park ‘has little value for agricultural or pastoral purposes, [it] has enormous value in the eyes of the Natives.’ He went on: ‘The Natives attach more value to these mountains than they do to an equal area of the finest agricultural land in the colony. These mountains have been from time immemorial tapued.’<sup>410</sup> He also highlighted the value of the Ketetahi springs:

The Natives have attached the greatest possible value to the springs, which are known to be the finest in the colony, and the Natives go to them from long distances on account of their healing qualities. There is no part of New Zealand which the Natives appreciate more than they do these mountains.<sup>411</sup>

In other words, the value of these lands to Māori cannot be measured in economic terms alone. The mountains and springs are (and have always been) ‘priceless’, in the commonly understood usage of that term. Whatever the Crown paid for interests in blocks containing these geographical features, therefore, was nominal. It would be inherently problematic to compare prices paid in these blocks to market prices region-wide. In our view, the ‘value’ to Māori of this land is not strictly reducible to what the market determines.

We also consider that there is not a simple causal connection between prices paid and the Crown’s monopoly purchase power. The claimants suggested that the Crown’s purchase monopoly power was the key factor that allowed it to set whatever prices it wished without competition.<sup>412</sup>

For instance, Tūreiti Te Heuheu had expressed his concerns about the detrimental effect of Crown purchase monopoly at the hearings of the Native Land Laws Commission in March 1891:

If the land is not very good land there is nothing to stop the Government from fixing the price at any sum they like – say 1s or 1s 6d an acre. That, of course, comes about through the market being restricted to only one purchaser, and that one the Government themselves. No matter how hard the Natives fight for a larger price, they are unable to alter the Government's intention. But, on the other hand, if the public market were open to the Natives there is no doubt that they would obtain competitive prices for their land, and thus would very often get more than the Government chose to offer.<sup>413</sup>

Another prominent Ngāti Tūwharetoa chief, Tōkena Kerehi (or Karihi Te Kehakeha), was even more forthright. He told the commissioners that if the present unjust system of purchasing was corrected he would be able to achieve far better prices for his land: 'supposing I wanted to sell a piece of land, I would not be compelled to take this 1s 6d an acre, but be enabled to get a bigger price.' He believed the system unfair and had only once received a fair price:

that is why I call the present system *kohuru*, for this 1s 6d is too small a price. We sold one piece of land at 5s an acre, and that is the only piece we consider we got properly paid for.<sup>414</sup>

The evidence before us, however, suggests that owners were not always forced to accept the prices the government offered. As we discussed above, Lewis initially set an upper limit of 1s 6d an acre for shares in the Taupōnuia block. Because of owner resistance, though, Lewis was forced to concede an increase to five shillings as the limit on two significant blocks within our inquiry district, Rangipō North and Ōkahukura. In other instances, owners could cite prices previously offered by private interests to support a case for getting higher prices. Henry Mitchell,

for example, reported that rates of four to six shillings had been introduced to the district by private purchasers over recent years 'establishing a standard of value which even for inferior quality and position of land takes time to break down.'<sup>415</sup> In other words, we believe it simplistic to assert that the monopoly purchase power allowed the Crown to completely dictate terms to owners in every instance. The evidence before us demonstrates that the situation was more complex than the claimants have suggested.

In general, though, we do agree with the CNI Tribunal, which stated that there were mechanisms available to the Crown for ensuring its monopoly powers were not used unfairly. These included:

- › using experts to set a fair price for land;
- › setting a minimum price;
- › having procedures requiring agents not to drive down individual prices as low as possible below the maximum price;
- › using an independent means for setting prices; and
- › setting prices by public auction.<sup>416</sup>

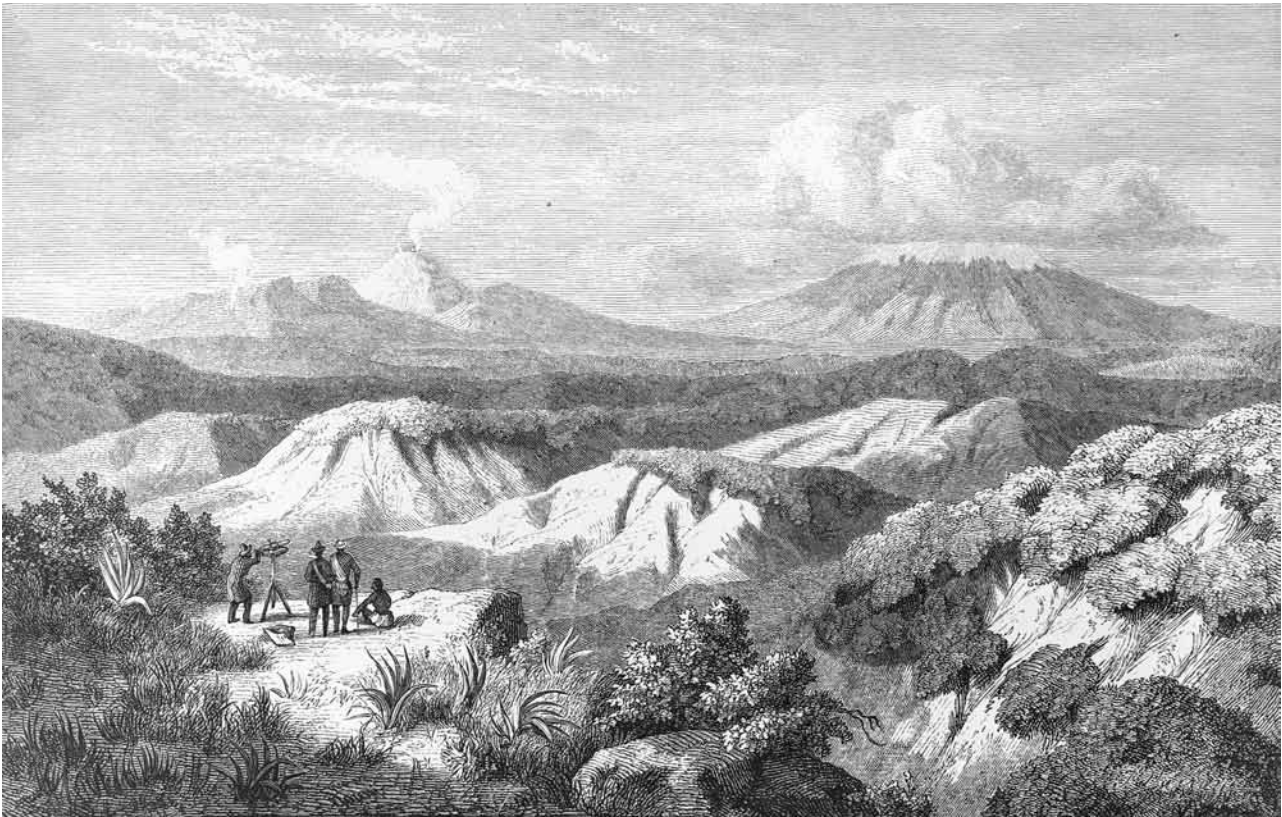
In our view, had these mechanisms been adopted, ngā iwi o te kāhui maunga might have received a fairer price for their land in the nineteenth century.

## (7) Survey costs

At the core of submissions about survey costs is the claim that the Crown took 'excessive amounts of land' to discharge the survey debts of ngā iwi o te kāhui maunga. The claimants pointed, in particular, to the alienation of the Taurewa 1, Ōkahukura 7, and Rangipō North 1A to 7A blocks in our inquiry district. Ngāti Tūwharetoa argued that they were unprepared for the amount of land they lost as a result of these survey debts.<sup>417</sup>

There are two dimensions to this particular topic: survey awards and liens. Survey awards were alienations to the Crown to discharge debts Māori incurred as a result of obtaining a properly surveyed title to their land. Although awards were not purchases, ultimately they were still alienations to the Crown.<sup>418</sup> For that reason, we consider the claims regarding such awards in the three case studies that follow.





A survey party looking towards the Tongariro mountains, 1860s. Surveys were necessary before title could be awarded to Māori land. Māori were often charged for the surveys, and they paid for them by land transfers or by sales in lieu of cash, which was not readily available to them.

Survey liens, by contrast, were a means of holding rights over land as security for unpaid debt. The Pouakani Tribunal defined survey liens in its report:

A 'lien' is a right which one person has to retain the property of another or to have a charge over it until the debt owing by the other is paid. A 'charge' is an encumbrance on the land which charges the land with payment of the debt. It is like a mortgage over the land which secures the debt by giving priority over the owner(s) interest in the land.<sup>419</sup>

If a survey was not paid and was registered as a lien,

interest was charged, which increased the original debt. Survey liens could result in further alienations to pay off such debts.

Surveys were conducted for both parent blocks and their subsequent subdivisions. Surveys for parent blocks were generally initiated as a result of the court title process, by which a survey was required before a certificate of title could be issued to owners (and, therefore, before which they could alienate the land to a purchaser). Costs associated with these types of surveys were generally borne by the Māori owners. The costs of surveys for subdivided blocks were either picked up by the owners or the

Area of survey land (acres)	Cost per acre (s d)	Minimum total cost (£ s d)
500–1,000	1 3	37 10 0
1,000–5,000	0 10	62 10 0
5,000–10,000	0 7	208 6 8
10,000–25,000	0 5	291 13 4

Table 6.4: Survey regulations of 1886

Crown depending on who benefited from the survey.<sup>420</sup> For instance, if the Crown was awarded land to discharge survey debt on a parent block, it would generally pay the cost of surveying the subdivision of the Crown's interests on the ground. If land subdivided was retained by the owners, however, Māori would pay. While the costs of surveying parent blocks were generally substantially higher than subdivisions, Stirling did note that 'surveying numerous partitions could still be a significant impost on the owners of the land'.<sup>421</sup> We consider this further below.

There are two factors in assessing the impact of surveys on Māori owners. First, there is the actual cost of the survey. For example, was the land surveyed at a rate of two-pence per acre or five-pence per acre? Obviously the higher the rate and amount of land to be surveyed, the greater the debt on owners. These rates were specified in regulations.

Where surveys were for areas greater than those outlined above, these were to be worked out 'by special arrangement'.<sup>422</sup>

The second factor is the value of the land. Being in the position of monopoly purchaser, the Crown set the price for the land it was taking to cover the survey costs in each block. If the purchase price of land set by the Crown was artificially low, Māori were compelled to cede more land to cover the debt, resulting in significant land loss. In the Taupōnuiātia block, assistant surveyor-general Percy Smith set the value of land recovered for survey costs at two pence per acre.<sup>423</sup> In September 1887, Lewis personally attended the Taupō land court to enforce the Crown's survey debts in two blocks that neighbour our inquiry district

(Waihaha and Tuhua). In order to obtain the maximum area of land possible Lewis insisted on the lowest possible purchase price per acre. He explained to Percy Smith:

I have obtained order this morning for 11,924 acres in best part of Tuhua Waihaha [blocks] for survey costs at two shillings an acre. My object in contending for so low a price is that it will practically fix [the] price in other portions of block.<sup>424</sup>

Recalling this event a year later, he explained to the new Native Minister that 'I may here mention that at the Taupō court I succeeded in obtaining land in payment of surveys on terms which are very advantageous to the Crown'.<sup>425</sup> That advantage was setting a low value for the land ceded to settle the owners' debt.

Setting a low value enabled the Crown to obtain a significant amount of Māori land at the end of the Taupōnuiātia hearings. Of the approximately 1.5 million acres in the Taupōnuiātia block, Māori ceded approximately 300,000 acres – or 20 per cent – to cover court costs and survey fees.<sup>426</sup> Under cross-examination, Crown historian Dr Keith Pickens argued that 20 per cent did not constitute an excessive cost, noting they could afford to lose this amount because 'They had a lot of land to start with'.<sup>427</sup> He also commented that this was 'a relatively small portion' of the land involved.<sup>428</sup> We can only agree with the CNI Tribunal, however, that this was 'an extraordinary statement'.<sup>429</sup> Twenty per cent, as counsel for Ngāti Tūwharetoa stated, was indeed 'a very high cost'.<sup>430</sup>

We discuss the exact amount of land ceded in our inquiry district to cover survey costs later in our analysis. At this point, however, we review the evidence relating to the three main blocks that the claimants drew our attention to. These blocks were all subdivisions of Taupōnuiātia. Our focus, therefore, is deliberately confined to land ceded for survey costs in the Taupōnuiātia block. Survey awards to the Crown in the southern blocks of our inquiry district will be covered in the Whanganui district report.

(a) *Rangipō North*: The large Rangipō North parent block on the eastern side of the mountain seems to have

Rangipō North block	Total area (acres)	Total survey debt (£ s d)	Cost of survey per acre (d)	Subdivision taken to cover survey debt	Area of block taken (acres)	Survey debt recovery per acre (s d)	Amount of block taken to discharge survey debt (%)
1	1,766	23 5 10	3.2	1A	233	2 0	13
2	15,277	309 2 11	4.8	2A	3,092	2 0	20
3	9,446	263 18 9	6.7	3A	2,640	2 0	28
4	7,031	116 4 2	3.9	4A	1,162	2 0	17
5	10,003	153 6 8	3.7	5A	1,533	2 0	15
6	29,056	619 4 0	5.1	6A	8,256	1 6	28
7	9,252	195 17 11*	5.1**	7A	1,959	2 0	21

Table 6.5: Survey awards in the Rangipō North block

contained over 80,000 acres, although figures vary.<sup>431</sup> Title was awarded in early 1886, to owners from a number of different hapū. On 19 March of that year, the block was subdivided into nine subdivisions: Rangipō North 1 to 7, Ruapehu 2, and Tongariro 2.<sup>432</sup>

The title determination had been sought by the Māori owners, and the cost of surveying was eventually awarded against them. However, quibbles about responsibility for the cost went as far back as 1881. In that year, Colonel William Fraser had made an application to survey Rangipō North and it had been approved by Native Minister William Rolleston.<sup>433</sup> It appears that at that time, Fraser had a leasing arrangement over a section of Rangipō North (although no documentary evidence of it has been located) and he hoped to purchase the block. The survey was for the whole outer boundary of the entire Rangipō North block, including what later became Tongariro 2 and Ruapehu 2.<sup>434</sup> When it became clear that the Crown intended to purchase the land, Fraser claimed the cost of survey from the government.<sup>435</sup> Arguing that the costs of this survey were in fact over £2,000, Colonel Fraser indicated that he would nevertheless settle for £1,932 16s 3d.<sup>436</sup> However, assistant surveyor-general Percy Smith, having 'been over' the block, assessed the cost of the survey at only £716 13s.<sup>437</sup>

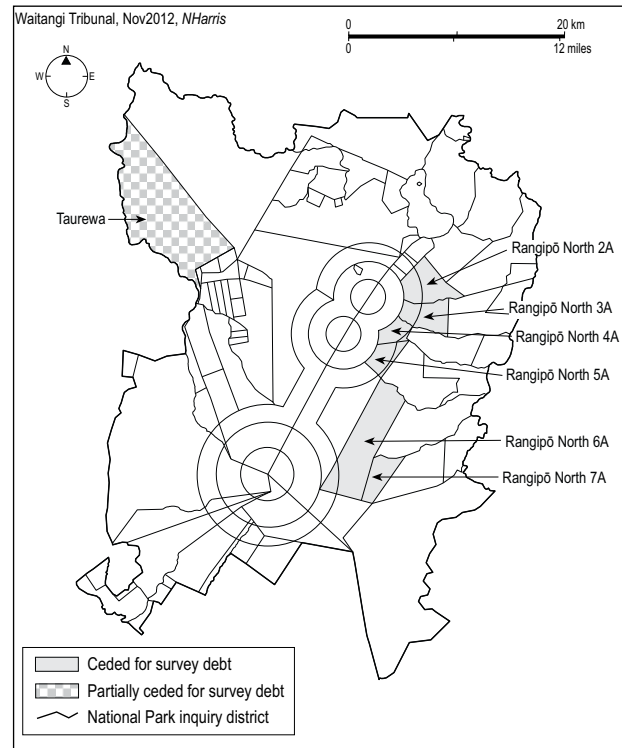
Following the court hearings in February and March 1886, the Crown paid out £700 to Colonel Fraser's wife Elizabeth Fraser – the claim for refund apparently having been put in her name to avoid any perception of a conflict of interest, given that Colonel Fraser was a member of the House of Representatives from 1884 to 1893. When the Frasers insisted on receiving the balance of the cost as well, it was referred for arbitration to the chief judge of the court, J E MacDonald, and 'the Under-Secretary for the Colony'. In December 1886, they found that the whole amount of £1,932 16s 3d should be paid to Mrs Fraser.<sup>438</sup>

In turn, the Crown passed on the majority of the costs of survey to the Māori owners of the block. Of the overall amount, £250 was allocated for the eastern mountain blocks (Tongariro 2 and Ruapehu 2 (12,053.5 acres). At the completion of the Taupōnuiātia hearings, this cost was split out at £135 10s 10d for surveying the 'gift' blocks (Tongariro 1A, 2A, 1B, and 2B and Ruapehu 1A and 2A) and £116 5s 2d for the land remaining outside this radius (Tongariro 1C and 2C and Ruapehu 1B and 2B).<sup>439</sup> Consistent with its policy that whoever was to benefit from the survey should pay the costs, the Crown met the costs of the 'gift' blocks, but it is not clear what happened in the case of the land outside this radius.<sup>440</sup>

The balance of £1681 3d was to be met by the owners

of the Rangipō North subdivisions 1 to 7, which totalled 81,854 acres in area.<sup>441</sup> In order to meet the cost of survey, the owners parted with portions of the seven Rangipō North 1 to 7 blocks, which resulted in the creation of seven further subdivisions: Rangipō North 1A to 7A. With the exception of the Rangipō 6 and 7 blocks, the A subdivisions awarded to the Crown were adjacent to the mountains. Lewis explained at the 12 September 1887 subdivision hearing that ‘it has been arranged that each of these blocks will bear its proportion of the cost.’<sup>442</sup> The seven blocks were awarded to the Crown on 24 September 1887 and amounted to 18,875 acres.<sup>443</sup> For each of the A subdivisions, the Crown paid the survey costs.

(b) *Taurewa*: The 47,633-acre<sup>444</sup> Taurewa parent block was awarded to 452 Māori owners in 1886. Between May 1886 and May 1887, the Crown purchased the interests of around a third of them (154 owners) for £1,605. This amounted to 13,629 acres, acquired at an average rate of 2s 4d per acre.<sup>445</sup> However, a further 3,971 acres – approximately 8 per cent of the total block – was ceded to the Crown in lieu of paying the cost of surveying the outer boundary. These two portions together made up the Crown’s 17,600-acre Taurewa 1 block awarded in 1887.<sup>446</sup> The evidence presented to us seems, at first sight, to suggest that the 3,971 acres was ceded by the non-sellers only and covered the survey of the master block. It is, therefore, uncertain if sellers contributed anything at all to the costs of the survey. Mr Stirling raised the possibility that the Crown’s low payment to sellers for their 13,629 acres might have been in lieu of survey costs and that sellers, therefore, did contribute in their own way.<sup>447</sup> But Dr Pickens recorded that the vouchers relating to the survey of the Taurewa block put the total cost of the survey (conducted during late 1887 or early 1888) at ‘just over £400, at a rate of 1.5 pence an acre.’<sup>448</sup> By our calculations, the rate was closer to twopence per acre.<sup>449</sup> Without further information, however, we cannot come to a firm view about the relative apportionment of costs. If the non-sellers did indeed pay the total cost of survey for the whole block, they received around two shillings per acre for the 3,971 acres taken to recoup survey debt for this block. Based on



Map 6.6: Blocks ceded or partially ceded for survey debt

what sellers were paid for the rest of Taurewa 1 (around 2s 4d per acre) the 3,971-acre portion ceded was worth around £467. Therefore, given that the survey costs, according to Dr Pickens’ evidence, were only just over £400, the owners may have overpaid by around £60.<sup>450</sup>

(c) *Ōkahukura*: As in the Rangipō North block, the Ōkahukura block was also surveyed by private runholders with interests in purchasing the land in the early 1880s. As noted above, Ōkahukura had been developed as a sheep farm during the late 1870s and early 1880s by a business partnership consisting of the Māori owners and a group of Pākehā businessmen comprising Thomas Morrin, John Studholme, and Lawrence and John Grace. The terms of the partnership stated that Morrin and Studholme would provide the starting capital and the Māori owners would

supply the land and the labour. The Māori owners were to repay Morrin and Studholme their half of the original capital from the farm's income and once paid they would share equally in the profits.<sup>451</sup>

When this venture failed to produce the financial benefits hoped for the Māori owners sought to convert the partnership into a formal leasing arrangement which would guarantee a regular income. In order to do this, title to the block had to be confirmed by the court and an authorised survey of the block completed. In September 1882 Lawrence Grace arranged with the approval of the Māori owners for the survey to be undertaken.<sup>452</sup>

The survey for this approximately 82,000-acre block was completed in June 1883 at a cost of £1,034 10s 6d, the cost being paid by Morrin and Studholme.<sup>453</sup> This worked out at around threepence per acre.<sup>454</sup> However, Morrin and Studholme expected the Māori owners to repay the cost of the survey. The Māori owners appeared to accept this because a lien agreement was drawn up by Lawrence Grace and signed by the owners in June 1883.<sup>455</sup> Because they were to benefit from having an authorised survey, Dr Pickens regarded that as the likely reason the owners agreed to accept responsibility for this debt.<sup>456</sup> But the lien agreement was not able to be legally enforced following the imposition of pre-emption in 1884 because leasing arrangements with private parties were prohibited. With no formal leasing arrangement, the Māori owners were unable to pay for the survey. Morrin and Studholme were left out of pocket. At least that was the case until the Taupōnuiātia hearings offered Morrin and Studholme the opportunity to recover their debt.

In July 1886, Morrin submitted a claim to the government for reimbursement of the cost of the 1883 survey.<sup>457</sup> The assistant surveyor-general, Stephenson Percy Smith, explained the background to Morrin's claim:

Mr T Morrin who had the first survey made to pass the Block through the Native Land Court in 1882 called on me lately and asked me to represent to you that we are using his survey for Court purposes and also to request that he might be refunded the sum he paid which amounts to £1034.00.00 as certified to by me at the time.<sup>458</sup>

Percy Smith recommended to his superior that Morrin be reimbursed this amount and that the Māori owners of Ōkahukura pay.<sup>459</sup> He provided three reasons for this recommendation. First, the Crown was using this particular survey to aid its purchasing in Ōkahukura.<sup>460</sup> Secondly, Morrin had the lien agreement, which provided evidence that the owners accepted responsibility for the debt.<sup>461</sup> And, thirdly, he noted that Morrin's plan to enter a formal lease with the owners of the Ōkahukura block had been quashed by the imposition of Crown monopoly purchasing in the area. Percy Smith noted that

The transaction was I believe quite legitimate at the time of survey but the Act prohibiting private purchases within the 'King Country' of course prevented steps being taken to complete it.<sup>462</sup>

Percy Smith also recommended that the government assist Morrin and Studholme to recover this debt from the Māori owners. His recommendation was based on the fact that Percy Smith had only authorised the original survey on the condition that Lawrence Grace (who was acting on Morrin's behalf) obtain 'the trig stations at Motuopa Umukerikeri Kakaramea Tongariro Ngauruhoe Ruapehu Hauhaungatahi Maungakatote Karangahape and other points' for the government.<sup>463</sup> These trig stations were regarded as essential for future Crown purchasing in the district, but would take considerable effort by Lawrence Grace to convince Maori of their utility. As he explained:

From September 1882 to February 1883 I was engaged in overcoming the opposition of the Natives to the trig stations required by the Assistant Surveyor general all of which I succeeded in obtaining.<sup>464</sup>

In Percy Smith's view, obtaining these trig stations in the face of opposition warranted support from the government to recover Morrin and Studholme's debt.

That support would follow soon after. On 14 September 1886, the Land Purchase Department asked William Grace if Morrin and Studholme's debt had been repaid from the proceeds of the sale of Ōkahukura 7, and, if not,

how he proposed to deal with it.<sup>465</sup> Grace replied shortly after that he had paid the entire purchase price to the owners of Ōkahukura and that an arrangement had been made between them and Morrin and Studholme that they would repay the cost of the 1883 survey.<sup>466</sup> It appears that Morrin had no part in these arrangements and was only informed after they had been concluded, with Grace explaining to Lewis ‘Mr Morrin has been informed to this effect.’<sup>467</sup> Grace also advised that ‘Messrs Morrin and Natives have now no claim whatever on the Govt for the original survey of Ōkahukura Block.’<sup>468</sup> The Māori owners of Ōkahukura therefore agreed to pay Morrin and Studholme’s survey debt and set aside part of the payment from Ōkahukura 7 for that purpose. Of the £2,500 paid to the Māori owners of Ōkahukura 7, £1,034 10s 6d was therefore paid over to Morrin and Studholme as reimbursement for that survey debt. After paying this amount the owners were left with £1,466, or 59 per cent of the total purchase price. Therefore, they paid 41 per cent of their purchase money – or parted with around 4,100 acres of land – to cover the cost of the survey.<sup>469</sup>

Why, then, did the government become involved in what was essentially an arrangement between private parties? It seems that because Morrin and Studholme failed to recover the cost of the survey from the owners, officials believed the government had an obligation to facilitate reimbursement of this private consortium. That may have been acknowledgement that pre-emption subverted this private arrangement, as well as recognition that the government would benefit from the survey’s existence during future purchase operations. Whatever the explanation, without the government’s intervention it seems unlikely that Morrin and Studholme would have recouped the cost of the 1883 survey.

(d) *Summary of survey awards in our inquiry district:* From our discussion above, a total of 22,846 acres of land was awarded to the Crown to cover survey debts in 1887. This represented the seven Rangipō North subdivisions (1A to 7A) and the 3,971 acres of the Taurewa 1 block. The Ōkahukura 7 block, as we have discussed, was not awarded to the Crown to cover survey costs. It was

purchased from the Māori owners, who, in turn, repaid their debt to Morrin and Studholme for the survey of the Ōkahukura master block. The 22,846 acres of land awarded to the Crown represents approximately 6.5 per cent of the total land in our inquiry district and 22 per cent of Taupōnuīātia lands awarded to the Crown in 1887 as a direct result of survey costs.<sup>470</sup>

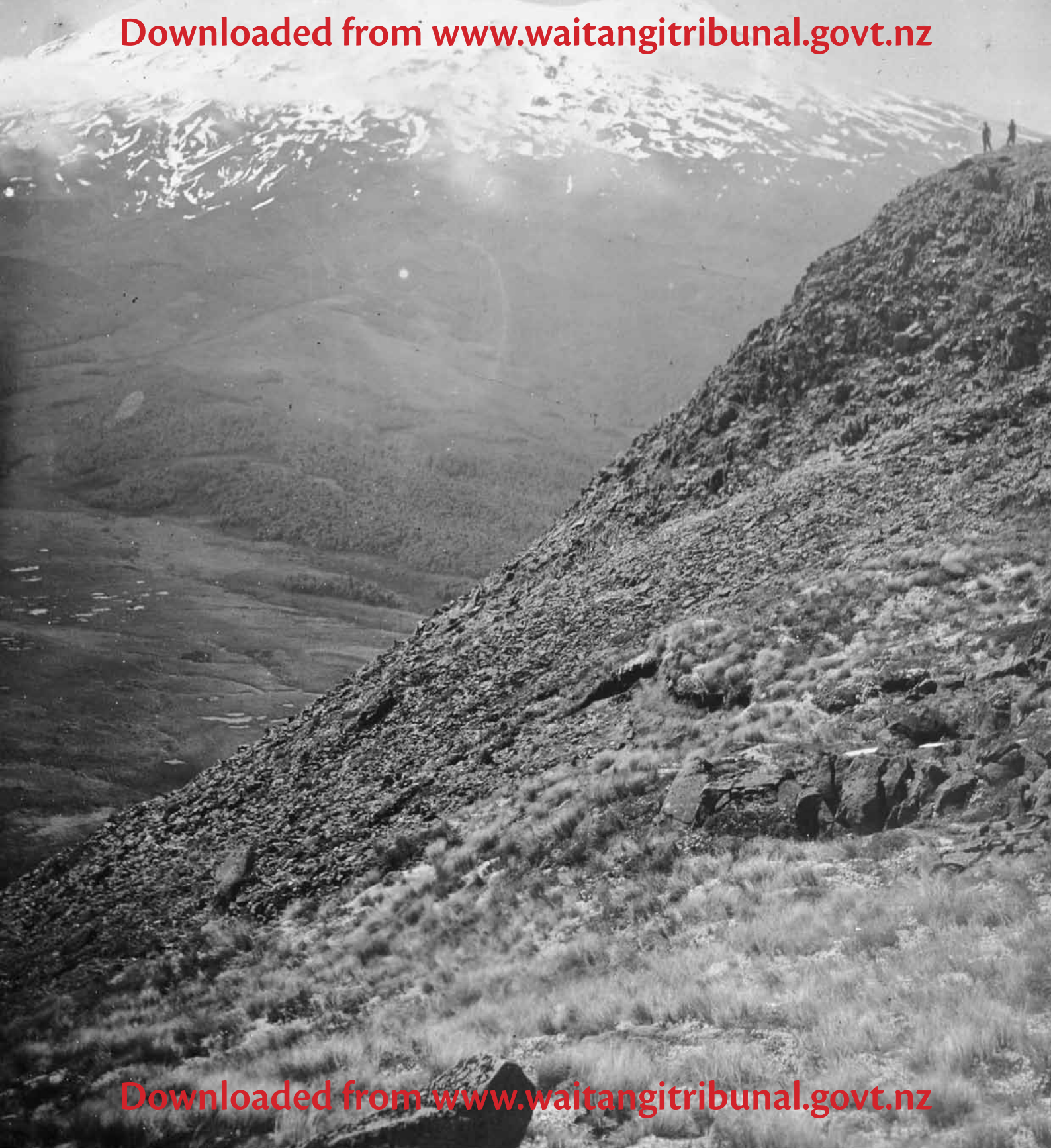
(e) *Remaining survey debt and liens in the 1890s:* Survey awards to the Crown in 1887 did not end the burden of survey costs for ngā iwi o te kāhui maunga. At the close of the Taupōnuīātia hearings the extent to which surveys had not been paid for is demonstrated by the volume of survey liens still outstanding. Substantial liens remained over a number of blocks in our inquiry district during the 1890s. In 1891, for example, survey liens amounting to £316 on Ōkahukura 1 to 8, £236 on Taurewa 1 to 4, and £405 on Rangipō North 1 to 7 remained.<sup>471</sup> A list compiled in 1891 shows that approximately £1,182 of survey debt were imposed as liens on the blocks within (or partially within) our inquiry district.<sup>472</sup>

Māori became very concerned and frustrated with the amount of liens remaining on their land. The fact that they were charged interest at a rate of 5 per cent per annum for five years only intensified that concern and frustration.<sup>473</sup> At the Native Land Laws Commission of 1891, Tūreiti Te Heuheu explained:

Now there are some blocks in Taupōnuīatia West that were surveyed in 1886 . . . but up to the present we have been unable to cut off any portion of this land to pay for these surveys, owing to the difficulty I have just mentioned [Crown pre-emption in the Rohe Potae and Taupōnuīatia districts]. Therefore for four-and-a-half years these surveys have remained unpaid, and of course interest has accumulated. I have heard that a fixed rate of interest is chargeable on

- **Mount Ruapehu from Mount Hauhungatahi. A smaller mountain to the west of Mount Ruapehu and Mount Ngāuruhoe, Mount Hauhungatahi was ideally placed as a trig station and was one of a number that the government sought to control to make the surveying and purchasing of land in the area an easier proposition.**

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the costs of these surveys from that time until now. Then, as these restrictions on the land are the cause of the surveys not being paid, they have at the same time the effect of increasing the amount of expense with which the Natives are saddled. Now, the owners of those blocks have long wished to have the matter settled – that is to say, to have portions cut off to pay for the subdivision – but they have been unable to do so owing to the restricted market; and the owners have repeatedly requested the Government to settle this matter, but up to date nothing has been done. This delay, of course, has raised the amount of interest they will have to pay. . . . the delay in that payment has not been their fault, but that it is rather the fault of the Government and of the laws. Seeing that it has not been the fault of the Natives, I think the Government should not charge them with interest at all.<sup>474</sup>

He further claimed that if the monopoly system did not exist, and private purchasers could enter the market, ‘I am quite sure the Māori would not suffer as they do at present, but would obtain a better price, and therefore less land would go to pay for the survey.’<sup>475</sup>

Māori opposition to surveying and the burden it imposed continued throughout the decade. In 1894 the chief surveyor arranged to survey the Ōkahukura 1 to 6 blocks.<sup>476</sup> Despite the objections of local Māori, officials pushed ahead with the survey anyway.<sup>477</sup> In response, Tūreiti Te Heuheu resisted operations by pulling up the surveying pegs and seizing the survey instruments of surveyor Robert Cashel.<sup>478</sup> The purchase officer in the field, Gavin Park, stated that Tūreiti’s actions were motivated by ‘the native land legislation of last session which he says aims at ruining the natives.’<sup>479</sup> Park recommended that if Tūreiti did not return the equipment he should be arrested. The trouble was resolved, however, when Tūreiti’s uncle, Lawrence Grace, was sent to negotiate. Grace’s efforts were obviously successful, as surveyor William Cussen reported that he did ‘not expect any more trouble with natives’ in April 1895.<sup>480</sup> This was a powerful illustration of Māori anger at the ongoing loss of land through survey and lien debt.

In the case of the Ōkahukura 1 to 6 blocks, that survey debt increased during the 1890s. By the end of the

nineteenth century, liens on these relatively small blocks were substantial.

While debts were substantial on these blocks, the extent to which these liens (or any others on lands within our inquiry district) contributed to Māori alienating more land to repay those debts cannot be determined from the evidence available to us. What is clear, however, is that Māori were frustrated by these liens and regarded them as a significant burden.

(f) *The benefits of survey*: Aside from the quantity of land ceded to discharge survey debts, there is another factor we must consider when addressing the claims relating to surveys. The Crown submitted that a simple principle to apply is that whoever accrues benefit should contribute costs. Given Māori benefited from surveys by gaining secure title, it was reasonable to expect Māori to contribute towards these costs.<sup>481</sup> However, the Crown acknowledged that survey costs were a burden on Māori and that it ‘could have taken further steps to ease the burden of survey costs.’<sup>482</sup> We agree with the Crown – those who benefited should have contributed costs. But it cannot be assumed only Māori benefited from surveys, as the Te Urewera Tribunal has explained:

in its consideration of benefit from surveys, the Crown did not consider the national benefit, despite the fact that the Maori contribution to the public good through their payment of survey costs was acknowledged at the time. The public good, moreover, was generally understood in this period to be synonymous with Pakeha settlement. Consideration of payment of survey costs should be set in the context of New Zealand’s development as a colonial society whose governments (central and provincial) were in the process of providing a range of infrastructure for economic development. To saddle its indigenous people – particularly those who had scarcely entered the market economy – with the cost of surveying large tracts of North Island land was inequitable.<sup>483</sup>

We agree with this Tribunal, and can only emphasise the technical importance and substantial public benefit of erecting trig stations and laying down the base lines on



Block	Area (acres)	Survey liens in 1894 (£ s d)	Survey liens in 1898 (£ s d)
Ōkahukura 1	134	13 3	27 16 6
Ōkahukura 2	2,360	11 13 1	39 15 5
Ōkahukura 3	1,250	6 13 10	48 11 8
Ōkahukura 4	2,850	14 2 6	61 4 1
Ōkahukura 5	732	3 12 6	32 6 11
Ōkahukura 6	1,460	7 4 8	68 12 2

**Table 6.6: Survey liens on the Ōkahukura blocks during the 1890s**

which all subsequent surveys were erected. The loss of land for survey debt in our inquiry district, particularly the Rangipō North 1A to 7A blocks, must be set against the context of the Crown's objective of establishing a national park. Because the Crown intended to incorporate these particular blocks within the Park, the beneficiaries of the survey were 'the New Zealand public'. It follows, therefore, that the public should have shared those costs. This follows the Hauraki Tribunal, which stated that survey charges should have been 'shared more equally' and that with 'initial surveys of exterior boundaries of blocks, and the marking off of reserves, the Crown or private purchasers should have accepted the greater part of the cost'.<sup>484</sup> Given the scale of Crown purchasing across the region, it was entirely reasonable for the Crown to have shared in the costs of surveying exterior boundaries of blocks intended for the National Park.

### 6.6 TRIBUNAL FINDINGS

Our findings are as follows:

- By the end of the nineteenth century, the Crown had acquired 173,052 acres – or just under 50 per cent – of land within our inquiry district. Of that total acreage, only 41,860 acres – or approximately 25 per cent – was earmarked for the Tongariro National Park, as legislated in 1894. Most of the land in our inquiry district purchased prior to 1900, therefore, was obtained for

the Crown's wider objectives of economic development and settlement, the construction of the North Island main trunk railway, and the development of a tourist industry within the central North Island. The establishment of a national park around the three mountains was a part of those wider objectives, but cannot be regarded as the sole focus of operations.

- Overall, we agree with claimant counsel that the Crown employed its standard purchasing practices to acquire the land in this district. At a fundamental level, we also agree with the findings of a number of previous Tribunals that this system of purchasing was profoundly wrong. Finding its most recent expression in *He Maunga Rongo*, the Tribunal stated that this system:

disempowered the iwi and hapu of the Central North Island, took the 'strength which lies in union' from them, and turned their tino rangatiratanga into a virtual, saleable, individual interest. This was a very serious breach of the terms of the Treaty and of the principles of partnership, autonomy, and active protection.<sup>485</sup>

- Purchase agents made few advance payments on blocks within our inquiry district during the nineteenth century. While previous Tribunals have condemned this practice, from our appraisal of the evidence, those that were made in our inquiry district

did not appear to result in any significant prejudice to Māori.

- ▶ The Crown obtained most of the land in our inquiry district through the standard practice of undivided share purchase. Previous Tribunals have found this practice undermined community ownership and collective decision-making and was in breach of the Treaty.<sup>486</sup> We endorse those findings and note that in our district this practice allowed the Crown to purchase substantial quantities of land in a relatively short amount of time.
- ▶ Crown purchase agents were employed on salary and commission to conduct operations on the ground. Claims relating to the activities of these agents focused overwhelmingly on the Grace brothers and their alleged conflicts of interest. We concluded that there was potential for conflicts in the various roles of the Graces, but lacked firm proof of any consequential prejudice to Māori. We also noted that potential conflicts could operate in multiple directions and that this would reduce the ability of agents to manipulate events in any one individual or group's favour. Agents employed to purchase Māori land were generally known to the communities they were purchasing from and, in some cases, the agents were related to owners. While the claimants argued such arrangements were in breach of the Crown's duty of active protection, we considered this appropriate and reasonable for the circumstances of the time providing the government adequately supervised their agents' activities on the ground. From the evidence available, however, that supervision did not meet the standard expected of the Crown under the Treaty.
- ▶ The Crown held pre-emption over our inquiry district for the majority of the last two decades of the nineteenth century. While the purchase monopoly was enacted in part to protect Māori from land speculation, the Crown assumed a serious obligation to protect Māori interests when conducting its operations. It assumed a responsibility to pay Māori a fair price for their land. Based on the evidence available, however, the Crown paid owners in the lowest part of

a range of values identified by officials at the time, or in 53 per cent of cases, below that range. In our view, that did not meet the standard of fairness expected under the Treaty. To impose artificially low prices on land that it acknowledged as having immense value both to Māori and to the New Zealand public is a clear breach of the Crown's duty of active protection and Treaty principles of partnership and equity. But we also note that Māori were not always forced to accept the prices the government offered and that owner resistance resulted in higher prices being paid than was initially offered in some circumstances.

- ▶ In 1887, a total of 22,846 acres – or 6.5 per cent – of land in our inquiry district was awarded to the Crown to cover survey debts. Substantial liens on blocks in our inquiry district also remained in place after that point. These liens were regarded by Māori as a substantial and ongoing burden during the 1890s. We find that the cost of surveying Māori land in our inquiry district should have been shared more equally by the Crown. The government's determination to establish a national park is important context in that regard. Given the beneficiaries of these surveys was the 'New Zealand public', and in recognition of the principle of partnership, the Crown should have paid for half and, more properly, for those blocks which can be identified as being purchased by the Crown to form the National Park.

#### Notes

1. Jamie Mitchell, 'Quantitative Study of Maori Land Alienation and Management in the National Park Inquiry District, 2006' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc D11), p 14. During the nineteenth century, 173,052 of the 348,605 acres were acquired, which amounted to 49.6 per cent.
2. The 500-acre Taurewa 2B block was purchased by Lawrence Grace on behalf of his daughter on 17 February 1894, and 1,305 acres in the Waiakake block was purchased by James McKelvie and John Hammond on 27 April 1894. These purchases occurred during a hiatus in Crown purchase pre-emption.
3. Claimant counsel, generic closing submissions on nineteenth century Crown purchasing, 14 May 2007 (paper 3.3.21), p 7
4. Claimant counsel, generic closing submissions relating to the 'Gift'

of the Peaks and the establishment of the Tongariro National Park, 15 May 2007 (paper 3.3.23), p 55

5. Ibid, pp 19–20
6. Ibid, p 24
7. Ibid, pp 46–47
8. Counsel for Ngāti Hikairo, closing submissions, 28 May 2007 (paper 3.3.42), p 40
9. Paper 3.3.23, p 50
10. Ibid, p 55
11. Ibid, p 2
12. Paper 3.3.21, p 7
13. Ibid
14. Paper 3.3.23, p 46
15. Counsel for Ngāti Rangī, closing submissions, 15 May 2007 (paper 3.3.33), p 32
16. Paper 3.3.23, p 77
17. Ibid
18. Paper 3.3.21, pp 16–17
19. Ibid, p 17
20. Paper 3.3.33, p 23
21. Paper 3.3.21, p 17; Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview Project', 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A39), vol 1, pp 172, 308; counsel for Ngāti Tūwharetoa, closing submissions, 7 June 2007 (paper 3.3.43), p 95
22. Paper 3.3.42, p 51; counsel for Ngāti Waewae, closing submissions, 28 May 2007 (paper 3.3.41), p 55
23. Ibid
24. Paper 3.3.21, p 18
25. Ibid
26. Ibid, p 17
27. Ibid, p 3
28. Ibid, p 23; see also paper 3.3.23, pp 11–12
29. Paper 3.3.21, p 23; paper 3.3.42, p 44
30. Paper 3.3.21, p 21
31. Ibid, pp 25–26
32. Paper 3.3.43, p 96
33. Paper 3.3.21, p 30
34. Ibid, pp 30–31
35. Ibid, pp 4, 31
36. Ibid, p 32
37. Ibid, p 26
38. Ibid, pp 32–33
39. Paper 3.3.43, p 97
40. Paper 3.3.21, pp 4, 26
41. Ibid, p 27
42. Ibid
43. Ibid, p 29
44. Ibid, p 8
45. Ibid
46. Ibid, pp 8–13
47. Ibid, p 14

48. Ibid, pp 14–15; paper 3.3.43, p 43
49. Paper 3.3.41, p 56; paper 3.3.42, p 52
50. Paper 3.3.21, p 13
51. Ibid, p 38
52. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 8, p 26
53. Ibid, ch 6, p 45, ch 8, p 26
54. Ibid, ch 6, p 45
55. Ibid, p 18
56. Ibid, pp 45–46
57. Ibid
58. Ibid
59. Ibid, p 19
60. Ibid ch 8, pp 32–33
61. Ibid, p 24
62. Ibid, pp 24, 34–36
63. Ibid, pp 36–37
64. Ibid, p 38
65. Ibid
66. Ibid, pp 3–4
67. Ibid, pp 5–6
68. Ibid, p 6
69. Ibid, pp 8–9
70. Ibid, pp 13–14
71. Ibid, p 19
72. Ibid, p 24
73. Ibid, ch 7, p 43
74. Ibid, pp 43–44
75. Ibid, p 43
76. Ibid, pp 43–44
77. Ibid, p 45
78. Ibid
79. Ibid, ch 8, pp 41–42
80. Ibid, p 42
81. Ibid, pp 4, 42–43
82. Ibid, p 43
83. Ibid, ch 5, p 15
84. Ibid, pp 15–16
85. Ibid, p 24
86. Ibid
87. Ibid, pp 15–16
88. Ibid, ch 8, p 45
89. Claimant counsel, submissions in reply, 6 July 2007 (paper 3.3.50), pp 4–5
90. Ibid, p 6
91. Ibid, p 5
92. Ibid, p 7
93. Ibid, pp 8–10
94. Ibid, pp 8–9
95. Ibid, p 9
96. Ibid, p 10
97. Ibid

98. Document D11, p 14
99. In the 1890s, 1,805 acres was privately purchased: (ibid), p 179.
100. Ibid, p 14
101. Ibid, pp 14–15
102. Marian Horan, ‘Government Lease Negotiations for Murimotu, Ruanui, Rangiwaea, and Rangipo-Waiu, 1874–1885’ (commissioned research report, Wellington: Crown Law Office, 2005) (doc A52), p 186
103. Ibid, pp 80–83
104. Ibid, pp 82–84
105. Ibid, p 140
106. Ibid, pp 173, 185
107. Bruce Stirling, ‘Presentation Summary of the Taupo–Kaingaroa 19th Century Overview Report for the National Park Inquiry’ (presentation summary, Wellington: Crown Forestry Rental Trust, 2006) (doc A39(a)), p 7
108. Ibid, pp 6–7; see also Paula Berghan, ‘Block Research Narratives of the Tongariro National Park District, 1865–2000’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A5), p 110
109. Native Land Alienation Restriction Act 1884, s 3
110. Document A39(a), pp 7–8. More detailed information is available in document A39, vol 2, pp 1314ff – Ōkahukura case study.
111. ‘Dealing in Native Lands, Mr Jas Booth RM Suspended’, *Wanganui Herald*, 9 May 1878, p 2
112. *Wanganui Chronicle*, 24 August 1878, p 2
113. *Wanganui Herald*, 4 December 1878, p 2; ‘Death of Mr Booth, SM’, *Poverty Bay Herald*, 15 May 1900, p 2
114. Document D11, p 178
115. Document A5, pp 339–340; LHAD: Tawhai Block History, p 6
116. LHAD: Taurewa Block History, p 8
117. Document A39, vol 2, pp 1190–1191; doc A5, pp 324–325
118. Document A5, p 115
119. Ibid, pp 115, 117–121, 123–125, 133, 135, 147
120. Ibid, pp 117–120
121. This figure is often cited as being £1,932 16s 3d, but £250 of it was for the survey of the Tongariro 2 and Ruapehu 2 blocks.
122. Taupō Native Land Court minute book 4, 4 February 1886, fol 120
123. Taupō Native Land Court minute book 5, 19 March 1886, fols 12, 31
124. Taupō Native Land Court minute book 9, 21 September 1887, fols 265–268
125. Andrew Joel, ‘The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park’ (commissioned research report, Wellington: Crown Law Office, 2005) (doc A56), p 143
126. Ibid
127. The Tribunal’s direction on this matter (Waitangi Tribunal, memorandum-directions of the presiding officer, 14 December 2005 (paper 2.3.29), para 3.2) stated:

Since only a small portion of the Waimarino block lies within the National Park inquiry district, this inquiry will not hear issues dealing with the alienation of the entire block. Instead, the inquiry will hear

issues dealing with the sale of the block for the purposes of creating the Tongariro National Park, and any other specific issues dealing with that portion of the Waimarino block lying within the National Park inquiry boundary.

128. Cathy Marr, ‘The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues’ (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc A43), pp 308–309, 338
129. Ibid, p 346
130. *Press*, 8 February 1904, p 7; ‘Death of Judge Butler’, *Wairarapa Daily Times*, 4 February 1904, p 6
131. Document A43, p 352
132. Peter Clayworth, ‘Located on the Precipices and Pinnacles: A Report on the Waimarino Non-seller Blocks and Seller Reserves’ (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc A35), p 37; doc A43, p 352
133. Document A43, pp 360, 415, 493
134. Edwin Mitchelson, 26 July 1888, NZPD, 1888, vol 62, p 283 (as quoted in doc A56, p 25)
135. Edwin Mitchelson, 21 August 1889, NZPD, 1889, vol 65, p 494 (as cited in doc A56, p 26)
136. Edwin Mitchelson, 17 September 1890, NZPD, 1890, vol 69, pp 952–953 (as quoted in doc A56, p 26)
137. Document A56, p 97. The total area of these blocks was 17,283 acres: see document D11, pp 180–181.
138. Document A5, pp 125, 133, 216–219; doc A39, vol 2, p 1160
139. ‘Embezzling Government Money at Taupo’, *Auckland Star*, 12 March 1896, p 5; doc A56, p 146; doc A39, p 1283
140. Document A5, pp 21–22; LHAD: Mahuia Block History, p 3
141. Document A5, pp 322–338; paper 3.3.42, pp 31–32; doc A39, vol 2, pp 1285–1286
142. Ibid
143. Ibid, p 133; LHAD: Ōkahukura Block History, pp 219–242
144. LHAD: Ōkahukura Block History, pp 243–248, 272–273
145. Document A5, pp 214–220
146. Whanganui Native Land Court minute book 47A, 12 December 1900, fol 77; doc A5, p 266; LHAD: Rangipō–Waiū Block History, pp 3–4
147. Document A5, p 191; LHAD: Raetihi Block History, p 5; Whanganui Native Land Court minute book 29, 23 June 1896, fols 356–357
148. Rangiwaea 2 (10,836 acres) and Rangiwaea 3 (10 acres) are outside our inquiry district.
149. Document A5, p 292; LHAD: Rangiwaea Block History, p 3
150. Document A5, p 212; LHAD: Rangataua Block History, p 5
151. Document A5, p 212; LHAD: Rangataua Block History, p 7
152. ‘The Native Land (Validation of Titles) Act, 1892’, AJHR, 1893, G-1, p 3; see also Alan Ward, *National Overview*, 3 vols, Waitangi Tribunal Rangahaua Whānui Series (Wellington: GP Publications, 1997), vol 2, pp 279–286. In 1896, advertisements appeared in the *Feilding Star* promoting the sale of 500-acre subdivisions of the

Waiakake block for 30 shillings per acre, far above what McKelvie had originally paid (6 shillings 8 pence per acre) in 1884.

153. Document A56, p 111
154. Document D11, pp 14–15
155. Paper 3.3.45, ch 6, p 45, ch 8, p 26
156. *Ibid*, ch 6, pp 45–46
157. *Ibid*, p 19
158. *Ibid*, p 46
159. *Ibid*
160. Document D11, p 14
161. The specific blocks referred to are: Ōkahukura 7 (7,780 acres), Waimarino 1 (5,965 acres), Rangipō North 1A (233 acres), Rangipō North 1B (417 acres), Rangipō North 2A (3,092 acres), Rangipō North 3A (741 acres), Rangipō North 4A (1,097 acres), Rangipō North 5A (1,113 acres), Rangipō North 6A (636 acres), Rangipō North 8 (5,181 acres), Rangataua North 1 (1,117 acres), Rangataua North 3 (203 acres), Rangiwaea 1 (377 acres), Ōkahukura 8M1 (2,670 acres), Rangipō North 6B (6,645 acres), Mahuia A (158 acres), Ruapehu 1A (1,198 acres), Ruapehu 2A (1,302 acres), Tongariro 1A (1,004 acres), Tongariro 1B (1,032 acres), Tongariro 2A (1,004 acres), and Tongariro 2B (977 acres); calculated from document D11, app G, pp 178–181, and “Tongariro National Park Map Showing Areas of Blocks Included within the Park Boundary as Gazetted in 1907”, LS 4/362, Archives New Zealand, Wellington (Andrew Joel, comp, ‘Document Bank for “The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park”’ (document bank, Wellington: Crown Law Office, 2005) (doc A56(a), pp 274–275)
162. Brad Coombes, ‘Tourism Development and its Influence on the Establishment and Management of Tongariro National Park’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2007) (doc 11), p 67
163. John Ballance, 20 May 1887, NZPD, 1887, vol 57, p 399
164. *Ibid*
165. John McKenzie, 11 October 1894, NZPD, 1894, vol 86, pp 678–679
166. Cecilia Edwards, ‘Tongariro National Park: The Legislative Regime and Park Management, 1894–1952’ (commissioned research report, Wellington: Crown Law Office, 2005) (doc A53), p 14
167. Commissioner of Crown lands to surveyor-general, 13 October 1898, AJHR, 1903, C-13, p 2
168. *Ibid*; doc A53, p 63
169. Document A53, p 66; Robyn Anderson, ‘Tongariro National Park: An Overview Report on the Relationship between Maori and the Crown in the Establishment of the Tongariro National Park’ (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2005) (doc A9), pp 122–123
170. ‘Report of the Board of the Tongariro National Park’, AJHR, 1908, C-8, pp 1–2 (as quoted in doc A9, pp 123–124)
171. ‘Report by Dr Cockayne and Mr Turner’, 2 April 1908, AJHR, 1908, C-8, p 2; doc A9, p 124
172. Document A9, p 124
173. *Ibid*
174. *Ibid*, p 125
175. Paper 3.3.50, p 3
176. Donald Loveridge, ‘The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910: A Preliminary Survey’ (commissioned research report, Wellington: Crown Law Office, 2004) (Wai 1200 RO1, doc A77), tbl 10, figs 5–6 (as cited in Richard Boast, *Buying the Land, Selling the Land: Governments and Māori Land in the North Island, 1865–1921* (Wellington: Victoria University Press, 2008), p 37)
177. Donald Loveridge, ‘Summary of “The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910: A Preliminary Survey”’ (commissioned summary report, Wellington: Crown Law Office, 2004) (doc A47), p 8
178. Michael Macky, ‘Crown Purchasing in the Central North Island Inquiry District, 1870–1890’ (commissioned research report, Wellington: Crown Law Office, 2004) (doc A33), p 7
179. *Ibid*
180. *Ibid*, p 9
181. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 556
182. McLean to James Booth, 7 September 1871, AJHR, 1873, G-8, p 27 (as quoted in doc A52, p 29)
183. Nicholas Bayley, ‘Murimotu and Rangipo-Waiu, 1860–2000’ (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc A4), p 40; McLean to James Booth, 7 September 1871, AJHR, 1873, G-8, p 27 (as quoted in doc A52, p 29)
184. Buller to Booth, 24 November 1873, MA-MLP 73/207 in ACIH 16046 MA13/83/50AA, Archives New Zealand, Wellington (as quoted in doc A4, p 41)
185. Document A4, p 41
186. Booth to William Fitzherbert, Wellington superintendent, 24 November 1873, MA-MLP 73/207 in ACIH 16046 MA13/83/50AA, Archives New Zealand, Wellington (as quoted in doc A4, p 42)
187. Booth to Colonel St John, 24 November 1873, MA-MLP 73/207 in ACIH 16046 MA13/83/50AA, Archives New Zealand, Wellington (as quoted in doc A4, p 43). Morrin and Studholme were not actually involved in the negotiations for the Ruanui block, but supported the efforts of Howard and Russell to acquire the lease of Ruanui: see document A52, p 40.
188. Donald McLean, 19 September 1873, NZPD, 1873, vol 15, p 1242 (as quoted in doc A33, p 9)
189. Paper 3.3.45, ch 8, pp 6–7
190. Document A47, p 8
191. Wai 1200 RO1, doc A77, p 51
192. *Ibid*, p 130
193. Julius Vogel, 28 July 1873, NZPD, 1873, vol 14, p 138 (as cited in doc A33, pp 24–26)
194. Governor’s speech, 19 August 1884, NZPD, 1884, vol 48, pp 5–7; Donald Loveridge, ‘The Crown and the Opening of the King Country, 1882–1885’ (commissioned research report, Wellington: Crown Law Office, 2006) (doc A72), p 147
195. Governor’s Speech, 19 August 1884, NZPD, 1884, vol 48, p 6
196. *Ibid*, pp 5–7 (as quoted in doc A72, p 147)

197. Railways Authorisation Act 1884
198. Document A72, p 153
199. Document A33, p 272
200. Vogel to Ballance, 8 February 1885, Ballance papers, MS papers 0025–02, items 36–37, Alexander Turnbull Library, Wellington (as quoted in doc A72, p 184; paper 3.3.45, ch 6, p 39)
201. Included in the cost of constructing the railway was ‘The cost, to an amount not exceeding £100,000, of acquiring Native or other lands lying within the boundaries described in the Schedule to “The Native Land Alienation Restriction Act, 1884”’: North Island Main Trunk Railway Loan Application Act 1886, s 4(5).
202. Section 4(5) of the North Island Main Trunk Railway Loan Application Act 1886 allowed the Crown to spend up to £100,000 to purchase any ‘Native or other lands’, and section 5 allowed land purchased under the legislation but not used specifically for the railway to be used for any purpose ‘thought fit’.
203. Document A39, vol 2, p 1203
204. ‘Lands Purchased and Leased from Natives in North Island’, AJHR, 1888, G-2a, p 13; ‘Public Works Statement’, AJHR, 1889, D-1, pp 11–12
205. Document A56, p 9
206. Document 11, pp 16, 26; John Chantrey Harris, *The Southern Guide to the Hot Lake District of the North Island of New Zealand* (Dunedin: Daily Times Office, 1878), p 10
207. William Fox, ‘Hot Springs District of the North Island, Memorandum for Premier Julius Vogel’, AJHR, 1874, H-26, p 5 (as quoted in doc A56, pp 11–12)
208. William Fox, ‘Hot Springs District of the North Island, Memorandum for Premier Julius Vogel’, AJHR, 1874, H-26, p 1 (as quoted in doc 11, pp 30–31)
209. Alan Ward, *A Show of Justice: Racial ‘Amalgamation’ in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), pp 288–289
210. Dr Brad Coombes, ‘Summary of Report of Dr Brad Coombes Tourism Development and its Influence on the Establishment and Management of Tongariro National Park’ (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2007) (doc 11(b)) p 3; doc 11, pp 17, 31, 40
211. Document A56, pp 14–15, 34; JH Kerry-Nicholls, *The King Country; or, Explorations in New Zealand: A Narrative of 600 Miles of Travel through Maoriland* (London: Sampson Low, Marston, Searle and Rivington, 1884), p 302 (as quoted in doc 11, pp 58–59)
212. Andrew Joel, ‘Summary: The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park’ (commissioned summary report, Wellington: Crown Law Office, 2006) (doc A56(b)), p 4
213. John Ballance, 17 October 1884, NZPD, 1884, vol 49, p 532 (as quoted in doc A56, p 34)
214. *New Zealand Herald*, 17 February 1887 (as quoted in doc A56, pp 19–20)
215. Lawrence Grace to Ballance, 6 January 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, pp 1–2 (Bruce Stirling, comp, ‘Supporting Documents to “Taupo–Kaingaroa 19th Century Overview Project”’, 17 vols (Wai 1200 ROI, doc A71(g)), vol 5, pp 2617–2618)
216. Paper 3.3.45, ch 6, p 45, ch 8, p 26
217. *Ibid*, ch 8, pp 5, 27
218. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 3 vols (Wellington: Legislation Direct, 2004), vol 2, pp 516–517
219. Paper 3.3.45, ch 8, pp 5, 27
220. R Stout and A Ngata, ‘Native Lands in the Whanganui District (Interim Report on)’, 26 April 1907, AJHR, 1907, G-1A, p 16 (as quoted in doc A4, p 181); see also Boast, *Buying the Land*, p 407; Keith Pickens, ‘Operation of the Native Land Court in the National Park Inquiry District in the Nineteenth Century’ (commissioned research report, Wellington: Crown Law Office, 2005) (doc A50), p 43
221. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 516–517
222. Boast, *Buying the Land*, p 408
223. *Ibid*, pp 412–413. See also Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 521.
224. Lewis to Ballance, 29 June 1886, NLP 86/243 in LS 1/29805, Archives New Zealand, Wellington (as quoted in doc A39, vol 2, p 1179)
225. Native Land Act Amendment Act 1877, s 6; Michael Macky, ‘Kemp’s Trust’ (commissioned research report, Wellington: Crown Law Office, not dated) (doc A55), p 39
226. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 590
227. David Vernon Williams, *‘Te Kooti Tanga Whenua’: The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999), p 262
228. Document A55, p 41; paper 3.3.45, ch 7, pp 58–59
229. Paper 3.3.45, ch 7, pp 58–59, ch 8, pp 24–25
230. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 596, 598
231. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 2, pp 425–437
232. *Ibid*, p 460
233. Document A39, vol 2, p 1307
234. *Ibid*, pp 1307–1308
235. *Ibid*, p 1307
236. ‘Minutes of Meeting, Tapuaeharuru, 12 January 1875’, MA-MLP 1 1902/17, Archives New Zealand, Wellington (as quoted in doc A39, vol 2, pp 1307–1308)
237. *Ibid* (p 1308)
238. Document A55, pp 43–44
239. Angela Ballara, ‘Tribal Landscape Overview, c1800–c1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A2), pp 652–653
240. Document A50, p 61
241. *Ibid*, p 62
242. *Ibid*, pp 64–65
243. Booth report, 25 May 1881, NLP 81/285 in MA-MLP 1/9, Archives New Zealand, Wellington, p 9 (as quoted in doc A43, p 91)
244. Document A50, p 65
245. Document A5, pp 206–207

246. Document A2, pp 652–653
247. Whanganui Native Land Court minute book 3, 10 August 1881, fol 238; see also doc A2, p 653
248. *Ibid*, fol 240
249. *Ibid*
250. *Ibid*, fol 239
251. *Ibid*
252. Document A55, p 43
253. *Ibid*
254. Document A2, p 653
255. Paper 3.3.45, ch 8, pp 24–25
256. Government Native Land Purchase Act 1877, s 2
257. Native Land Alienation Restriction Act 1884. A map showing the railway restriction zone can be found in document A43, p 17.
258. Native Land Administration Act 1886, s 33
259. North Island Main Trunk Railway Loan Application Act Amendment Act 1889, sch 2
260. Native Land Frauds Prevention Act 1881 Amendment Act 1888, s 5
261. North Island Main Trunk Railway Loan Application Acts Amendment Act 1892, s 2
262. Native Land Purchase Act 1892, ss 14, 16, 17
263. Native Land Court Act 1894, s 117
264. The 500-acre Taurewa 2B block was purchased by Lawrence Grace on behalf of his daughter on 17 February 1894, and 1,305 acres in the Waiakake block was purchased by James McKelvie and John Hammond on 27 April 1894. These purchases occurred during a hiatus in Crown purchase pre-emption.
265. Paper 3.3.21, p 21
266. *Ibid*, p 25
267. Paper 3.3.45, ch 8, pp 18–19
268. *Ibid*, p 4
269. Cathy Marr, ‘Summary and Response to Statement of Issues “Waimarino Purchase Report”’, April 2006 (doc A43(a)), p 14
270. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 614
271. *Ibid*, p 615
272. *Ibid*
273. Williams, ‘*Te Kooti Tango Whenua*’, p 285
274. Native Land Division Act 1882, s 4; Native Land Court Act 1886, s 23
275. Native Land Court Act 1886, ss 23, 24
276. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 514
277. *Ibid*, p 513
278. *Ibid*, p 441
279. *Ibid*
280. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 613–614
281. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 514
282. *Ibid*
283. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 433
284. Paper 3.3.21, p 3
285. Document D11, p 36
286. Taupō Native Land Court minute book 5, 6 April 1886, fol 136
287. *Ibid*, 10 April 1886, fols 212–222
288. Document A5, p 322
289. Paper 3.3.21, pp 16–18
290. Document A5, p 325
291. *Ibid*, pp 324–325
292. Thomas Lewis, 12 May 1891, in William Lee Rees, James Carroll, and Thomas Mackay, ‘Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws’, 23 May 1891, AJHR, 1891, sess II, G-1, p 145
293. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 520–521, 532–534
294. There are no specific claims relating to the actions of Henry Mitchell.
295. Paper 3.3.21, pp 8–9
296. John Grace to Lawrence Grace, 7 October 1885, Tauhara South Run letterbook, MSY-3469, Alexander Turnbull Library, Wellington, p 261 (as quoted in doc A39, vol 2, p 884)
297. Document A33, pp 274–275. Stirling argues that William’s appointment was dependent on the Grace’s success in securing the Taupōniātia application, which was achieved on 31 October 1885: see doc A39, vol 2, p 1156.
298. Lawrence Grace to Ballance, 6 January 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, p 4 (Wai 1200 ROI, doc A71(g), p 2620)
299. *Ibid*, p 5 (p 2621)
300. Document A33, pp 275–276; Lewis to Native Minister, 29 June 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, p 8 (Wai 1200 ROI, doc A71(g), p 2561)
301. Mitchell to Ballance, 6 January 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, pp 1–2 (Wai 1200 ROI, doc A71(g), pp 2602, 2604)
302. Lewis to Ballance, 6 January 1886, LS 1 29805 box 255, Archives New Zealand, Wellington (Wai 1200 ROI, doc A71(g), p 2603); Lewis to Ballance, 29 June 1886, LS 1 29805 box 255, Archives New Zealand, Wellington (Wai 1200 ROI, doc A71(g), p 2557)
303. Document A33, p 276
304. William Grace, Taupōniātia Commission minute book, MA 71/1, Archives New Zealand, Wellington, p 21 (Bruce Stirling, comp, ‘Supporting Documents to the Evidence of Bruce Stirling, “Taupo–Kaingaroa 19th Century Overview Report”’ (Wai 1200 ROI, doc A71(j)), vol 8, p 3677A (21)); doc A33, p 277; doc A39, vol 2, p 1156
305. Lewis to William Grace, 5 March 1886, MA-MLP 4/3, Archives New Zealand, Wellington (as quoted in doc A33, p 285). There is no record of which land was being discussed.
306. Lewis annotation on telegram from Grace, 19 April 1886, MA-MLP 1886–1897, Archives New Zealand, Wellington (Bruce Stirling, comp, ‘Supporting Documents to the Evidence of Bruce Stirling, “Taupo–Kaingaroa 19th Century Overview Project”’ (Wai 1200 ROI, doc A71(l)), vol 10, p 4621)

307. William Grace to Lawrence Grace, 26 June 1886, William Grace letterbook 1886–87, MSX-5787, Alexander Turnbull Library, Wellington, pp 24–28
308. William Grace to Lawrence Grace, 12 July 1886, William Grace letterbook 1886–87, MSX-5787, Alexander Turnbull Library, Wellington, pp 24–28
309. William Grace to Lawrence Grace, 26 June 1886, William Grace letterbook 1886–87, MSX-5787, Alexander Turnbull Library, Wellington, pp 24–28
310. Ibid
311. William Grace to Lawrence Grace, 26 June 1886, William Grace letterbook 1886–87, MSX-5787, Alexander Turnbull Library, Wellington, pp 24–28
312. Native Minister to Lewis, 18 May 1887, NLP 87/172 in MA-MLP 1 1887/211, Archives New Zealand, Wellington (Wai 1200 ROI, doc A71(l), p 4676); doc A39, vol 2, p 1189
313. Paper 3.3.21, pp 8–13
314. Counsel for the claimants, submissions in reply for Ngāti Tūwharetoa, 11 July 2007 (paper 3.3.60), pp 11–12
315. Paper 3.3.21, pp 8–9
316. Paper 3.3.45, ch 5, p 15
317. Ibid, pp 15–16
318. Ibid, p 39
319. Ibid, p 22
320. Ibid, pp 20, 24–25
321. Ibid, pp 15–16
322. Lawrence Grace to Earl, 12 October 1893, Ōkahukura letterbook 1881–94, 85–173 2/3, Alexander Turnbull Library, Wellington, p 85 (as quoted in doc A39, vol 2, p 1161)
323. Lawrence Grace to Park, 8 October 1893, Ōkahukura letterbook 1881–94, 85–173 2/3, Alexander Turnbull Library, Wellington, p 68 (as quoted in doc A39, vol 2, p 1283)
324. Document A39, vol 2, p 1283
325. Ibid, p 1033; paper 3.3.21, pp 8–11
326. Lewis to Ballance, 29 June 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, pp 4, 8 (Wai 1200 ROI, doc A71(g), pp 2557, 2561)
327. Paper 3.3.60, p 10
328. Lawrence and John Grace also appeared to have competing interests on occasion. In 1895, for instance, Gavin Park advised the Native Minister that
- A peculiarity in this matter is that while Mr LM Grace's interests are identical with Te Heu Heu's, who would naturally be advised by him. Mr JE Grace's interests are with the other side, his late wife having considerable interests and he naturally opposes his brother Lawrence so far as the three blocks [Hautu, Tokaanu, and Waipapa] are concerned.
- (Park to Native Minister, 24 March 1895, MA-MLP 1 1895/490, Archives New Zealand, Wellington (as quoted in doc A39, vol 2, p 1403)).
329. Paper 3.3.60, p 11
330. Lawrence Grace to Ballance, 6 January 1886, LS 1 29805 box 255, Archives New Zealand, Wellington (Wai 1200 ROI, doc A71(g), p 2621)
331. Document A2, p 648
332. William Grace to Lawrence Grace, 26 June 1886, William Grace letterbook 1886–87, MSX-5787, Alexander Turnbull Library, Wellington, pp 24–28
333. Ibid
334. Taupōnuīatia Royal Commission minute book, MA 71/1, Archives New Zealand, Wellington, p 21 (Wai 1200 ROI, doc A71(l), p 3677a (21)); doc A39, vol 2, p 1156
335. Native Minister to Lewis, 18 May 1887, NLP 87/172 in MA-MLP 1 1887/211, Archives New Zealand, Wellington (Wai 1200 ROI, doc A71(l)), p 4676); doc A39, vol 2, p 1189
336. Thomas W Lewis to Native Minister, 28 August 1888, minute on coversheet to NLP 88/196, in MA-MLP 1 1890/172, Archives New Zealand, Wellington (as quoted in doc A56, p 143)
337. Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker's Ltd, 1993), p 241
338. Lawrence Grace to Ballance, 6 January 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, pp 1–2 (Wai 1200 ROI, doc A71(g), pp 2617–2618)
339. Ibid, p 4 (p 2620)
340. Paper 3.3.21, p 13
341. Lewis to Ballance, 29 June 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, pp 1–4 (Wai 1200 ROI, doc A71(g), pp 2554–2557)
342. The original commission asked for by Mitchell was three pence per acre purchased, and an advance of two guineas per day (£2.2s): see Lewis to Ballance, 29 June 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, p 4 (Wai 1200 ROI, doc A71(g), p 2557); doc A39, vol 2, p 1158; doc A33, p 275.
343. Document A33, p 275
344. Lewis to Mitchell, 11 January 1886, MA-MLP 1 1890/172, Archives New Zealand, Wellington (doc A33, p 277)
345. Grace to Ballance, 6 January 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, pp 2–3 (Wai 1200 ROI, doc A71(g), pp 2618–2619)
346. Lewis to Ballance, 10 November 1885, MA-MLP 1 1890/172, Archives New Zealand, Wellington, pp 2–3 (Wai 1200 ROI, doc A71(l), pp 4912–4913); doc A39, vol 2, p 1156
347. Document A39, vol 2, p 1156
348. Lewis to Ballance, 29 June 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, p 8 (Wai 1200 ROI, doc A71(g), p 2561); doc A33, pp 275–276
349. Document A39, vol 2, pp 1155–1156; doc A33, p 274
350. Document A43, pp 315–317, 415
351. Mitchell to Ballance, 19 May 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, p 4 (Wai 1200 ROI, doc A71(g), p 2569)
352. Document A39, vol 2, pp 1179–1180
353. W Grace, 'Interim Report', 16 June 1886, NLP 86/243 in LS 1 29805, Archives New Zealand, Wellington (Wai 1200 ROI, doc A71(g), p 2564); doc A39, vol 2, p 1180
354. Document A5, p 115



355. Document A39, vol 2, p 1178; Mitchell to Lewis, 20 August 1886, LS 1 29805 box 255, Archives New Zealand, Wellington (Wai 1200 ROI, doc A71(g), p 2550)
356. Lewis to Ballance, 29 June 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, p 11 (Wai 1200 ROI, doc A71(g), p 2563); doc A39, vol 2, p 1180
357. Document A39, vol 2, pp 1178, 1181
358. Smith to Minister of Lands, 11 December 1890, NLP 90/159 in J 1 1897/569, Archives New Zealand, Wellington (as quoted in doc A39, vol 2, p 1187)
359. Document A39, vol 2, p 1187. According to Thomas Lewis, they were paid advances of £325 10s each over the 1885 to 1887 period: Thomas W Lewis, 'Native Land Purchases in the North Island (Report by T W Lewis)', 30 November 1887, AJHR, 1888, G-2, p 7.
360. Smith to Minister of Lands, 11 December 1890, NLP 90/159 in J 1 1897/569, Archives New Zealand, Wellington (as quoted in doc A39, vol 2, p 1187); doc A39, vol 2, p 1257
361. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 814
362. Waitangi Tribunal, *He Maunga Rongo*, vol 2 p 592
363. Boast, *Buying the Land*, pp 145–146
364. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 607
365. Mitchell to Ballance, 6 January 1886, NLP 86/10 in LS 1 29805, Archives New Zealand, Wellington (as quoted in doc A39, vol 2, p 1157)
366. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 599
367. Paper 3.3.45, ch 8, pp 4, 42–43
368. Michael Macky, 'Summary of "Crown Purchasing in the Central North Island District, 1870–1890"' (commissioned summary report, Wellington: Crown Law Office, not dated) (doc A34), pp 22–23
369. Gill to Bryce, 4 January 1881, MA-MLP 1881/227 in MA-MLP 1896/260, Archives New Zealand, Wellington (as quoted in doc A5, pp 194–195)
370. Document A5, pp 195–196
371. Gill to Native Minister, 21 November 1884, MA-MLP 1 1884/219, Archives New Zealand, Wellington (as quoted in doc A5, p 263)
372. Ibid
373. Document A5, p 264
374. Gill to McDonnell, 21 February 1885, MA-MLP 1 1885/25, Archives New Zealand, Wellington (as cited in doc A5, p 264)
375. Ernest Wright to Ballance, 24 April 1886, MA-MLP 1 1886/143, Archives New Zealand, Wellington, pp 1–2 (Wai 1200 ROI, doc A71(l), pp 4632–4633)
376. Ibid
377. Document A39, vol 2, p 1176
378. Lewis to Ballance, 6 January 1886, LS 1 29805 box 255, Archives New Zealand, Wellington (Wai 1200 ROI, doc A71(g), p 2603)
379. Lewis to Mitchell, 7 January 1886, LS 1 29805 box 255, Archives New Zealand, Wellington, pp 1–3 (Wai 1200 ROI, doc A71(g), pp 2598–2600)
380. WH Grace to Lewis, 11 February 1886, MA-MLP 1 1905/54, Archives New Zealand, Wellington (doc A56(a)), p 198
381. Smith to Lewis, 18 February 1886, MA-MLP 1 1905/54, Archives New Zealand, Wellington (as quoted in doc A9, p 90)
382. Lewis to Grace, 20 February 1886, MA-MLP 1 1905/54, Archives New Zealand, Wellington, p 1 (doc A56(a), p 202)
383. Lewis to Ballance, 3 March 1886, MA-MLP 1 1887/211, Archives New Zealand, Wellington (doc A56(a), p 31)
384. Mitchell to Lewis 23 March 1886, LS 1 29805 box 255, Archives New Zealand, Wellington (Wai 1200 ROI, doc A71(g), p 2585)
385. Ibid
386. Mitchell to Ballance, 19 May 1886, NLP 86/189 in LS 1 29805, Archives New Zealand, Wellington, p 4 (Wai 1200 ROI, doc A71(g), p 2569); doc A39, vol 2, p 1175
387. Ibid
388. Grace to Ballance, 9 April 1886, MA-MLP 1 1887/211, Archives New Zealand, Wellington, p 2 (doc A56(a), p 39)
389. Lewis to Ballance, 3 March 1886, MA-MLP 1 1887/211, Archives New Zealand, Wellington (doc A56(a), p 31)
390. Butler to Lewis, telegram, 10 April 1886, NLP 86/122, attached to NLP 86/144, MA 1 1924/202, vol 1, Archives New Zealand, Wellington (as quoted in doc A43, p 347)
391. Document A43, p 346
392. 'Notes of a Meeting between Hon Mr Ballance and the Natives at the Public Hall at Kihikihi, on the 4th February 1885', AJHR, 1885, G-1, p 17
393. Document A43, p 348
394. Butler to Lewis, 8 July 1887, MA-MLP 1 1899/29, Archives New Zealand, Wellington (as quoted in Tony Walzl, 'Ngati Rangi Land Issues, 1840–1970' (commissioned research report, Ōhakune: Ngāti Rangi Trust, 2004) (doc A41), p 249)
395. Lewis to Ballance, 12 July 1887 (as quoted in doc A41, p 249)
396. Surveyor-general to Native Minister, 13 May 1893, MA-MLP 1 1893/233 in MA-MLP 1 1901/105, Archives New Zealand, Wellington (as quoted in doc A41, p 101)
397. Manson to Minister of Lands, 4 December 1893, MA-MLP 1 1893/233 in MA-MLP 1 1901/105, Archives New Zealand, Wellington (as quoted in doc A41, p 102)
398. Manson to Sheridan, 20 December 1893, MA-MLP 1 1895/168 in MA-MLP 1 1901/105, Archives New Zealand, Wellington (as quoted in doc A41, p 103)
399. Henare Haeretuterangi and others to Native Minister, 12 February 1894, MA-MLP 1 1895/168 in MA-MLP 1 1901/105, Archives New Zealand, Wellington (as quoted in doc A41, p 109)
400. Paper 3.3.21, p 28
401. Wai 1200 ROI, doc A77, p 71. The Crown filed the summary for this report (doc A47) in our inquiry but did not file the report itself. This report was, however, relied on by the parties. See also Waitangi Tribunal, *Te Urewera: Pre-publication, Part II* (Wellington: Waitangi Tribunal, 2010), p 668; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 581.
402. Crown counsel, closing submissions, issue 6: Waimarino block, 4 December 2009 (Wai 903 ROI, paper 3.3.122), pp 1–2
403. Lewis to Grace, 20 February 1886, MA-MLP 1 1905/54, Archives New Zealand, Wellington (doc A56(a), pp 202–203)
404. Paper 3.3.45, ch 8, p 43

405. Document A33, p 301
406. Ibid
407. John Ballance, 20 May 1887, NZPD, 1887, vol 57, p 401
408. Ibid, p 400
409. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 581
410. John Ballance, 20 May 1887, NZPD, 1887, vol 57, p 401
411. Ibid
412. Paper 3.3.21, pp 26–29
413. ‘Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws: Minutes of Meetings with Natives and Others and Correspondence’, 25 March 1891, AJHR, 1891, sess II, G-1, p 12
414. Ibid, p 13
415. Mitchell to Ballance, 19 May 1886, NLP 86/189 in LS 1 29805, Archives New Zealand, Wellington (Wai 1200 ROI, doc A71(g), p 2569); doc A39, vol 2, p 1175
416. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 585–586
417. Paper 3.3.21, p 26; paper 3.3.43, p 97
418. For a further discussion on surveys, refer to Ward, *National Overview*, vol 2, pp 323–336.
419. Waitangi Tribunal, *The Pouakani Report 1993*, pp 206–207
420. Paper 3.3.45, ch 7, pp 43–44
421. Document A39, vol 2, pp 1237–1238
422. ‘Survey Regulations under “The Land Act, 1885”’, 20 May 1886, *New Zealand Gazette*, 1886, no 30, p 636 (as cited in Waitangi Tribunal, *The Pouakani Report 1993*, p 395)
423. Correspondence from March 1887 shows that William Grace wrote to Smith noting that he was acquiring land for survey debt in Taupōniūiātia West at two shillings per acre, noting ‘I am taking these survey costs at the rate approved by you, viz 2s per acre’: Grace to Smith, 23 March 1887, BAAZ 1108/105/a LS 2413, pt 1, Archives New Zealand, Auckland (Bruce Stirling, ‘Supporting Documents to the Evidence of Bruce Stirling, “Taupo–Kaingaroa 19th Century Overview Project”’, 17 vols (Wai 1200 ROI, doc A71(r)), vol 16, p 7904).
424. Lewis to Percy Smith, 17 September 1887, CS 2413/120 in BAAZ 1108/105/a LS 2413, pt 1, Archives New Zealand, Auckland (as quoted in doc A39, vol 2, p 1060)
425. Lewis to Native Minister, memorandum, 20 September 1888, NLP 88/222 in MA-MLP 1 1905/29, Archives New Zealand, Wellington (as quoted in doc A39, vol 2, p 1191)
426. Keith Pickens, under cross-examination by Karen Feint, 29 November 2006, Ōhākune Returned and Services Association Working Men’s Club (transcript 4.1.12, p 284)
427. Ibid
428. Keith Pickens, ‘Introduction and Operation of the Native Land Court in the Central North Island’ (commissioned research report, Wellington: Crown Law Office, 2004) (doc A31), p 301
429. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 511
430. Keith Pickens, under cross-examination by Karen Feint, 29 November 2006, Ōhākune Returned and Services Association Working Men’s Club (transcript 4.1.12, p 284)
431. Document D11, p 140; doc A50, pp 247–249; W Grace to assistant surveyor general, 14 November 1887, BAAZ 1108/105/a LS 2413, pt 1, Archives New Zealand, Auckland, pp 3–4 (Wai 1200 ROI, doc A71(r), pp 7844–7845). Note Rangipō North 8 (Customary land) was not part of the Rangipō North 8 parent block. (Mitchell’s figures are based on the LHAD database.)
432. Document A50, pp 244, 247
433. *Daily Telegraph* (Hawke’s Bay), 9 May 1887, p 2
434. Data from Mitchell (doc D11); John Ballance, 4 May 1887, NZPD, 1887, vol 57, pp 64–65
435. *Daily Telegraph* (Hawke’s Bay), 9 May 1887, p 2
436. John Ballance, 4 May 1887, NZPD, 1887, vol 57, pp 64–65
437. Ibid
438. John Ballance, 29 April 1887, NZPD, 1887, vol 57, p 23
439. ‘Native Land Purchases in the North Island (Return of), since 1st April, 1884’, AJHR, 1888, G-2, p 6; see also William Grace to Assistant Surveyor General Percy Smith, 14 November 1887, BAAZ 1108/105/a LS 2413, pt 1, Archives New Zealand, Auckland, p 1 (Wai 1200 ROI, doc A71(r), p 7842)
440. T W Lewis, ‘Lands Purchased and Leased from Natives in North Island’, 23 August 1888, AJHR, 1888, G-2A, p 4
441. ‘Native Land Purchases in the North Island (Return of), since 1st April, 1884’, AJHR, 1888, G-2, p 6; doc D11, p 140. The total acreage of the Rangipō North blocks provided here is 23 acres more than that referred to by Jamie Mitchell: see doc D11, p 140.
442. Taupō Native Land Court minute book 9, 12 September 1887, fol 215; doc A50, p 247
443. Document D11, p 16; doc A5, pp 215–216; ‘Native Land Purchases in the North Island (Return of), since 1st April, 1884’, AJHR, 1888, G-2, p 6
444. Document D11, p 153
445. LHAD: Taurewa Block History, p 8
446. Document A50, pp 256–257
447. Document A39, vol 2, pp 1190–1191
448. Document A50, p 256
449. The survey cost of £400 divided by the survey area of 47,633 acres equals 2.01 pence per acre.
450. Pickens states that the owners may have overpaid by about £47, but this is based on a rate of 2s 3d per acre: doc A50, p 257.
451. Document A39, vol 1, pp 403–404
452. Ibid, vol 2, p 1327
453. Assistant Surveyor-General Smith to surveyor-general, 19 July 1886, Archives New Zealand, NLP 86/308 with MA MLP 1/1905/54, Archives New Zealand, Wellington (Paula Berghan, comp, ‘Supporting Papers for “Block Research Narratives of the Tongariro National Park District”’, 15 vols (supporting papers, Wellington: Crown Forestry Rental Trust, 2004) (doc A5(a)), vol 3, p 1244); doc A39, vol 2, p 1328. Note that Lawrence Grace incorrectly cites the date as June 1882, but, as Stirling notes, chronologically it must be June 1883.
454. The survey cost of £1,034 10s 6d divided by the survey area of 82,000 acres equals 3.03 pence per acre.

455. On 27 November 1884, Lawrence Grace noted to the Native Minister that 'In June 1882 [*sic* - 1883] the survey was completed a lien on the land for cost thereof duly signed by Natives': Grace to Native Minister, 27 November 1884, NLP 84/228, Archives New Zealand, Wellington, pp 2-3 (doc A5(a), vol 3, pp 1261-1262).
456. Document A50, p 241. Crown historian Keith Pickens argues the owners agreed because they recognised there was a 'debt of honour' involved because the survey 'had been used ultimately for their benefit'.
457. Lawrence Grace had earlier sought reimbursement from the Native Department for the considerable expenses - amounting to £14,000 - relating to the survey and development of the block prior to its planned acquisition: Grace to Native Minister, 27 November 1884, NLP 84/228, Archives New Zealand, Wellington, p 3 (doc A5(a), vol 3, p 1262).
458. Stephenson Percy Smith to surveyor general, 19 July 1886, NLP 84/228, Archives New Zealand, Wellington (doc A5(a), vol 3, p 1244)
459. *Ibid.* Percy Smith noted that he considered 'Morrin entitled to a refund and that the sum should be charged to the Natives in the negotiations'.
460. Document A5, p 116
461. Stephenson Percy Smith to surveyor general, 19 July 1886, NLP 84/228, Archives New Zealand, Wellington (doc A5(a), vol 3, p 1244)
462. *Ibid.*
463. Lawrence Grace to Native Minister, 27 November 1884, MA-MLP 1 1905/54, Archives New Zealand, Wellington, p 2 (doc A5(a), vol 3, p 1261)
464. *Ibid.*
465. Patrick Sheridan to William Grace, 14 September 1886, MA-MLP 1 1905/54, Archives New Zealand, Wellington (doc A5(a), vol 3, p 1228)
466. William Grace to Lewis, 27 September 1886, MA-MLP 1 1905/54, Archives New Zealand, Wellington (doc A5(a), vol 3, p 1229)
467. *Ibid.*
468. *Ibid.*
469. The Ōkahukura owners believed they had paid what should have been a Crown debt. In 1929, Hemopo Pakau - an Ōkahukura owner - made explicit his belief that the 10,000-acre Ōkahukura 7 block had been 'cut off to pay for the cost of the survey': Hemopo Pakau to registrar, Rotorua Native Land Court, 15 November 1929, MA-MLP 1 1905/54, Archives New Zealand, Wellington (as quoted in doc A39, vol 2, p 1344).
470. Document A39, vol 2, pp 1241-1242. Stirling cites 100,000 acres awarded to the Crown in the Taupōnuīātia block in 1887, most of which is outside our inquiry district.
471. *Ibid.*, p 1251
472. Taken from an official report of liens on Taupōnuīātia blocks in 1891; Auckland chief surveyor to Johnston, 1 December 1891, BAAZ 1108/106/a LS 2413, pt 2, Archives New Zealand, Auckland, pp 1-5 (Wai 1200 ROI, doc A71(r), pp 8094-8098). This was later published in 'Applications for Survey Liens', 4 January 1894, *New Zealand Gazette*, 1894, no 1, pp 37-39.
473. Waitangi Tribunal, *The Pouakani Report 1993*, p 215

474. 'Minutes of Meetings with Natives and Others and Correspondence', 25 March 1891, AJHR, 1891, sess II, G-1, pp 12-13
475. *Ibid.*, p 12
476. Document 11, p 110
477. *Ibid.*
478. *Ibid.*
479. *Ibid.*, p 111
480. *Ibid.*
481. Paper 3.3.45, ch 7, pp 44-44
482. *Ibid.*, pp 43-44
483. Waitangi Tribunal, *Te Urewera: Pre-publication, Part II*, pp 682-683
484. Waitangi Tribunal, *Hauraki Report*, p 780
485. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 625
486. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 513-514, 535-537

#### Page 363: James Booth

1. 'Death of Mr Booth sm', *Poverty Bay Herald*, 15 May 1900, p 2; David Young, *Woven by Water: Histories from the Whanganui River* (Wellington: Huia Publishers, 1998), p 61
2. 'Death of Mr Booth sm', p 2; Young, *Woven by Water*, p 116
3. James Booth to under-secretary, Native Department, 30 June 1876, AJHR, 1876, G-5, p 12
4. 'Dealings in Native Lands', *Wanganui Herald*, 9 May 1878, p 2; 'Normanby, Governor', *Wanganui Chronicle*, 24 August 1878, p 2
5. 'Death of Mr Booth sm', p 2

#### Page 366: Henry Walker Mitchell

1. 'Local and General', *Evening Post*, 3 January 1917, p 6; 'Old Colonists', in *The Cyclopaedia of New Zealand: Auckland Provincial District* (Christchurch: Cyclopaedia Company Ltd, 1902), p 810, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-Cyco2Cycl-ti-body1-d3-d4-d1.html>; 'Henry Taiporutu Te Mapu-o-te-rangi Mitchell', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/3m57/1>, last modified 3 June 2012; *Bay of Plenty Times*, 5 April 1883, p 2; doc A56, p 138

#### Page 369: Sir Edwin Mitchelson

1. Janice Mogford, 'Edwin Mitchelson', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/2m52/1>, last modified 5 June 2012; doc A56, p 138

#### Page 371: Richard John Gill

1. 'Wellington', *Poverty Bay Herald*, 8 March 1879, p 2; 'Obituary', *Press*, 29 December 1910, p 8
2. 'Judge Gill's Retirement', *Evening Post*, 8 July 1886, p 2; 'Parliamentary House of Representatives', *Te Aroha News*, 10 July 1886, p 5; 'Sea Sickness', *Bay of Plenty Times*, 3 July 1895, p 2
3. 'Pars about People', *Observer*, 14 October 1905, p 4; 'Obituary', p 8

## Page 371: Patrick Sheridan

1. Document A56, p 139; 'Mr Patrick Sheridan', *Evening Post*, 21 July 1919, p 2; 'Personal Matters', *Evening Post*, 9 January 1909, p 5; 'Other Officers', in *The Cyclopaedia of New Zealand: Wellington Provincial District* (Wellington: Cyclopaedia Company Ltd, 1897), p 184, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-Cyco1Cycl-t1-body-d3-d15-d2o.html>

## Page 390: Table 6.1

Source: Document A5, p 322

## Page 401: Table 6.2

Source: Document A5, pp 263–264

## Page x: Table 6.3: Purchase prices in the inquiry district

Sources: LHAD: Rangataua Block History, pp 2, 3, 14; LHAD: Waimarino Block History, p 3; LHAD: Raetihi Block History, p 14; LHAD: Rangiwaea Block History, p 2; LHAD: Ōkahukura Block History, pp 217–218; doc A5, p 206

## Page x: Table 6.4: Survey regulations of 1886

Sources: 'Survey Regulations under "The Land Act, 1885"', 20 May 1886, *New Zealand Gazette*, 1886, no 30, p 636; Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker and Friend Ltd, 1993), p 395

## Page x: Table 6.5: Survey awards in the Rangipō North block

LHAD block histories

## Page x: Table 6.6: Survey liens on the Ōkahukura blocks during the 1890s

Sources: The 1894 figures were taken from an official report of liens on Taupō-nui-a-tia blocks in 1891: chief surveyor, Auckland, to Johnston, 1 December 1891 (Wai 1200 ROI, doc A71(r), pp 8094–8098). This was later published in 'Applications for Survey Liens', 4 January 1894, *New Zealand Gazette*, 1894, no 1, p 38. The 1898 figures were taken from 'Applications for Survey Liens', 1 December 1898, *New Zealand Gazette*, 1898, no 86, p 1933.

CHAPTER 7

## TE KĀHUI MAUNGA: THE ‘GIFT’ AND THE CREATION OF THE TONGARIRO NATIONAL PARK

### 7.1 INTRODUCTION

For over 120 years, the creation of the Tongariro National Park has been commemorated for the way in which it brought Māori and Pākehā together for the purpose of a common goal. That goal was to protect the mountains of Tongariro, Ngāuruhoe, and Ruapehu as a special site for the benefit and inspiration of all New Zealanders. The ‘standard account’ of how the Crown came to acquire the mountains is a familiar one to many New Zealanders. According to published versions of that account, the government wanted to create a national park centred on the mountains of the central volcanic plateau. To help achieve this goal and as a gesture of goodwill, the paramount chief of Ngāti Tūwharetoa, Horonuku Te Heuheu, generously gifted the three mountains to the government in 1887 to keep forever as a national park.<sup>1</sup> And so, with its publication, the story of Te Heuheu’s ‘noble gift’ became etched into our nation’s mythology.

In fact, the story of the Tongariro National Park’s establishment is significantly more complex than the legend suggests. It is a story of conflict, compromise, and complex negotiations, the resolution of which remains in dispute. Our inquiry produced a rich body of evidence from both documentary sources and oral traditions that we assessed in our analysis of the claims before the Tribunal. Having carefully weighed up all the evidence before us, we set out our view of events that led to the establishment of the National Park.

In chapter 6, we assessed the Treaty compliance of the Crown’s acquisition of land incorporated into the park – including the southern portion of Mount Ruapehu – by the Tongariro National Park Act 1894. We concluded that the Crown acquired that land in breach of Treaty principles. Our focus in this chapter is to examine the negotiations toward the formal establishment of the Tongariro National Park. We assess those negotiations for consistency with the principles of the Treaty. The key question that frames our analysis in this chapter is: Did the Crown’s actions in creating the Tongariro National Park meet the Treaty standards of good faith, honour, reciprocity, and active protection?

In answering that question, we divide our analysis into two parts. Those issues are:

- ▶ Were the negotiations toward an arrangement for te kāhui maunga characterised by good faith and mutual understanding, and did the Crown’s implementation of that arrangement comply with the understanding and expectations of the negotiating parties, or did it misunderstand (or even deliberately ignore) those understandings and expectations?

- ▶ Did the Crown negotiate with all Māori who exercised customary rights over lands included in its proposed boundaries? If not, why not, and how were any unconsulted Māori affected by the Crown's subsequent legal implementation of the park?

At this point, we turn to our first issue.

### 7.2 KEY ISSUE 1 – INTRODUCTION

It will come as a surprise to most that achieving a national park was actually a near run thing and New Zealand attained it only after a series of negotiations in the 1880s lasting several years. In chapter 3 of our report, we explained that the government ruled out confiscation of Ngāti Tūwharetoa lands in the wake of events at Te Pōrere. Official statements soon after, however, suggested that some kind of 'cession' might yet be demanded of Ngāti Tūwharetoa for their involvement with Te Kooti. In terms of an appropriate punishment, Premier William Fox, for instance, had thought that Horonuku Te Heuheu 'ought to give land at Taupo for a small settlement and redoubt, and pledge himself to assist in road-making'.<sup>2</sup> Similarly, the Minister of Defence, Donald McLean, considered a cession of land to be 'the most politic and satisfactory' approach to the question of his punishment.<sup>3</sup> But there is no evidence in the documentary record to suggest that further discussions between Ministers (or officials) and rangatira about a cession took place between 1870 and 1886. In chapter 3, we found that the threat of cession had receded by the end of 1869.

The negotiations conducted from the mid-1880s came in the context of significant land-related activity in the central North Island. Between January 1886 and September 1887, Ngāti Tūwharetoa were engaged in the Native Land Court hearing of the one million acre Taupōnuiātia block. At the same time, both the 450,000-acre Waimarino and 12,000-acre Urewera block hearings occupied the attention of the northern Whanganui tribes. The award of title to these lands generated a wave of Crown purchasing that extended the Crown's authority into the central North Island.

Amid this activity, the Crown commenced negotiations

for the acquisition of the mountains. Native Minister John Ballance led the negotiations from Wellington with assistance from his under-secretary, Thomas W Lewis. In Taupō, the Minister had some eager assistants in the Grace brothers, Lawrence (the member of the House of Representatives for Tauranga) and William (a land purchase agent), who worked closely with the leadership of Ngāti Tūwharetoa to facilitate the government's objectives. Over the course of two years, these four individuals worked closely and collaboratively to secure Crown title to te kāhui maunga. The purchase of significant portions of land on and around the mountains by purchase agents certainly assisted toward that goal. But the Crown was intent on obtaining the peaks themselves, without which the park would lose much of its significance and attraction. Māori consent to outright alienation of their taonga, through purchase, seemed unlikely so another way had to be found. Negotiations toward a 'gift', from the paramount chief of Ngāti Tūwharetoa took over two years to achieve, however, and the result was not as the Crown had hoped.

In February and March 1886, Ngāti Tūwharetoa subdivided out portions of the three mountains from the surrounding land within the Taupōnuiātia land block. The blocks were awarded to 19 different rangatira and formed semicircles around the summits of the maunga. Whanganui iwi also subdivided the land immediately south of the Taupōnuiātia block into a series of adjoining blocks that encompassed a significant portion of Mount Ruapehu. With the land passing through the court, the Crown began negotiations for the acquisition of the mountain blocks. These blocks were to form the core of its proposed national park and the Crown believed it would be able to acquire them via a gift by Horonuku Te Heuheu. Several meetings were held with the leadership of Ngāti Tūwharetoa between 1886 and 1887 and certain agreements were reached. The only eye-witness account of those meetings was recorded word-for-word in 1920 and came from Tūreiti Te Heuheu, a man in his early twenties at the time of these agreements and already heavily involved in Ngāti Tūwharetoa affairs.<sup>4</sup> One particular meeting involving Lawrence Grace, however, was also recounted by James Cowan, in a handbook on the park

published in 1927. In his preface to the book, Cowan indicated that Lawrence Grace himself, along with his brother John Grace, had been his principal informants for 'much of the historical data'.<sup>5</sup> As we saw in chapters 5 and 6, however, the Grace brothers were not disinterested observers (see sections 5.5.3(7)(a) and 6.5.4(5)).

Following these meetings, the Crown took a number of legal, political and administrative steps to implement the agreements. One of those steps included a delineation of the boundaries of the proposed national park, which included land to the south of the Taupōnuiātia boundary. During the process of implementation, however, the negotiations faltered and looked like they were reaching an impasse. With the negotiations stalled, several Ngāti Tūwharetoa chiefs appeared before the court in September 1887 to subdivide the inner peaks out of the mountain blocks and award them to Horonuku Te Heuheu alone. Horonuku then signed a deed, dated 23 September 1887, that led to the court vesting legal ownership of the peaks of the three mountains to the Crown for a national park on 24 September 1887.

Having acquired the peaks of the mountains in September 1887, the national park concept lay dormant until legislation was passed in 1894. Under the provisions of the Tongariro National Park Act 1894, Te Heuheu was made one of the specified trustees on a board of management governing the park. He was joined by the Minister of Lands (chairman), the surveyor-general, the director of the geological survey and 'such other persons as the Governor shall appoint'.<sup>6</sup>

The 1894 legislation also specified the boundaries of the proposed Park in its schedule. Included within the boundaries were the 'gift' area and all the lands around the three mountains within a three and four mile radius. That encompassed lands under the mana of both Ngāti Tūwharetoa and Whanganui iwi, even though the Crown did not have secure title to all of it. In fact, it required another 10 years of negotiations with Māori for the acquisition of all the land included before the park could be legally proclaimed, 20 years after Horonuku's gift.

We now turn to the submissions of claimants and the Crown.

### 7.3 KEY ISSUE 1 – CLAIMANT SUBMISSIONS

Ngāti Tūwharetoa claim that the tale of the 'Noble Gift' is 'a myth that obscures the real, more painful truth' of what took place in the creation of the Tongariro National Park. Ngāti Tūwharetoa wish to set aside the mythologising and to say that 'it was not a gift' in the Pākehā sense.<sup>7</sup> The Crown failed to honour the basis on which Horonuku Te Heuheu 'bequeathed' the mountain peaks of Tongariro, Ngāuruhoe, and Ruapehu to the nation. The ariki, Tumu Te Heuheu, stated at the end of hearings:

There is an enormous chasm between the two cultures in their understanding of what was meant by the 'Gift'. In 'gifting' the Tongariro peaks, my great-great grandfather never intended that the Crown would assume sole ownership and control of the mountains.<sup>8</sup>

He claimed that the Crown imposed upon Ngāti Tūwharetoa its own conception of the gift, and in breach of its Treaty duties, failed to give effect to what Ngāti Tūwharetoa were seeking to achieve. Ngāti Tūwharetoa, counsel submitted, planned to use Pākehā law to protect ngā maunga tapu as the mountains were under threat, and their sanctity was paramount. In their design, Ngāti Tūwharetoa's goals were diametrically opposed to the Crown's, and their plans failed because of the duplicitous action of their 'advisors'. The gift 'was an astute act of statesmanship by a leader forced to act in a situation where there were very few choices open to him'.<sup>9</sup> The gift was inextricably linked to the steady unravelling of Ngāti Tūwharetoa mana and sovereignty as the Crown extended its authority into the interior of the central North Island. This context is essential to understanding Te Heuheu's actions in relation to the transfer of the mountains into Crown ownership.<sup>10</sup>

In the claimants' view, the Taupōnuiātia application of October 1885 had struck a fatal blow to their aspirations to maintain their authority and control over their land. Horonuku Te Heuheu and the rangatira of Ngāti Tūwharetoa had discussed what could be done to protect ngā maunga tapu, at several tribal hui. For a number of years, there had been ongoing concern over Pākehā

encroachment on the mountains. At these hui, consensus was reached that Pākehā law would be invoked to protect the maunga. It was already evident at that stage that land would be lost to pay for survey charges, court fees, and other expenses, as Crown purchase activities were under way. It was decided to transfer the taonga into the names of rangatira selected by whakapapa to represent the hapū and to hold them forever.<sup>11</sup>

The claimants asserted that Ngāti Tūwharetoa were deceived by their advisors (William and Lawrence Grace) into thinking that the tribe could use the court to achieve these ends.<sup>12</sup> In addition, the Grace brothers either misunderstood the actions of Horonuku Te Heuheu and his chiefs, or deliberately misled them into a course of action that ultimately served Ballance's plan to acquire the mountains for the Crown. The evidence, say Ngāti Tūwharetoa, points to the gift being conceived by the Crown or its agents as a means of securing the mountains, and 'sold' to Ngāti Tūwharetoa on the basis that it would be a means of achieving their goal of preserving the sanctity of their sacred maunga.<sup>13</sup> It is unclear if Horonuku and his chiefs were cognisant of the Crown's intentions, or if they were, what they understood of them.<sup>14</sup> It cannot be assumed that when the mountain blocks were created in early 1886, Ngāti Tūwharetoa understood the Crown wanted to acquire legal ownership of them and make them a public reserve. There is no evidence that this had been communicated to Ngāti Tūwharetoa and it is unclear that Ngāti Tūwharetoa agreed to do anything other than cut out the mountain blocks as reserves.<sup>15</sup> In effect, the Crown imposed upon Ngāti Tūwharetoa its own conception of the decision to create the mountain titles, a conception that was diametrically opposed to that of the tribe.<sup>16</sup>

Counsel for Te Iwi o Uenuku, claimed that the Crown created donors by facilitating the vesting of lands into the ownership of those that it was confident would be complicit in its plans to acquire the lands. The award of the mountain titles was a prelude to the 'gifting' to the Crown and formed part of the Crown's strategy to facilitate the creation of a national park.<sup>17</sup> Subsequent protest from certain of the titleholders places doubt over the proposition that there was any awareness among, or agreement

by, the tribe to placing the mountains in the names of the representative chiefs at all.<sup>18</sup> Also, this evidence indicates that there was certainly no awareness that setting aside the mountains involved any implication that they were to be given to the Crown.<sup>19</sup>

Counsel for Ngāti Waewae and Ngāti Hikairo claimed that the Crown chose to deal with Horonuku Te Heuheu solely as he was the person most likely to be in a position to assist it to reach its ultimate goal: the acquisition of the mountains for a national park. Negotiating solely with Horonuku, the Crown incorrectly regarded him as ruler and spokesperson on behalf of all hapū and iwi, to the extent that whatever Horonuku decided, the Crown believed that the tribe would support him. Other rangatira within the tribe were seen as having no mana or significance in their own right.<sup>20</sup> This, according to claimant counsel, was evidenced by the government's reaction to protest at Te Heuheu's actions during 1887. The historical record highlights a number of complaints raised by rangatira, but there was little response and no attempt made by the Crown to provide relief. In fact, the Crown set out to deliberately thwart opposition. The objections of these rangatira were, however, not a challenge to Horonuku's mana. They were a challenge to the right of the Crown to own the mountains outright. Considering their status within the tribe, all the rangatira with legal interests in the blocks should have been consulted in relation to the negotiations. The claimants submitted that the hapū of Ngāti Tūwharetoa had their own autonomy, independently of the Te Heuheu line, so the Crown was obliged to gain authority for the transfer of the maunga from the rangatira of the hapū who had interests in the maunga. In failing to negotiate with all the owners and obtain their consent to any arrangement, the Crown undermined the mana of those rangatira and their hapū. This created internal dissension amongst the chiefs who had supported the paramount chief in the Taupōnuīatia application, but who opposed the gift.<sup>21</sup> The failure of the Crown to adequately respond to the contemporaneous protests was in breach of the Crown's duty of good faith.<sup>22</sup>

After choosing to negotiate with the ariki, Native Minister Ballance had a face-to-face, or *kanohi ki te*





**John Ballance.** As Native Minister, Ballance played a major role in the negotiations that led to the Crown securing title to the peaks of Tongariro, Ngāuruhoe, and Ruapehu for its proposed national park.

kanohi, meeting with Horonuku Te Heuheu in January 1887 at Rotorua. Ngāti Tūwharetoa argued that this meeting was pivotal to the arrangement. Horonuku's subsequent actions were informed by, and consistent with, his understandings of the arrangements reached at this meeting. He acted upon assurances and undertakings agreed to with Ballance. In terms of tikanga, these verbal undertakings were superior to any legal document subsequently signed by Horonuku.<sup>23</sup>

According to claimants, significant weight should be placed on Tūreiti Te Heuheu's account as he was an eyewitness to the meeting, and his recollection of events is the only evidence available regarding the arrangement.

This account originated from a meeting requested by Tūreiti Te Heuheu in 1920 with the Minister in charge of the Department of Tourist and Health Resorts to protest his removal as a trustee from the Tongariro National Park Board.<sup>24</sup> According to Tūreiti Te Heuheu's account of the park's origins, an 'agreement' was reached between his father and Native Minister Ballance, albeit with each party acting from within their cultural milieu. That 'agreement' appeared to have been with respect to the whole mountains. Tūreiti recounted that Horonuku asked Ballance to have an Act passed by parliament making the mountains sacred.<sup>25</sup> A subsequent agreement was then reached between Lewis and Horonuku Te Heuheu at Taupō whereby the paramount chief of Ngāti Tūwharetoa agreed to invite the Queen into the title beside him. This was the tikanga of the gift.<sup>26</sup>

However, Ngāti Tūwharetoa alleged that throughout its implementation of that agreement, the Crown remained wedded to the conviction that there would be a gift, as Pākehā understood that term, of the whole mountains.<sup>27</sup> The Crown chose to disregard Horonuku's intentions in the negotiations. Instead, the Minister drafted a Bill in February 1887 that granted the ariki a position as one of three management representatives in a Crown-owned park.<sup>28</sup> Ngāti Tūwharetoa argued that Horonuku would not have willingly agreed to an arrangement if it would effectively place his mana under that of the Queen.<sup>29</sup>

Minister Ballance's promised Tongariro National Park Bill was introduced into parliament in April 1887 and passed its second reading, but owing to the brevity of the parliamentary session and the failure to secure title to the mountains the Bill failed to pass into law.<sup>30</sup> The Crown then drafted legal documentation to transfer ownership of the mountains to itself. The Minister sent the deed to the Crown's purchase agent, William Grace, in June 1887 and instructed him to acquire signatures to give effect to the gift. Evidently, many of the titleholders were reluctant to sign.<sup>31</sup> This reluctance was likely to have been related to their discomfort at the Crown's processes and a sense of foreboding for the future. The Crown's insistence on written documentation may have been perceived as overbearing and undermining the mana of the earlier agreement.

English law guided the Crown's implementation of the arrangement, whereas Ngāti Tūwharetoa tikanga shaped their understanding of the legal process.<sup>32</sup>

In the claimants' view, the Crown focused its attention on Horonuku Te Heuheu after failing to obtain the other chiefs' cooperation. From about August 1887, the Crown failed to consult with the remaining rangatira of Ngāti Tūwharetoa because of its determination to obtain legal title to the mountains. The proposal to subdivide the peaks out of the mountain blocks developed at this time. Lewis travelled to Taupō in early September 1887 and was able to persuade the paramount chief and some of his supporters to subdivide out the peaks and put them in Horonuku's name, probably with support from the Graces. This was part of a revision of the Crown's position. Ballance and his officials thought they could pressure Te Heuheu to sign the deed by exploiting his anxiety over protecting the most sacred part of the maunga, with the others succumbing to pressure to sign once the peaks were gone.<sup>33</sup>

Counsel for Ngāti Tūwharetoa notes that, unable to achieve consensus amongst his chiefs during the negotiations, Horonuku Te Heuheu was left in the 'lonely and unenviable position of having to act on his own'.<sup>34</sup> As ariki, he had the mana to act, for it was his obligation to protect the mana of the land. Te Heuheu, however, received no legal advice on the Pākehā legal structures necessary to achieve his objectives. Rather, Lawrence Grace, his son-in-law and a person with a clear conflict of interest, interpreted for him during the final negotiations. Ngāti Tūwharetoa argued that, given his ability in te reo, and his close relationship with the paramount chief, it is likely that Lawrence, and thus the Crown, was aware that Horonuku's intentions did not, in fact, accord with the government's.<sup>35</sup>

On 23 September 1887, Horonuku Te Heuheu signed a deed of conveyance transferring legal ownership of the peaks of te kāhui maunga to the Crown. It cannot be assumed, however, that Te Heuheu understood the full import of what he was signing from a legal perspective. The deed is of little assistance in interpreting Horonuku's understanding of the transaction, as it presumes that his framework of reference was the same as that of those who



**Horonuku Te Heuheu.** Te Heuheu was the Ngāti Tūwharetoa chief who signed a deed of conveyance transferring the tree mountain peaks to the Crown.

initiated the deed. Te Heuheu would not have understood that by signing the deed, he was permanently alienating the mountains.<sup>36</sup>

The clearest insight into Horonuku's understanding of the deed he had just signed is his letter in Māori, which was drafted immediately afterwards. The contemporaneous English translation of his letter, probably drafted by Lawrence Grace, incorporates English legal paradigms and fundamentally changes the meaning of the original Māori text of the letter. The modern translation of his letter, provided by the claimants, clarifies what Ngāti Tūwharetoa consider to be its true meaning.<sup>37</sup>

Te Heuheu's invitation to the Queen was informed by the tikanga pertaining to the concept of 'tuku taonga', although the arrangement agreed to was not a tuku in the traditional sense.<sup>38</sup> Horonuku was faced with a new challenge that required a novel response. His own father had rejected the Treaty because he would not cede his mana to come under the skirts of a woman; Horonuku found himself compelled to treat the Queen as equal. In responding to the threat to the maunga, Horonuku could not dissociate himself from the tikanga of tuku taonga, which was innate to his world. He was inevitably influenced by the reciprocity inherent to the notion of tuku.<sup>39</sup>

In sum, Ngāti Tūwharetoa argue that their ariki was placed in a position of pressure, where he had to take action to protect the maunga from piecemeal alienation and desecration. At a series of tribal hui, it was decided to attempt that protection by enlisting the support of the Queen's authority and English law. The result was a gift, in which the Queen was invited to share title to the maunga with the ariki as joint trustees, holding them as tapu and inviolate. In the claimants' view, Te Heuheu's closest Pākehā advisers either misled him as to how the Crown understood the gift – permanent alienation to the Crown for the purposes of a national park – or failed to appreciate or give effect to his true intent. In any case, the evidence shows that there was no mutual or agreed understanding of the deed of conveyance in 1887. Further, some claimants argue that this agreement between the Crown and Te Heuheu was made without their consent, that protests were ignored or overridden, and that the Crown failed to recognise or protect their interests in their sacred mountains.

Claimant counsel argued that the Crown's failure to honour the tikanga of the gift and the mana of the ariki was exacerbated in following years by the casual treatment of the ariki's requests. The Crown dishonoured and diluted Horonuku's intentions by 'failing to implement a trustee-type arrangement whereby he would hold the mountains with the Queen'.<sup>40</sup> Instead, Horonuku Te Heuheu was excluded from the title by the deed of 23 September 1887, which vested the peaks in the Crown's name alone. The ariki was relegated to one of three management

representatives on a statutory board of management under the provisions of the Tongariro National Park Act, which was eventually passed in 1894. This Act only passed after the intervention of Tūreiti Te Heuheu during the Native Affairs Committee process assessing the Bill. The combined effect of Crown actions placed the mana of Te Heuheu beneath the mana of the Queen, which is deeply insulting to Ngāti Tūwharetoa.<sup>41</sup>

Counsel for various claimant groups raised other issues with the legislation governing the park. Counsel for Ngāti Hikairo ki Tongariro and Ngāti Waewae, for instance, argued that the Crown breached Treaty principles by enacting the Act without consultation with the hapū of Ngāti Tūwharetoa. Under section 2 of the Act, the Crown legislated for the compulsory acquisition and extinguishment of Māori customary title over any lands contained within the schedule to the Act. The inclusion of this aspect of the legislation required prior consultation with and informed consent from the owners of the lands concerned. The Crown's failure to secure this, according to counsel, was in breach of common law rights protecting aboriginal title, as well as the express provision of article 2 of the Treaty and the principle of active protection.<sup>42</sup>

Counsel for Ngāti Hikairo argued that the power of compulsory acquisition assisted the Crown to acquire outstanding interests in the maunga blocks over successive years. After 1894, purchase agents acquired all remaining interests in these blocks from either the original owners, or their successors. According to counsel, these remaining shareholders were probably convinced that they had no alternative but to sell their interests to the Crown.<sup>43</sup> This was particularly unfair to those who protested against the negotiations between Te Heuheu and the Crown at the time.<sup>44</sup> Furthermore, counsel argued that there is nothing to suggest that the Crown ever explained the compulsory acquisition provision to Horonuku Te Heuheu in its engagement with him.<sup>45</sup> In fact, it seems unlikely that Te Heuheu would ever agree to such a clause in the Bill when he signed the deed in 1887. Consequently, the Crown 'failed miserably' to reflect the partnership that was created by the gift when it finally enacted legislation.<sup>46</sup>

Aside from this fundamental expectation, the Crown

also agreed to specific conditions of the gift, as outlined in Horonuku's letter of 23 September 1887. The first of these was that the government agreed to pay for the removal of Mananui Te Heuheu's remains from Tongariro maunga and erect a monument in his memory. Mananui's remains, however, were not removed until 1910, some 23 years after the gift and at the expense of Ngāti Tūwharetoa. Furthermore, the Crown incorrectly dedicated the memorial tablet it erected in 1953 to Horonuku, not Mananui. These failures showed bad faith and a fundamental lack of respect for Horonuku Te Heuheu's request upon entering an agreement with the Crown.<sup>47</sup>

In 1907, a proclamation was issued declaring 62,300 acres of land around the mountains as vested in the Crown pursuant to the Tongariro National Park Act 1894. The only land not included within the proclamation zone was Ketetahi Springs, which Ngāti Tūwharetoa subdivided out of the mountain blocks at the same time as the peaks. By issuing the proclamation, Māori interests in land still in customary ownership were compulsorily acquired by the Crown. Several blocks were in this category, including Rangipō North 8, part Ōkahukura 1, and part Ōkahukura 8M2. Furthermore, the owners of these lands were never compensated for the takings. This, claimants submitted, was in breach of the Crown's Treaty duties of good faith and active protection.<sup>48</sup>

#### 7.4 KEY ISSUE 1 – CROWN SUBMISSIONS

The Crown argued that '[e]vents leading to the establishment of the Tongariro National Park . . . appear to be the outcome of a negotiated process (at least as between the Crown, Te Heuheu, and those who supported him)'.<sup>49</sup> It rejects Ngāti Tūwharetoa's contention that the gift is a 'myth' and that a cultural misunderstanding over the concept of 'tuku' and 'gift' developed during the course of the negotiations. The evidence does not support such a misunderstanding, as there was broad agreement on a number of matters about the respective intentions of the Crown and Horonuku Te Heuheu when the gift was made and the park established.<sup>50</sup>

The Crown accepted that it was under a Treaty duty to act reasonably and in good faith in its dealings with Horonuku Te Heuheu over the establishment of the Tongariro National Park, and in implementing the gift. It acknowledged that the protective standard required of the Crown was a high one, given the significance of the taonga involved.<sup>51</sup>

The Crown said that it is clear that the mountain peaks were gifted or released into Crown ownership. No payment was expected or required as the mountains were too sacred ever to be sold. The Crown accepted, however, that the gift did bring with it obligations. Reciprocity was expected. According to the Crown:

The fundamental expectation was that the association of Te Heuheu and Ngāti Tūwharetoa with the sacred mountains would never be lost and that the mountains would be respected by all and preserved for all. At its simplest that is the expectation and standard against which subsequent Crown conduct ought to be measured.<sup>52</sup>

Crown representatives understood that Horonuku wished to protect the maunga and retain the association of his name and tribe with regard to future management and administration of the park, and provided for this through legislation passed in 1894. In practical terms, reciprocity was given effect through the provision of a seat on the board governing the mountains.<sup>53</sup>

In closing submissions, the Crown conceded, however, that it failed to honour the two express commitments made to Horonuku Te Heuheu at the time of the gift.<sup>54</sup> These two commitments were made by under-secretary Lewis after the ariki signed the deed of conveyance confirming the gift:

With reference to the request which you make, first, that the remains of your father, Te Heuheu, which are now on Tongariro should be removed to some other place, I am to state that the Government will allow you that request, and pay for the expense of removal, and also erect a monument in memory of that distinguished chief. Your second request,

that your son, Tureiti te Heuheu Tukino, should be appointed trustee for the park after your death, has also been agreed to by Mr Mitchelson, and provision will accordingly be made in any Bill introduced relating to the national park.<sup>55</sup>

The Crown acknowledged it failed to consistently uphold Horonuku Te Heuheu's requirement that his personal tribal connection with the mountains was maintained through the statutory mechanism of the right to be a trustee. It noted that Tūreiti's trusteeship on the park board was unilaterally repealed in 1914 and only reinstated after protest by Tūreiti in 1922. The Crown also acknowledged that it failed to facilitate the removal of Mananui's remains, which did not occur for 23 years after the gift and was undertaken by his descendants at their own expense. Furthermore, a memorial was not raised in Te Heuheu's name until 1953.<sup>56</sup> The Crown's failure to adequately fulfil these conditions was inconsistent with its duty to act in good faith and was in breach of the Treaty of Waitangi and its principles.<sup>57</sup>

In reaching his decision to gift the peaks, the Crown claimed that Horonuku Te Heuheu's determination to secure Ngāti Tūwharetoa's tribal boundaries from the claim of the Rohe Pōtae alliance was important context to his actions.<sup>58</sup> Both the Taupōnuīātia application and the gift can be seen as strategic measures taken for protective purposes. They were strategic in the sense that they enabled Te Heuheu to assert his mana. According to various sources cited by the Crown, this was evidently important in the case of the gift, because of the perception that Horonuku had discredited the family name by his association with Te Kooti. The gift also provided an opportunity to ward off claims to the maunga from Whanganui hapū who fought at Te Pōrere and asserted rights of conquest at the end of the battle.<sup>59</sup>

The most important issue for Horonuku Te Heuheu, according to the Crown, was his desire to protect the tapu nature of the mountains.<sup>60</sup> Early European encounters recorded that the maunga were tapu and Ngāti Tūwharetoa did not want them ascended. The Crown argued that Te Heuheu's actions in 1887, therefore, reflected his desire to

protect the sacred maunga from future encroachment. The Crown also contended, however, that Te Heuheu wanted to protect the mountains from being sold into private hands. It cited an account in James Cowan's 1927 history of the Tongariro National Park stating that Te Heuheu hoped to achieve this by making them a tapu place of the Crown. In that respect, Te Heuheu's objectives coincided with the Crown's recognition that the mountains were a special place that ought to be set aside for the benefit of the nation.<sup>61</sup>

Horonuku Te Heuheu was using the law to give over or release the peaks in order to protect their tapu status. A new arrangement for the mountains was to be created under the mana of the Queen.<sup>62</sup> Te Heuheu and Ngāti Tūwharetoa understood that the government wished to create a national park in public ownership throughout the negotiation process.<sup>63</sup> Some of the chiefs were acting in concert with Te Heuheu throughout the negotiations, and whilst there was not unanimous support for the gift, the Crown cited Craig Potton's *Tongariro: A Sacred Gift* to argue that Horonuku had the support of the majority of Ngāti Tūwharetoa.<sup>64</sup>

The Crown agreed that Ballance held a meeting with Horonuku in January 1887 at Rotorua. In accordance with the chronology outlined by Tūreiti in his interview of 1920, it is possible that during this meeting the idea or agreement to gift the peaks crystallised. There is little direct evidence relating to what was agreed, however, between Horonuku and Crown officials about the future use of the mountains and surrounding lands as a national park. It seems clear, according to the Crown, that there was a high degree of common ground between Horonuku and Crown representatives over the essential element of protection of the mountains and surrounding areas. Horonuku understood the lands were to be administered either under a trust-like arrangement or legislation that would provide for oversight of what occurred in the park. The mountains would be preserved, but available for everyone.<sup>65</sup>

According to the Crown, it is implausible to suggest that Ngāti Tūwharetoa or Horonuku Te Heuheu

understood this to mean the complete denial of access to the mountains and surrounding areas. Te Heuheu and some within Ngāti Tūwharetoa did understand that after the gift and the establishment of the national park, people would come in increasing numbers.<sup>66</sup> There was no evidence of protest by Ngāti Tūwharetoa in the decades following the gift over access by Europeans accessing the park or ascending the peaks. Furthermore, evidence from 1894 of Ngāti Tūwharetoa people acting as guides in the park or attempting to levy fees for permission to ascend the mountains suggests that a degree of European access previously considered unthinkable was now among the realities Te Heuheu accepted as part of the future. For the Crown, Horonuku recognised that a new world was fast approaching and the evidence suggests that his action in 1887 was part of engaging and adapting to the emergence of tourism.<sup>67</sup>

The fundamental expectation of Horonuku Te Heuheu was that his association and that of Ngāti Tūwharetoa would never be lost with the sacred mountains and that they would be respected by all and preserved for all New Zealanders to enjoy. In contrast to the significance of Horonuku's gesture, the Crown accepted that the legal mechanism by which it was given effect seemed perfunctory.<sup>68</sup>

The Crown acknowledged that some form of trust arrangement was probably the closest to Horonuku Te Heuheu's understanding of the arrangement. The evidence suggests that vesting ownership in the Queen on trust was rejected as legally impossible. Whether that advice was correct at the time, it was on that basis of legal advice that the Crown changed its policy to a statutory board of management rather than vesting in a trust. The Crown does not accept, however, that this adjustment and subsequent changes in the Bills leading up to the Tongariro National Park Act 1894 represented a deliberate policy to subvert Horonuku's intentions.<sup>69</sup>

The Tongariro National Park Bill 1887 was drafted in anticipation of Horonuku fulfilling what the Crown considers to be his promise to gift the peaks for the purpose of the National Park.<sup>70</sup> Whilst contemporary newspapers record that the government intended to consult Ngāti

Tūwharetoa over the Bill prior to its introduction, the Crown acknowledged that there is no evidence that it did. Although the Bill was translated into Māori, there is no indication that the Bill was forwarded to government officers in Taupō or circulated amongst the chiefs for comment before being introduced to parliament on 28 April 1887.<sup>71</sup> The Bill was designed not to come into effect until all of the lands affected were conveyed to the Crown, but failed to become law.<sup>72</sup>

The Crown argued that the transfer of legal ownership was clear to the owners at the time subdivision of the mountains, into Horonuku's name alone, took place. Furthermore, there is no evidence to suggest that the Graces acted to deceive Te Heuheu or disregard his intentions, or that they thought or were aware of any indication that Horonuku's intention did not accord with the Crown's plan.<sup>73</sup> The deed of conveyance signed by Horonuku, the application to the court for the vesting of the peaks in the Crown, and the letter Horonuku wrote to Ballance all point to a common understanding that the peaks were gifted or released into Crown ownership for the purposes of setting aside the mountains for all people.<sup>74</sup> The decision to subdivide Ketetahi Springs out of the Tongariro 1 block on 21 September 1887 illustrates that the Springs were being separated from the blocks intended for Crown acquisition.<sup>75</sup> Furthermore, subsequent communications between Crown officials and Ngāti Tūwharetoa do not demonstrate any particular dissatisfaction with the legal mechanism of transfer.<sup>76</sup>

A literal understanding of the different words used in Horonuku's letter can only be taken so far. His overall meaning and intent is clear. The mountains were to be set aside and made sacred for all people, Māori and Pākehā. The Crown challenged the notion that Ngāti Tūwharetoa expected exclusion of public access to all or any of the lands in the park. In its view, a degree of European access previously considered unthinkable was now among the realities Horonuku accepted as part of the future and the new protective arrangement for the mountains.<sup>77</sup>

The Crown also challenges the argument that Te Heuheu was coerced into gifting the peaks to the Crown as a result of his association with Te Kooti in 1869. The length

of time it took to negotiate the gift and then legislate and acquire the lands for the park does not lend itself to the coercion theory. In the intervening 18 years since the battle of Te Pōrere, the Amnesty Act was passed, Te Kooti was pardoned, and the New Zealand Settlements Act was repealed. Furthermore, the official correspondence after Horonuku's surrender at Te Pōrere, makes it clear that no land was confiscated from Ngāti Tūwharetoa, because of a belief that Te Heuheu's association with Te Kooti may have been less than voluntary and that he would be useful as a government ally. Whilst the government did not rule out seeking a gift or cession of land from him as a token of his allegiance to the Crown, his lenient treatment was not contingent on such a cession or gift.<sup>78</sup>

With Crown ownership of the peaks secure in 1887, the political will of the new administration to progress the arrangement waned amidst numerous petitions and applications for rehearing of the Taupōnuiātia blocks after the final orders were made. Following Ballance's loss of office in the September 1887 election, and his death in April 1893, the official memory of what had been arranged with Horonuku Te Heuheu was lost or diminished. The other most important Crown official, under secretary Lewis, died in December 1891. The death of these two Crown representatives, and Horonuku's own death in July 1888, helps to explain why there were various changes to the ownership and management arrangements for the park leading up to the 1894 Act.<sup>79</sup>

The Crown submitted that Horonuku's son, Tūreiti Te Heuheu, assisted materially with the passage of the 1894 legislation, suggesting no particular dissatisfaction with the legal mechanism by which the National Park lands were held or other provisions of the Act. In particular, the Crown cited evidence that Tūreiti lobbied the government to amend the Bill in accordance with his understanding of the agreement. This, for the Crown, suggests that the legislation was consistent with the understandings between the Crown and Ngāti Tūwharetoa over the establishment of the park.<sup>80</sup>

As noted above, the Act contained a provision allowing for the compulsory acquisition of any Māori land embraced by the Act but not vested in the Crown at the

date of proclamation. When the park was proclaimed in 1907, it appears that some areas of land remained in Māori ownership, including Rangipō North 8, part Ōkahukura 1, and part Ōkahukura 8M2. From research undertaken thus far, it appears that no compensation was awarded to the owners of one of these blocks, Ōkahukura 8M2, at least through until 1938. According to the Crown, however, further research is required in relation to Ōkahukura 8M2 before definitive conclusions regarding the impact of the proclamation on the customary owners of this land, and whether compensation was ever paid. It says that this is an issue that parties can pursue in the context of future settlement negotiations.<sup>81</sup>

The Crown makes no submissions with respect to Ōkahukura 1A, the other block claimants argued was compulsorily acquired by the Crown, without compensation, via the 1907 proclamation. The Crown's submissions in respect of Rangipō North 8 are outlined in section 7.11, which looks more specifically at dealings with regard to lands in the southern part of the park.

#### 7.5 KEY ISSUE 1 – SUBMISSIONS IN REPLY

Ngāti Tūwharetoa stated that it is significant that the Crown has moved from its technical legal description of the gift to acknowledge that the spirit of the gift created obligations on the Crown to:

- ▶ protect ngā maunga tapu (the protective standard being a high one); and
- ▶ preserve the association of the ariki and Ngāti Tūwharetoa with the mountains for all time.

Ngāti Tūwharetoa also welcomed the Crown's concessions as a move towards understanding the tribe's position. Counsel, however, emphasised that there remains a chasm between the parties. It has narrowed, but it has not yet been bridged.

According to Ngāti Tūwharetoa, the fundamental problem is that the Crown remains fixed within its cultural paradigm. It continues to view the arrangement in terms of the Pākehā legal reality and thus fails to comprehend what Ngāti Tūwharetoa believed the arrangement was designed to achieve.<sup>82</sup> Ngāti Tūwharetoa believe that

the way forward is to seek to address the true spirit of the ‘Gift’, and that this process will necessarily involve revisiting the values and tikanga that exemplified the relationship Ngāti Tūwharetoa have with ngā kāhui maunga.<sup>83</sup>

Ngāti Tūwharetoa further state:

The Crown focuses on the idea that Te Heuheu understood that he was releasing something, but fails to grasp that under his tikanga Horonuku was retaining something as well – his mana over the mountains. Horonuku never intended that Tūwharetoa’s links with Nga Kahui Maunga would be severed; he would not and could not give away part of himself.<sup>84</sup>

Ngāti Tūwharetoa disagree with the Crown’s assertion that the mountains were to be protected under the mana of the Queen alone. They say that this does not reflect the true spirit of partnership demanded by the Treaty, which would see the Queen standing alongside the ariki. Ngāti Tūwharetoa does not accept that Te Heuheu ever intended the mana of the ariki to be subsumed under that of the Queen.<sup>85</sup>

Ngāti Tūwharetoa reject the argument that it was ever agreed that Horonuku would transfer the mountains to Crown ownership, or that he understood the consequences of the signing of the deed. While Ngāti Tūwharetoa accepted that the Crown’s intention was always that the mountains would be held in public ownership, claimant counsel stressed that caution was required in approaching the written record.<sup>86</sup>

Ngāti Tūwharetoa maintained that no one, not even Horonuku Te Heuheu, had the authority to ‘give’ the mountains away.<sup>87</sup> As ariki, Te Heuheu had the authority, indeed the overriding obligation, to keep the mountains tapu or sacrosanct. He attempted to be inclusive in acting to effect that objective. He understood that it was his duty to try and achieve consensus on behalf of ngā iwi o Tongariro, and his achievement in that regard was reflected in the 19 rangatira placed into the interlocutory orders of 1886. It was only when it became clear that consensus could not be reached within the leadership over the gift that Horonuku acted alone. As the ariki, Horonuku

had the authority to achieve his overriding obligation to protect ngā kāhui maunga.<sup>88</sup>

### 7.6 KEY ISSUE 1 – TRIBUNAL ANALYSIS

As we discussed in chapter 2, te kāhui maunga are a taonga of immense significance to tangata whenua and, as such, the right of Māori to maintain rangatiratanga and kai-tiakitanga over them is protected by the Treaty. Te kāhui maunga are the physical representations of the mana of the various tribes. These sacred icons are inextricably linked to the creation stories of the tangata whenua. During our inquiry, Ngāti Tūwharetoa maintained that they would never give away their sacred taonga, as they represent the very essence of their identity. Ngāti Tūwharetoa, therefore, reject the idea of the gift on the basis that no one man holds mana over the mountains. Indeed, in tradition, the maunga hold the mana over the people, and it is the Kaitiaki Patupaiarehe who enforce the mana of the maunga.<sup>89</sup> Chris Winitana explained to us that Horonuku Te Heuheu’s responsibility, as paramount chief, was to be ‘the protector of the way of god’ by ensuring his people’s physical and spiritual safety at all times. Giving away the spiritual fount of Ngāti Tūwharetoa, te kāhui maunga, and severing all connection, was simply not within his frame of reference.<sup>90</sup> In Mr Winitana’s opinion, Horonuku’s aims were completely the opposite:

Horonuku . . . had no intention of gifting the mountains. He was instead trying to protect them because of everything they meant to him and his people.<sup>91</sup>

Is this merely justification after the fact, or is there concrete evidence to support Ngāti Tūwharetoa’s view? It is never easy to determine, at a distance of generations, what may have motivated historical figures to act as they did. Nevertheless, in the case of Horonuku we have an eye-witness to events who was, moreover, privy to the chief’s thoughts and views. That eye-witness was his son Tūreiti, who would explain in 1920, 33 years after the event, that his father reached the following agreement with the government in 1887:





Tongariro's north crater, with Tongariro, Ngāuruhoe, and Ruapehu behind. Dominating the volcanic plateau, these mountains are of great significance to Māori, who regard them as sacred taonga.

[Under-secretary of the Native Department] Mr Lewis made the request) that my Father should agree that the Queen be put into the Title along with himself, so that the Crown should be represented in the Title [of the mountains] . . . I was present and my Father (I was his only son) asked me what I thought about that arrangement. I then said to my Father that I thought he should agree to the request made by Mr Lewis, as it would be a very great honour to him to have the name of the Queen as co-owner.<sup>92</sup>

To our mind, Tūreiti's account is telling. Agreeing to the Queen sharing title is a radically different proposition

from a gift of fee simple title of these taonga. Yet the latter has underpinned the popular myth of Horonuku Te Heuheu's magnanimous gesture to the nation. The gulf between the historical evidence and the myth compels us to investigate how the negotiations played out and why, at their completion, parties' understandings differed so substantially. Our analysis, therefore, is framed around six key questions:

- ▶ Did the Crown understand what Ngāti Tūwharetoa were trying to achieve in the negotiations?
- ▶ What was agreed to and what reciprocal obligations existed for the Crown to fulfil?



Tūreiti Te Heuheu. Tūreiti was present at the meeting between his father, Horonuku Te Heuheu Tūkino IV, and Native Minister John Ballance in January 1887. The meeting was a significant step towards the making of an arrangement for the mountains, and Tūreiti's recollection of it is the only documentary evidence of the agreement reached between the two leaders.

- ▶ What action did the Crown take to give effect to the agreement and did this achieve the intended result?
- ▶ Why did Ngāti Tūwharetoa subdivide the maunga blocks and was the deed a valid legal instrument, effecting a mutually understood and agreed decision to alienate legal ownership of the mountain peaks to the Queen?
- ▶ Did the Crown's response to Māori opposition fulfil its duty of active protection?
- ▶ What reciprocal obligations was the Crown required to fulfil upon Te Heuheu signing the deed, and did it fulfil these in a manner befitting a Treaty partner?

After addressing these questions, we make our findings on the key issue framing this part of the chapter:

*Were the negotiations toward an arrangement for te kāhui maunga characterised by good faith and mutual understanding, and did the Crown's implementation of that arrangement comply with the understanding and expectations of the negotiating parties, or did it misunderstand (or even deliberately ignore) those understandings and expectations?*

At this point, we move to the first of our key questions.

#### **7.6.1 Did the Crown understand what Ngāti Tūwharetoa were trying to achieve in the negotiations?**

The Crown argued in closing submissions that relevant Ministers and officials understood the objectives of Ngāti Tūwharetoa in the negotiations, and that its own goals converged with those of the tribe. If the Crown was correct, there would be no issue for this Tribunal to resolve. Ngāti Tūwharetoa, however, dismissed the Crown's argument as fallacious. In their view, the Crown imposed its own conception of what the negotiations were about and ensured those objectives were met.

In order to determine if the Crown understood the objectives of Ngāti Tūwharetoa, we must first assess what those objectives were, as claimants and the Crown disagree on this fundamental issue. In doing so, we have carefully considered the oral history of Ngāti Tūwharetoa, as well as the documentary evidence examined in both claimant and Crown evidence. This was critical to understanding why there has been such fundamental disagreement between parties. After assessing Ngāti Tūwharetoa's objectives, we determine if the Crown understood them, and if not, why not. Finally, we assess whether the Crown's legislative framework enabled the tribe to implement their objectives.

Throughout our analysis, we use the word 'arrangement' to describe what parties were negotiating towards. This is more appropriate given that claimants and the Crown disagree on this point. 'Gift', even in quotation marks to encompass the cultural divide over the meaning of the word, is still a problematic term to apply to the period, as it suggests continuity in the parties' plans, intentions, and strategies throughout. The significance of this point will become clear as we move through our discussion.

## (1) *Te Heuheu's 23 September letter to the government*

To assess Ngāti Tūwharetoa's objectives in the negotiations, we must turn to Horonuku Te Heuheu's letter of 23 September 1887. Along with the later account written by his son, this was one of the most important pieces of evidence submitted to the Tribunal. It was composed immediately after Horonuku signed a deed transferring the mountains to the Crown and thus provides a critical insight into what he believed was the purpose of his agreement with the Crown. Horonuku's letter to the Crown is reproduced here in full, with significant phrases in italics:

E Pa, Tena koe.

He kupu atu tena ki a koe, ara, he whakaatu kua maha nga ra e korerorero ana matou ko Te Ruihi mo te *Rahui whenua ka whakatapua nei mo te Iwi ki Tongariro*, notemea e mohio ana matou he mea nui rawa taua mea, a i te mea hoki kihai ano nga whakaaro o etahi o nga tangata o taku iwi i tino marama ki taua mea.

Na kua oti te wehe atu o taua whenua e te Kooti Whakawa Whenua Maori a kua whakataua nga tihi o Tongariro me Ruapehu ki toku ingoa anake, ki te tangata nona tenei whakatauki, 'Ko Tongariro te maunga, ko Taupo te moana, ko Ngatitūwharetoa te iwi, ko Te Heuheu te tangata.'

E hoa, kua hainatia e ahau te pukapuka i homai nei e Te Ruihi ki toku aroaro hei whakapumau i te *tukunga atu o taua whenua hei whenua tapu mo te iwi katoa* kia rite ai ki te hiahia o te Kawanatanga me taku kupu hoki i whakapuakina nei e au ki a koe i Rotorua.

Engari e rua aku kupu hei whakaatu ki a koe. Tuatahi – Ko taku papa ko Te Heuheu Tukino i horongia nei ki te Rapa kei runga i tana maunga e takoto ana, a, e mea ana ahau me whakaneke mai ia ki tetahi wahi ke atu. Ko taua tangata, otira e mohio ana koe he rangatira nui rawa, a, he mea tika kia mahia e te Kawanatanga tetahi urupa kohatu mona, i te mea kahore ahau me toku iwi e kaha ki te mahi mea pera mona. Kua whakaae to hoa a Te Ruihi ki tenei kupu aku, ana whakaae mai hoki koe. Taku kupu tuarua – koia tenei – Kua kaumatua ahau, a ko nga whakahaere mo toku iwi kai taku tama kotahi kai a Tureiti te Heuheu Tukino, a ko taku hiahia me whakamana, ara, me whakahua tonu tona ingoa ki roto ki te Ture whakamana i te whenua ka whakatapua nei mo te Iwi

ara, ko ia tonu te Kai-Tiaki hei riwhi mo toku turanga kai-tiaki i runga i taua maunga ana mate ahau, a kua whakaae mai hoki a Te Ruihi ki tenei kupu aku, ana whakaae mai koe.

Koia ena aku kupu ki te Kawanatanga itaku tuhinga, ara i taku hainatanga i te pukupuka *tuku atu i Tongariro me Ruapehu hai whenua tapu mo te Iwi katoa*, Pakeha me te Maori. Heoi ano.

Na to hoa na.

Te Heuheu Tukino. [Emphasis added.]<sup>93</sup>

The published contemporary translation of this letter is outlined below. Through a comparison of the handwriting, it seems that Lawrence Grace wrote Horonuku's letter in Māori, as dictated by the paramount chief.<sup>94</sup> The letter was then translated into English after under-secretary Lewis expressed his desire to publish both versions in the *Appendix to the Journal of the House of Representatives*. This English translation can have served only to reinforce the impression, already conveyed in the newspapers, that Horonuku Te Heuheu agreed to gift the mountains to the Crown. Ngāti Tūwharetoa, however, disputed that translation during our inquiry. They highlighted several phrases in English that do not reflect the essence of the Māori text. In an effort to clarify the differences for the Tribunal, Chris Winitana provided a modern interpretation of the letter. His translations of the disputed italicised phrases are in square brackets:

Sir, Greetings.

This is to inform you that my people and I have spent many days talking with Mr Lewis about the *subject of making Tongariro a national park* [land assigned to be made sacrosanct and kept inviolate for the people of Tongariro], because we regard it as a matter of great importance, and as well some of my people were not clear on the subject.

A division of that land has been made by the Native Land Court and it has awarded the tops of the mountains Tongariro and Ruapehu to me alone because I am the person to whom the following proverb applies: 'Tongariro the mountain, Taupō the sea; Tūwharetoa the tribe; Te Heuheu the man. Friend I have signed the deed laid before me by Mr Lewis for the purpose of confirming *the gift of that land as a national*

*park* [confirming the releasing of that land to be held inviolate for the people] in accordance with the wish of the Government and to fulfil my word spoken to you at Rotorua.

I have however two words to make known to you. First; my father Te Heuheu Tūkino who was overwhelmed at Te Rapa is laid on that mountain and it is my wish that he be removed to some other place. He was as you know a chief of very high rank and it is right that the government should erect a tomb for him because both my people and I are unable to do so. Your friend Mr Lewis has agreed to this word of mine subject to your approval. The second word is that I am an old man and the affairs of my people are conducted by my only son Tūreiti Te Heuheu Tūkino. It is my wish that he be authorised, that is to say that his name be inserted in the *National Park Act* [Act ratifying the land be kept sacred on behalf of the people]; that he be the trustee appointed to succeed me after my death. Mr Lewis has also agreed to this word of mine, subject to your approval.

These are my requests to the government on my *signing the deed giving Tongariro and Ruapehu to the Government as a national park for the use of both the Natives and Europeans* [releasing Tongariro and Ruapehu as land to be kept sacred and inviolate on behalf of the people, Pākehā and Māori]. That is all.

From your friend.

Te Heuheu Tūkino. [Emphasis added.]<sup>95</sup>

We largely endorse the modern translation provided by Mr Winitana. There are several key points that explain why Mr Winitana's translation more accurately encapsulates the meaning and intent of Te Heuheu's letter. We wish to emphasise those now.

(a) *Rāhui whenua*: Mr Winitana stated that 'rāhui whenua' means land forbidden, or restricted land, an area of land that has access to it withdrawn. He used as an example the rāhui that was placed on Te Rapa at Waihi after the landslide that killed Mananui Te Heuheu.<sup>96</sup> To our thinking, rāhui also carries a notion of protection, since controlling access to a place is generally for the purpose of protecting it from violation or disturbance. Thus, in addition

to instances such as that cited by Mr Winitana, where a death had occurred, a rāhui may also be declared over an area to protect the plant or animal life there. In short, a rāhui is put in place when an area needs to be particularly respected, and when its life-force needs nurturing and healing. It always involves a restriction on the sort of activities that can be carried out there. In some instances, access is denied completely; in others, people can still enter but must behave with respect and refrain from activity that would negatively impact on the special nature of the place or the resources there.

(b) *Ka whakatapua nei*: Implicit in the concept 'ka whakatapua nei' is that something is being set apart because of its special qualities or because of special circumstances, and that the restrictions are for spiritual reasons. Mr Winitana, for Ngāti Tūwharetoa, interprets 'whakatapua' as having 'the physical effect of keeping inviolate the object under discussion.'<sup>97</sup>

When applied to an area, rather than an object or person, the restrictions may include a total ban on entry. On the other hand, restrictions may be more limited, such as not eating in the area or (in more recent times) not smoking there. In all instances, however, there is a requirement for the area to be treated with respect.

(c) *Mō te Iwi ki Tongariro*: Mr Winitana also went on to say: 'Seeing the sentence in total . . . it is clear to me that Horonuku is talking about an assigned parcel of land to be made sacred . . . on behalf of the people.' In his written translation of the letter, however, he specifies: 'to be made sacrosanct and kept inviolate for the people of Tongariro' (emphasis added).<sup>98</sup> We are less convinced about the latter point. The Māori text says 'te Iwi ki Tongariro' (emphasis added). Mr Winitana's translation is certainly possible if one interprets the words to mean 'living at or near Tongariro', and if one ignores the rest of the letter. However, two paragraphs later, Horonuku records his intention that the area shall be made tapu 'mo te iwi katoa', describing this as also being the wish of the government. Then, at the end of his letter, he writes of the maunga



Waihi land slip, Tokaanu, 1910. The slip killed someone who had apparently broken tapu while Mananui Te Heuheu's remains were being brought down the mountain. Mananui had been killed and buried by a similar slip in 1846 that had also engulfed most of Te Rapa village.

being made whenua tapu 'mo te Iwi katoa, Pakeha me te Maori'. In the circumstances, therefore, we think that the first sentence cannot be construed to mean just the tangata whenua of Tongariro; rather, it must mean people more widely. In short, we understand Horonuku to mean that the area is to be kept sacred for (and treated as sacred by) all the people of New Zealand.

(d) *Tukunga, tuku atu*: The physical act of a tuku of land can be properly understood as tukunga whenua. In the context of this letter, Mr Winitana stated that 'tukunga/tuku atu' meant 'to release a treasure', although it is often translated as 'gift'. Mr Winitana argued that the Māori idea

of gift, however, is at odds with the Pākehā understanding. Releasing a possession, especially if it were a notable treasure, into the care of another person or group had strings attached:

The strings are physical and metaphysical. If an heirloom is released to you, the strings are, you must honour it. Honour it means taking care of it. Given our holistic cultural parameters, taking care of it means preserving its physicality as well as its spirituality. In other words, on receiving a released treasure, it is incumbent on you to honour its release by doing all in your power to ensure the rounded wellbeing of the treasure. The presumption is that you the receiver have the



*Tongariro by Moonlight*, 1883–84. In the nineteenth century, Ngāti Tūwharetoa became concerned over the ever-increasing number of European explorers on the Tongariro mountains. Passionate requests were made to try and halt this exploration since, unlike Maori, Europeans did not regard them as sacred.

appropriate ‘mana’ to enforce upon yourself the honouring of the release.<sup>99</sup>

Viewed in this light, ‘tuku’ cannot be interpreted as either a simple gift, in the Pākehā sense, or even as a finite transaction. Much more closely aligned to the notion of tuku, in the present instance, is that Horonuku was seeking an arrangement that would bind the Crown into ensuring the land’s protection – thus, as Mr Winitana translated, releasing the land so that it could be kept sacred for the people.

Furthermore, it should be recalled that no other national park had yet been established in New Zealand.

The idea was a new one, the parameters for which had not yet been worked out by the settler government. Te Heuheu’s understanding of what might be meant by a ‘national park’ would have come from within his own cultural and spiritual framework. From what he wrote in his letter, it is clear that he saw a national park as a rāhui whenua, restricted land that was to be kept sacred and accorded respect by all, and protected from common, everyday uses that might cause damage to it.

From our analysis of the two texts, therefore, we accept Ngāti Tūwharetoa’s claim that the published English translation does not encapsulate Horonuku Te Heuheu’s intent and understanding with respect to the taonga.

**(2) Ngāti Tūwharetoa's objectives for the taonga**

At this point, we put our consideration of the word 'tuku' to one side and focus on the combined phrase: 'Rāhui whenua ka whakatapua nei.' Our purpose here is to situate that phrase in its context through an analysis of the historical evidence. In doing so, we try to understand what Ngāti Tūwharetoa hoped to achieve for this taonga.

The history of Ngāti Tūwharetoa attempting to control access to – and activities on – their maunga is a long one. The mountains, collectively referred to in early accounts as 'Tongariro', featured as a popular destination for European explorers in the nineteenth century.<sup>100</sup> But exploration of their sacred taonga was something that caused significant concern for Ngāti Tūwharetoa. The earliest recorded description of Ngāti Tūwharetoa objecting to unauthorised intrusion on their maunga, as Dr Robyn Anderson noted, was in response to John Bidwill's ascent of Ngāuruhoe in 1839. Bidwill recorded that Mananui Te Heuheu passionately objected to that trespass:

He [Te Heuheu] did not appear in a particularly good temper, and after about five minutes' talk he suddenly arose from his seat, and began to walk up and down, and stamp, talking all the time with great animation. He at last worked himself into a most terrible pitch of fury, at which I only laughed. The cause of complaint was my having ascended Tongadido [*sic*]. I said that a Pakeha could do no harm in going up, as no place was taboo to a Pakeha; that the taboo only applied to Mowries; and finally that if the mountain was an atua, I must be a greater atua, or I could not have got to the top of it, and it was all a nonsense to put himself into a passion with me, as I did not care for it; but if he would see that the people made haste with the canoe, I would give him some tobacco. I then took out one fig for each of his companions, who sat still all the time without saying a word, and gave him three figs.<sup>101</sup>

This account is striking for exposing a cavernous divide in cultural values just prior to the Treaty signing. Māori and Pākehā were on completely different wavelengths when it came to these iconic mountains, and in many respects, little has changed over the history of the park.

Although the account goes on to indicate that Mananui

appeared somewhat appeased by Bidwill's gift, it also says that the chief explained to him in no uncertain terms that 'if he had thought that I [Bidwill] could have gone up the mountain, he would have prevented my ever trying it'. Wanting to avoid further infringements, Mananui requested that Bidwill not let other Pākehā know about his excursion on 'any account'.<sup>102</sup>

But Europeans continued to visit the area in the hope of exploring this renowned location. Mananui was able to stop some individuals. He was successful, for instance, in ensuring that New Zealand Company naturalist, Ernst Dieffenbach, did not repeat Bidwill's violation. Dieffenbach reported that he was unable to ascend the maunga because:

We could not persuade the natives to allow us to ascend the principal cone, which we might have accomplished in four hours. The head chief of the Taupo tribes, Te Heu Heu, was absent on a war excursion to Wanganui, and before he went he had laid a solemn 'tapu' on the mountain, and until his return they could not grant us permission to ascend it. This 'tapu' was imposed in consequence of a European traveller of the name of Bidwill having gone to the top without permission, which had caused great vexation, as the mountain is held in traditional veneration, and is much dreaded by the natives, being, as they tell you, the 'backbone of their Tupuna,' or great ancestor, and having a white head like their present chieftain.<sup>103</sup>

Mananui also informed another budding explorer, Jerningham Wakefield, in 1841 that 'you must not ascend my tipuna'.<sup>104</sup> But these early efforts at controlling Pākehā encroachment became harder to sustain over time. By 1878, it was evident that ngā iwi o te kāhui maunga were struggling to control unauthorised intrusions. Several interesting items appeared in the Māori newspaper, *Te Wananga*, highlighting the problem and explaining the cultural offence this caused:

Taupo

Kotahi Pakeha mahi whakaahua i haere ki runga ki te maunga i Tongariro, ano ka oti i aia te whakaahua o o reira mea eia, no

tana hokinga mai, i murua ai ana mea e o reira Maori. I mea hoki nga Maori he tapu no Tongariro i kore ai ratou e pai kia haere taua Pakeha ki reira.<sup>105</sup>

Taupo

A Pakeha photographer went to the top of Mount Tongariro to take photos and when he returned his possessions were confiscated by the Maori of that area. According to the Maori Tongariro Mountain is sacred and that is why they were not in agreement for that Pakeha to be there.<sup>106</sup>

Taupo

E kiia ana, kua mahia ano he Taone hou i Taupo, hei Taone nohoanga ma nga Pakeha noho i taua takiwa. A ko te Maori e riri ana ki nga Pakeha haere ki Tongariro, he tohe hoki na te Pakeha kia kite i te toitoti o Tongariro. Te take i riri ai te Maori (ara na te Maori aua kii nei) he tapu no taua wahi, a e takahi ana te Pakeha i o te Maori mea tapu, kite Pakeha, he whenua tonu te whenua kahore he tapu. Otiia kahore te Pakeha e puta i te Maori ki taua wahi.<sup>107</sup>

Taupo

It is said, that a new settlement is to be constructed at Taupo, as a place of residence for the Pakeha located in that area. And thus the Maori will be angered at those Pakeha who will travel to Tongariro, especially those who stubbornly persist in travelling to the summit of Tongariro. The principal concern of the Maori (that is those Maori previously referred to) is that the place is sacred and Pakeha will be trampling on the sacred beliefs of Maori, yet for the Pakeha, land is merely regarded as land and has no sacred attributes. Furthermore, it will be difficult for Maori to eject Pakeha from those areas.<sup>108</sup>

These two items were followed by a third, a letter from Eruini and Wineti Te Tau, Moko Te Araweaiti, and 'all of the peoples' to the editor of *Te Wananga*:

Ki te etita a te wananga

E koro, whakaaturia atu ta matou kupu whakatapu mo Tongariro, kia kite nga Pakeha, me nga Maori hoki. Tuatahi: Kauga rawa te Pakeha, hanga whakaahua, Teihana, ruri ranei

e piki ki Tongariro mahi ai i ana mahi. Ka mate koe i muri o enei kupu, no te mea e pokanoa ana koe ki te mahi i aua mahi ki runga ki taku maunga, hei putanga moni mau, nawai koe i ki atu kia piki, naku ranei, na to pokanoa ki te mahi i au mahi ki runga ki toku maunga hei utu moni mau, haka, kore maku, engari koe, kaati.

Eruini Te Tau

Wineti Te Tau

Moko Te Araweaiti

Otira na te iwi katoa

Papakai, Mei 20 1878<sup>109</sup>

To the Editor of *Te Wananga*

Esteemed Elder, publish our sacred sanctions with respect to Tongariro, so that the Pakeha may be informed as well as Maori. Firstly: Pakeha must not take photographs; erect stations or undertake surveying as they climb Tongariro or as they go about their business there. Should you transgress these words because you stubbornly persist in going about your commercial activities in the usual fashion on my mountain designed to make you money then we will ask who gave you permission to climb the mountain and why you persist in these activities and make money on my mountain for you alone without any benefit to us and we will protest and terminate these activities.

Eruini Te Tau

Wineti Te Tau

Moko Te Araweaiti

And from all of the peoples

Papakai, May 20 1878<sup>110</sup>

This last item is perhaps the most interesting because the people resorted to publishing the correct protocols to observe 'so that the Pakeha may be informed as well as Maori'. What is also interesting about it is that these Ngāti Waewae chiefs appeared not to oppose in principle the development of commercial activities on the maunga. What they objected to strongly was the benefits flowing solely to Pākehā without their authorisation.

In short, by the late 1870s ngā iwi o te kāhui maunga were struggling to stop unauthorised Pākehā encroachment of





A lone figure on Mount Tongariro, 1900–10. Some Māori pleaded with Pākehā not to climb their sacred mountains while others objected to Pākehā making money from activities like photographing or surveying the mountains when there was no benefit to Māori.

their maunga tapu by the late 1870s. This encroachment was trampling over their sacred beliefs, and they wished 'to protect the mountains and avoid any diminishment or loss of authority, power, strength and sacredness within them.'<sup>111</sup> Pākehā did not understand that kaupapa.

The context outlined above is, in our view, essential to understanding the objectives of the hapū of Ngāti Tūwharetoa in the 1880s. Their consistent concern was to maintain the sanctions over their sacred taonga. That

was a fundamental objective during the nineteenth century. But to do that they needed to ensure they maintained their authority over the taonga. How could they do that? We address that question in our next section.

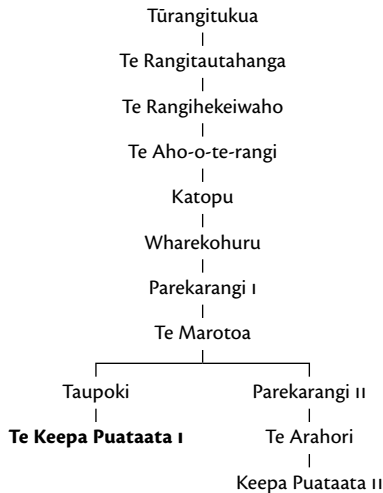
### **(3) *The strategy to achieving those objectives***

The strategy adopted by Ngāti Tūwharetoa developed in the build-up to the Taupōnuiātia hearings. In late 1885, Horonuku Te Heuheu called the chiefs of the tribe

**Keepa Puataata I**

c18??–72

Keepa Puataata I was a son of Taupoki. His obituary named him as Te Kēpa Puataata Te Rirerire. He resisted the Pai Mārire movement in 1869 when the Taupō district was threatened, and he accompanied Tōpia Tūroa in pursuit of Te Kooti. A namesake appears in the list of owners for the titles to the mountain peaks.<sup>1</sup>



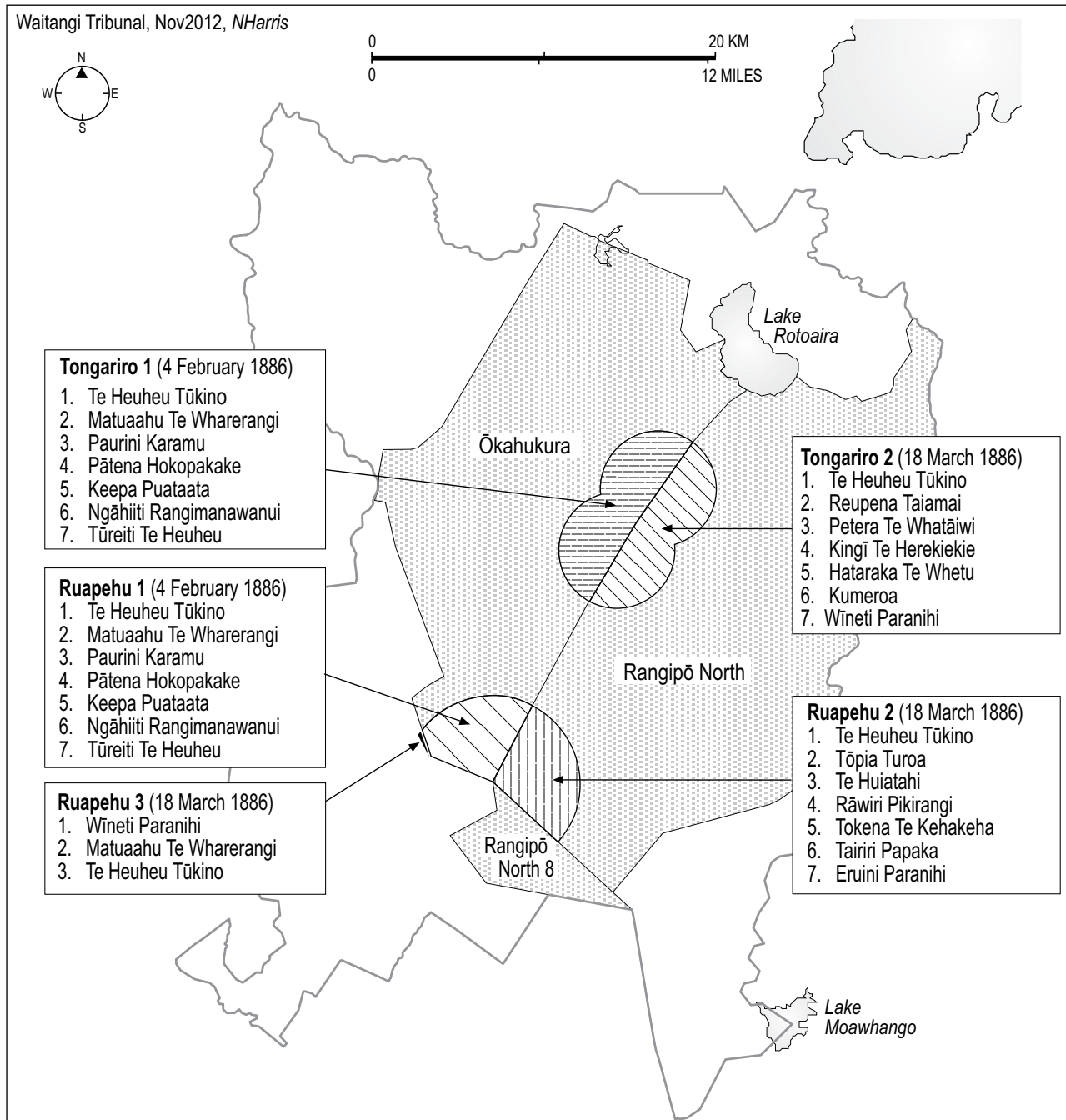
together where they prepared their ‘rārangi matua’ (defensive lines). The first of those, ‘rārangi matua tuatahi: kiwiweka’, as discussed in section 4.6.3(3)(a), was Ngāti Tūwharetoa’s plan to demarcate a boundary of their core land. The second defensive line, ‘rārangi matua tuarua: ngā pae maunga tapu’, emerged as the leadership of the different tribes contemplated how to protect ngā maunga tapu.

Ngāti Tūwharetoa explained in their traditional history report that large hui were held at Pāpakai and Ōtūkou, soon after the Poutū hui of September 1885. It was at these hui that the chiefs reached a consensus to work within

Pākehā law to protect ngā maunga tapu.<sup>112</sup> In terms of strategy, *Te Taumarumarutanga* goes on to record that:

The chiefs’ original intent was that seven chiefs would hold the mana tangata to the peaks on behalf of the tribes of Tongariro, so that no one man would be seen as holding the mana over the peaks. *The mana of the gods can belong to no man.* [Emphasis in original.]<sup>113</sup>

We discuss the identity of these chiefs soon. What is important to emphasise at this point is that, according to Ngāti Tūwharetoa oral tradition, seven chiefs would



Map 7.1: The mountain blocks

become kaitiaki (guardians, trustees) for the taonga on behalf of ‘the tribes of Tongariro’. We take this to mean all the tribes of te kāhui maunga. Those seven would hold the mana tangata to the taonga in all matters thereafter and be responsible for ensuring the sanctions around them were maintained.<sup>114</sup> This was a critical part of the decision to place ngā maunga tapu into the protective custody of Pākehā law. Under that law, seven chiefs would exercise their authority and control to maintain the tapu of the maunga. This was necessary because of the legacy of unauthorised intrusion and breaches of the tapu of the maunga.

The evidence of what took place in the court supports this oral tradition, albeit with a slight variation. Because the three mountains spanned two separate parent blocks – Ōkahukura in the west and Rangipō North to the east – separate titles were necessary for each side when subdivided out in the court. In February 1886, the Tongariro 1 and Ruapehu 1 blocks were subdivided out of the Ōkahukura block on the application of Keepa Puataata, who handed up the same list of seven names for each of the two blocks. The Ruapehu 1 block was a wedge-shaped quadrant and defined by a three-mile radius from Paretaitonga (see map 7.1). Tongariro 1 was made of two interconnecting half-circles measured two miles from the highest points of the Tongariro and Ngāuruhoe mountains. Tongariro 1 was measured at approximately 7,000 acres and Ruapehu 1 at 3,650 acres.<sup>115</sup>

Further subdivisions followed, extending the number of chiefs named in connection with the maunga. The Tongariro 2 and Ruapehu 2 blocks were subdivided out of Rangipō North on the application of Mita Taupopoki (kaiwhakahaere for several hapū<sup>116</sup>), who also provided two different lists of seven names to the court. These two blocks were mirror opposites of the 1 blocks previously subdivided. Ruapehu 2 was estimated to contain 4,876 acres and Tongariro 2 approximately 6,949 acres. Before the court made the order for Ruapehu 2, Wīneti Paranihi, and Paurini Karamu of Ngāti Waewae challenged the list Mita handed up. Both chiefs wished to have their names added. However, Horonuku, who was present in the court, agreed to add Wīneti, but not Paurini. The court then



**Mita Taupopoki, circa 1905. Taupopoki was the kaiwhakahaere for several hapū during the subdivision of the mountain blocks.**

issued its interlocutory orders. The order for Tongariro 2 passed without challenge.<sup>117</sup>

The Ruapehu 3 block was then created after 150 acres was subdivided out of the nearby Mahuia block. This block sat between the Ruapehu 1 and Waimarino 1 blocks and, like the others, was ‘to be inalienable’.<sup>118</sup>

It is important to highlight that, although they are not



Wineti Paranihi and Kuini at Pāpakai

necessarily a verbatim account of all that took place, the court minutes contained no indication that these blocks would be handed over to the Crown at a later date. These were simply orders to subdivide the mountains out of their parent blocks; orders which remained in place for the next 18 months until further subdivisions took place. Be that as it may (as we discuss later – see section 7.6.2(1)), however, it was reported in the press in February 1887 that Ngāti Tūwharetoa had

expressed in the Land Court their desire to make a free gift to the Government of Tongariro, Ruapehu, and Ngauruhoe Mountains . . . for the purpose of establishing a national park.<sup>119</sup>

This announcement took place after a kanohi ki te kanohi (face-to-face) meeting between the Native Minister and Horonuku Te Heuheu in February 1887, which we discuss below.

**Eruini Paranihi and Wineti Te Tau Paranihi**

*Eruini and Wineti were the sons of Paranihi Te Tau, a rangatira who was both Ngāti Pikiāhu and Ngāti Waewae. Wineti's mother was Paranihi's first wife Rihī Tapatu Parehenoa. Eruini's mother was Hingaawatea, Rihī's sister and Paranihi's second wife.<sup>1</sup> After the Ngāti Waewae migration to Te Reureu, Wineti was sent back to Rangipō and Ōkahukura while Eruini remained at Te Reureu.<sup>2</sup> When Paranihi died in 1858, the mantle of rangatira was placed on both brothers. Their names appear in three of the mountain blocks: Wineti in Ruapehu 1 and Ruapehu 3, and Eruini in Ruapehu 2.<sup>3</sup>*

As we can see, the owners' lists for these blocks had Horonuku's name common to each. Some names appeared twice, as in the case of those listed for Tongariro 1 and Ruapehu 1. In others, the name appeared only once. As tribal history reported, though, seven chiefs became the kaitiaki of these taonga. That was given effect through the title system. But because the mountains were divided into separate titles, seven kaitiaki were installed in each (except for Ruapehu 3), producing 19 different names altogether. These chiefs represented the different tribes of the takiwā. Separating the maunga out of the Ōkahukura and Rangipō North blocks was an indication of the significance of the maunga as a taonga to ngā iwi o te kāhui maunga; knowing the ease with which land could pass out of communal ownership through the purchase of undivided interests, placing the mountains under the care of the chiefs was perhaps seen as a way of safeguarding them. Significantly, James Cowan's account of the so-called gifting of the peaks begins with a rather poignant passage describing Horonuku's concern along precisely those lines:

After other areas of Taupo-nui-a-Tia had been dealt with by the Judge, Major Scannell, the question of the apportionment and disposal of the mountains Tongariro, Ngauruhoe

and Ruapehu came up for settlement. When this subject was being discussed, Mr Grace noticed that the old chief looked troubled – *pouri*.

At the adjournment the two of them went out on to the verandah of the court building, and then Te Heuheu told his friend that he was disturbed in mind about the future of his sacred mountains.

If . . . our mountains of Tongariro are included in the blocks passed through the Court in the ordinary way, what will become of them? They will be cut up and perhaps sold, a piece going to one *pakeha* and a piece to another. They will become of no account, for the *tapu* will be gone. Tongariro is my ancestor, my *tupuna*; it is my head: my *mana* centres round Tongariro. My father's bones lie there to-day. You know how my name and history are associated with Tongariro. I cannot consent to the Court passing these mountains through in the ordinary way. After I am dead, what will be their fate? What am I to do about them?<sup>120</sup>

Whether or not reference was made to 'the apportionment and disposal [allocation] of the mountains' in so many words, the prospect of the piecemeal loss of the maunga had clearly occurred to Te Heuheu and was alarming to him. Cowan portrays him as anguished, saying that he was 'troubled', 'disturbed in mind', and 'pouri' (which in Maori conveys far more than just 'sad' – perhaps, rather, 'heavy of heart, mind, and spirit'). Te Heuheu's reiteration of the significance of the maunga, in terms particularly evoking his close personal identification with Tongariro, is compelling: to think of the maunga being cut up, and perhaps even at some future date being exchanged for money, with 'a piece going to one *pakeha* and a piece to another', was in his eyes to do them an unspeakable violence and indignity. How, then, to preserve the *tapu* and integrity of the maunga, and particularly their peaks?

Under Pākehā law, there was no option for Māori land ownership other than to award title in the names of individuals. The only hope for the tangata whenua was that these 19 rangatira would be able to act as kaitiaki for the various hapū affected. Alongside that, it is important to remember that Ngāti Tūwharetoa entered

13 19/3/86 Taupō Rangipo North

estimated area 1118 acres  
No 1 Block - List of names handed in by Mito Taupōpōki for hapu N' Te Rangiuawao  
- List read out in Court -

estimated area 14,839 acres  
No 2 Block - N' Te Mahau list read - N' Te Ika list for No 2 Block read - same list applying to Nos 5 & 7. This list was handed in by Nataraka 2nd list handed in by Pukutōhi Patumoana  
- No 1 list read & passed -  
- No objectors -  
- No 2 list read -  
Some names objected to which it was agreed should be struck out -  
Court struck out same accordingly  
- No 2 list passed -

List of names for hapu N' Ngauru handed in and read in Court - list handed in by Pukutōhi Patumoana  
- No objections names passed -

List of names for hapu N' Hikairo handed in by Mito Taupōpōki - (same Block No 2 also No 3 Block  
- List read no objectors name passed -

List of names handed in by Mito Taupōpōki for N' Pōroto read and passed

List of names handed in by ~~Paurini Karamu~~ <sup>Winieti Paranihi</sup> for N' Pōroto  
List read and passed -

List of names handed in by Paurini Karamu for hapu N' Pōroto  
- List read and passed -

List for N' Rākeipōho handed in by Mito Taupōpōki  
- List read and passed -

List for N' Rākeipōho handed in by Winieti Paranihi

Native Land Court records of the subdivision of the Rangipo North block, 19 March 1886

19/3/66 86 Taupouaitia Rangipo North. 14

Lists of Names for hapu K' Kiriteatia handed in  
by Mito Taupouaitia (No 2 Block)  
- List read and passed -  
- Lists for No: 2 closed -

No: 3 Block - estimated area 12,669 acres  
List of names for K' Hinewai handed in  
by Mito Taupouaitia -  
K' Mahau list same as passed for No 2  
- List read and passed -  
K' Hittaino list - for this Block handed in by  
Mito Taupouaitia - read and passed -

No 5 - Blocks - estimated area 7360 acres.  
Lists handed in for K' Te Mahau and  
K' Te Ika already passed

No: 7. Block - estimated area 9403 acres.  
The same hapus as above lists.  
handed in & passed -

No 4 Block - estimated area 5578 acres -  
Lists handed in for K' Rangikitua & K' Kowhiti  
handed in by Winita Parauhi -  
Te Mahau list read and passed.  
Winita's list for Rangikitua  
read and passed.

Ngakawau handed in list for K' Rangikitua hapu  
- List read and passed -

Lists of Names for hapu K' Kowhiti read in Court  
one handed in by Mito Taupouaitia and  
one by Hori Te Iauri -  
- Lists read and passed -  
- Lists closed -

Native Land Court records of  
the subdivision of the Rangipō  
North block, 19 March 1886



15 19/3/86 Taupōmātao Rangipo North

Block No 6 Rangipo North.

estimated area 29,723 acres.

List of Names handed in for hapus N. Potae &  
M. N. Mahau by Winita Paraniki  
- List read and passed -

List of N. Waewae hapu handed in by  
Winita Paraniki  
- List read and passed -

- Orders -

Court ordered that Certificates of Titles for Ruapehu No 2  
Tongariro No 2 - Rangipo North No 1 -  
Rangipo North No 2 - do No 3. No 4 No 5 &  
No 6 <sup>4-1000 1 should prove</sup> in favor of several persons whose  
names have been handed in to-day  
on properly certified plans of sub-division  
being deposited in Native Land Court  
Office Auckland.

For names see pages 31 to 48, 1104 to 1189/1346

Court adjourned until  
- 9.30am 20<sup>th</sup> March -

- Court opened 9.30am 20<sup>th</sup> March -

Waihi Karakaharua Block - estimated at about ~~2000~~ 5000  
acres. Sketch plan produced

Mita Tauripotohi - said he appeared on behalf of Te Heuheu  
Tukino - asked that Court ascertain if  
awards this land to N. Turumakina & others

Te Heuheu Tukino (sumu) I know this Block shown  
Fee 22/- 2mg on plan - I know the boundary -  
If the boundaries are correct as marked  
on plan -

This land belongs to ancestor Turumakina

Native Land Court records of  
the subdivision of the Rangipo  
North block, 19 March 1886

the court process on the strength of Ballance's undertakings that a committee structure for the administration of (and decision-making about) tribal lands and affairs was imminent.<sup>121</sup> It is likely, therefore, that Māori believed they would also be able to exercise their rangatiratanga through district and block committees, thereby avoiding the piecemeal alienation that would lead to a loss of the tribe's authority.

At this moment, we turn to Ngāti Tūwharetoa evidence to determine why the 19 rangatira were chosen. According to George Asher, the rangatira installed as kaitiaki were charged with the responsibility of retaining the taonga in Māori possession forever. This was established in cross-examination during our hearings:

**Ms Sykes:** . . . there was no suggestion that those Trustees owned the mountain . . . rather that they would be stewards for and caretake for the proper descendants of the maunga?

**Mr Asher:** I think that would be the proper assessment of that . . .<sup>122</sup>

Ngāti Tūwharetoa oral traditions also confirm that the kaitiaki encompassed the leadership of the period and were chosen on the basis of whakapapa to represent the hapū around the maunga. Whakapapa presented in evidence showed how closely related these rangatira were.<sup>123</sup> Horonuku's name appeared in each of the five titles, and his son Tūreiti, an uncle, Tōkena, cousins Hoko Pātena and Tairiri, and a nephew, Te Whatāiwi, were also listed in one or more blocks.

The intention was to be inclusive and to bring in those who could represent the iwi on the basis of tikanga. According to the claimants, those represented were not only the hapū of Ngāti Tūwharetoa on the northern side of the National Park but also those linked to the south, such as Ngāti Whiti, Ngāti Tama, and Ngāti Waewae.<sup>124</sup> Hataraka Te Whetu and Wīneti Paranihi are two clear examples. The senior Ngāti Tūwharetoa line from Tūrangitukua was also represented in the lists by way of Kīngi Te Herekīkie, Keepa Puataata, and Matuaahu Te Wharerangi.

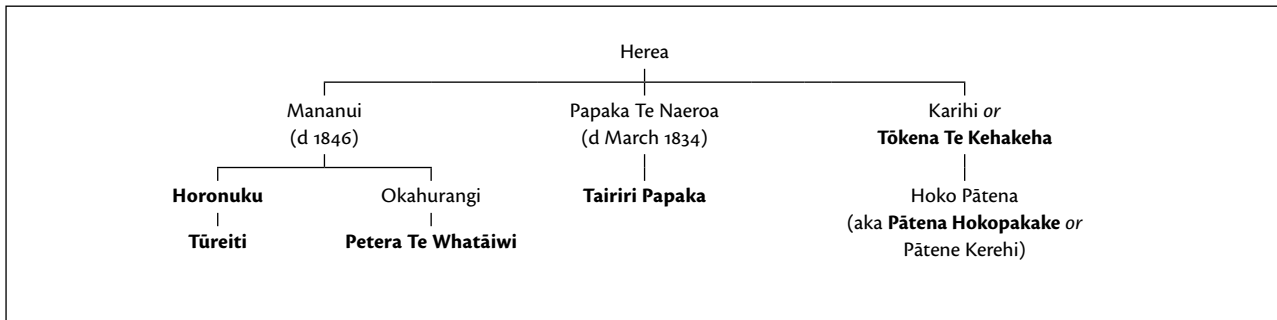
By installing these 19 rangatira as kaitiaki, the tribal komiti adopted an inclusive approach. Traditional rivals



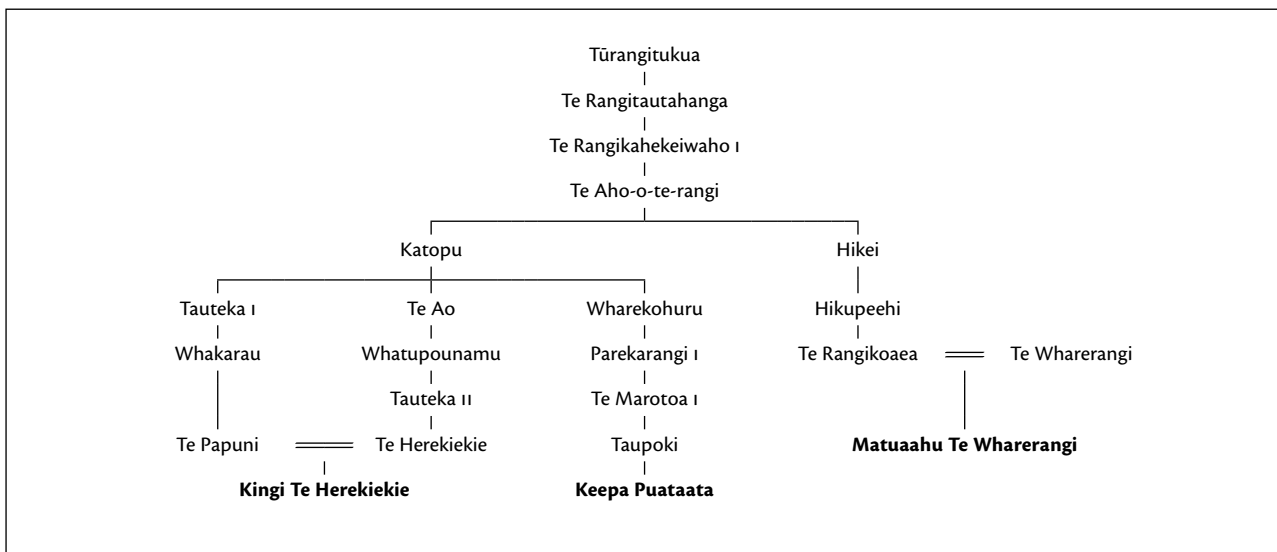
**Tōkena Te Kehakeha (or Kerehi)**

?–1904

*The son of Herea and his second wife Tokotoko, Tōkena Te Kehakeha escaped the 1846 landslide at Te Rapa in which his elder brother Mananui and over 50 of his kinsmen perished. In 1852, Tōkena was baptised by the first Catholic priests in the area, and he married Irena Moe that same year. In 1869, he fought at Te Pōrere, where he escaped with his nephew Horonuku during the siege, only to surrender some days later.<sup>1</sup> Tōkena was said to be over 90 years old when he died.<sup>2</sup>*



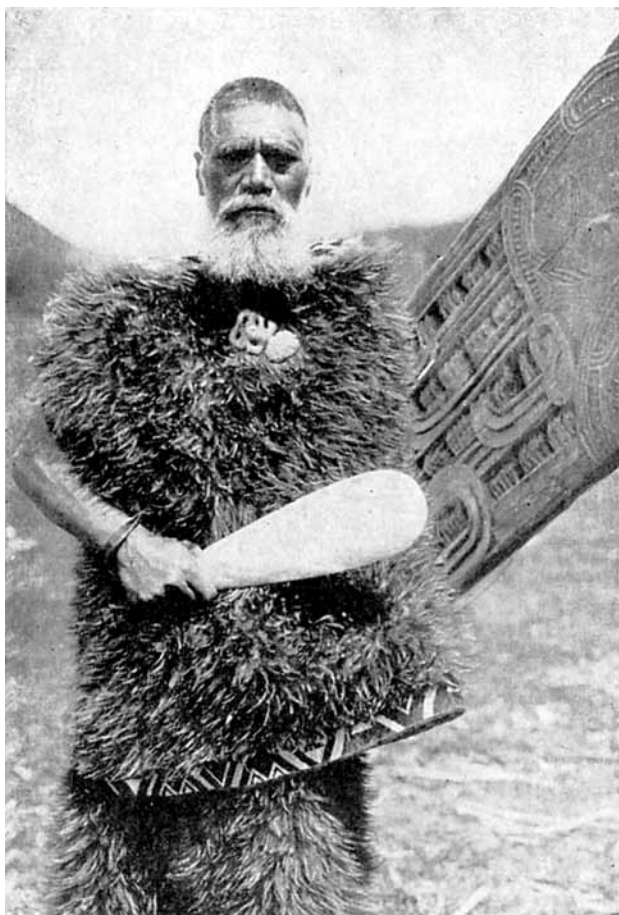
Ngāti Tūwharetoa whakapapa from Herea



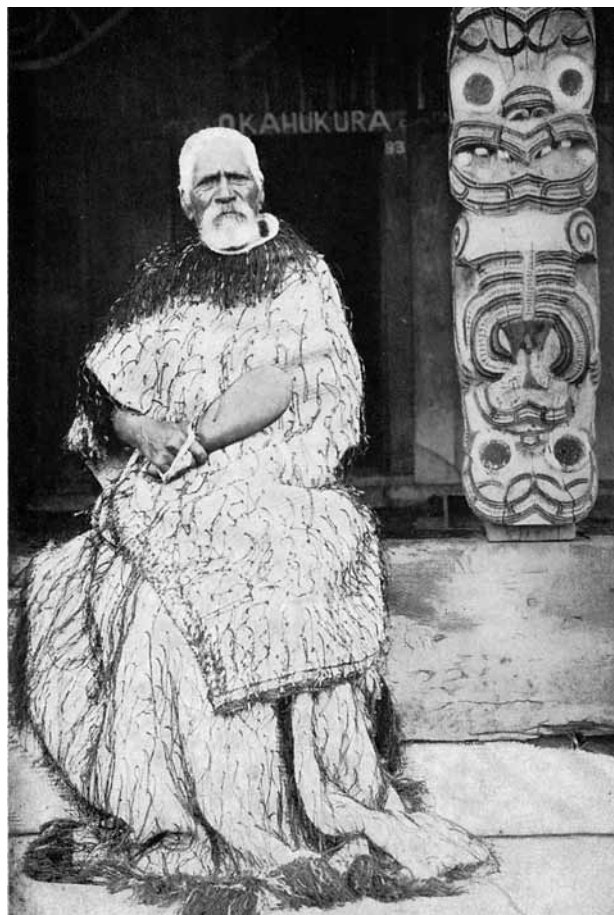
Ngāti Tūwharetoa whakapapa from Tūrangitukua

to the power and authority of Horonuku Te Heuheu, such as Tōpia Tūroa and Te Huiatahi, were also included in the ownership lists. In fact, as we discussed in chapter 5, the clash with the Waimarino hearing meant that some of those chiefs were not even present when the mountain blocks' ownership was determined.<sup>125</sup> The komiti, of which Horonuku was chair, acted to safeguard those chiefs' interests and to ensure, as 'Te Taumarumarutanga' stated, that no one person would hold the mana over the maunga.<sup>126</sup>

Nevertheless, it appears that Te Heuheu may have had lingering doubts about the safety of this approach: there was no firm guarantee that the named owners would be treated as trustees and left alone by, for instance, private interests with an eye to business. Even if not in the immediate, there was the spectre of the mountains' possible privatisation in generations to come: 'After I am dead, what will be their fate?'<sup>127</sup> (Indeed, private purchase was an eventuality that worried the Crown, too.) Nor was there



Petera Te Whataiwi, Waihi, Lake Taupo, circa 1905



The elder Wairehu in front of Okahukura

any guarantee that Ballance's undertakings about commitments would come to pass.

We therefore now return to the issue of 'tuku', because, as we have seen from Horonuku's letter, this also appeared to form part of the tribe's strategy.

Horonuku Te Heuheu's letter, as identified above, used the word 'tuku' to describe the arrangement he believed he had agreed to. Mr Winitana translated this, in the context of the letter, to mean the 'releasing of that land to be held inviolate'. That is, Te Heuheu was employing the word

'tuku' to express a desire to release the taonga into the protective custody of Pākehā law.

Certainly, Horonuku would have understood that such an arrangement would lead to change in relationships, rights, and obligations in respect of these mountains. The exact nature of this change was still uncertain at that time. The concept of tuku has already come under detailed Tribunal scrutiny in the Muriwhenua Land inquiry. That Tribunal concluded that when such a transaction occurred in a traditional context, it involved land being



Puhaorangi 1, Waihi, Tokaanu

'given to bring people into the hapu for the hapu's long-term advantage'. The recipient had possession and use of the land but authority, in some measure, still rested with the giver.<sup>128</sup> The Te Tau Ihu Tribunal also investigated the matter of tuku and agreed that it had traditionally involved 'the creation of a reciprocal relationship between the parties concerned' where 'the donors of rights to land expected benefits to flow back to them over time'. That said, the Tribunal observed that 'there were many permutations in the circumstances and practice of tuku': where strangers were invited in to an area where they had not formerly had any rights, significant rights might persist for the kaituku (donors), but there was debate over whether 'the donor (kaituku) continued to enjoy

undiminished rights in the land or taonga handed over, if it were done from position of weakness'. Nevertheless, even in the latter scenario, the Tribunal noted that there was a difference between tuku, where lands were 'given', and raupatu, where lands were seized and 'the mana of the former occupants was ceded'. Also material to the discussion of any particular tuku, said the Tribunal, was the mana of the rangatira involved in the transaction. In short, there was what might be described as a 'sliding scale of relative donor and donee rights.'<sup>129</sup> Overall, however, the Tribunal concluded:

While tuku took many different forms, there is extensive evidence available to show that under Maori custom it always

conveyed rights and imposed obligations on both sides that continued unless deliberately abandoned.<sup>130</sup>

It also recorded its view that ‘tuku were quite capable of being understood as permanent or long-term arrangements so long as the terms of the original agreement continued to be honoured and the mana of the donor upheld’. Related to that issue, the Tribunal noted a suggestion that if the conditions of a tuku failed to be observed, the land concerned might revert to the original owners.<sup>131</sup>

In an environment where Māori land tenure was being converted to European title, the leadership of Ngāti Tūwharetoa needed to find a way to ensure that it obtained the benefits of a Crown stake in the mountains, whilst still securing mana over the mountains. If the Crown obtained an interest in the mountains, it would encourage cooperation in governance and the enforcement of tribal sanctions. The solution arrived at by the paramount chief in 1886, on the evidence of the letter and information supplied to us by Ngāti Tūwharetoa’s customary witnesses, was to seek an arrangement that mirrored as closely as possible the concept of tuku, to bring the Crown into the title of the mountains. Ngāti Tūwharetoa would retain a stake in the mountains and the associated mana, but the Crown would obtain a legal stake as well. When the Crown cross-examined Mr Winitana, he explained his understanding as follows:

**Mr Doogan:** The first question, the Kaituku, in handing over, implicit in that there is an acknowledgement that something has been given over to the Crown, is that correct, is that your understanding?

**Mr Winitana:** Yes.

**Mr Doogan:** . . . in your view why was he seeking to bring the Queen, the Crown into an interest in the mountains?

**Mr Winitana:** To protect them.<sup>132</sup>

In receiving an interest in the taonga, the Crown was forever bound to the tribe, in partnership, to do everything to ensure its future protection, unless or until one

or other of the parties involved gave notice of wishing to terminate or modify the agreement. That was the tikanga associated with the practice of tuku. In this instance, the tuku involved title-sharing in the maunga, to enable Ngāti Tūwharetoa to cement its authority in partnership with the Crown, thus achieving its overriding objective of protection for the peaks.

What evidence do we have to sustain this conclusion? We regard two pieces of documentary evidence as decisive on this matter. This evidence demonstrates a clear divergence over the concept of the tuku.

The first piece of evidence is a record of minutes from a meeting between Tūreiti and the Minister in Charge of Tourism and Health Resorts, William Nosworthy in 1920. Tūreiti requested this meeting after Lawrence Grace alerted him to the fact that the Crown had abolished the Tongariro National Park Board, and with it, Tūreiti’s place on it. In an effort to restore his position, Tūreiti met with Nosworthy, and recounted events surrounding his father’s tuku to the Crown. Tūreiti explained that the court placed the mountains in the ownership of ‘the Chiefs of the different tribes’. The Native Minister had asked to purchase the mountains ‘so that they might be made into a National Park’, but his father, Horonuku, had refused the request, explaining that he could not sell ‘because his prestige depended on his retaining these mountains’. Rather, he had, in turn in January 1887, ‘asked Mr Ballance to have an Act passed by Parliament making sacred the peaks of those mountains’. However, the court apparently told Horonuku (whether before or after his discussion with Ballance is not clear from Tūreiti’s account) that it had ‘no power to set aside’ the peaks as sacred. This led to further discussion, including a meeting in September 1887 with the under secretary, Lewis, at which the latter had told Horonuku that (in Tūreiti’s words): ‘the Prime Minister had agreed that the portion asked for my Father be set aside for himself [Horonuku], and should be held sacred’. In return, however, Lewis had relayed ‘a request . . . that my father should agree that the Queen be put into the Title along with himself [Horonuku], so that the Crown should be represented in the Title of that partition.’<sup>133</sup>

The notion of co-ownership of the mountains is corroborated by a second piece of documentary evidence. During a court hearing in 1908, Tūreiti had already made the following enlightening statement:

In the Tongariro National Park the only person included with me in the title is the King of England.<sup>134</sup>

This evidence confirms that Tūreiti Te Heuheu had a consistent belief over time that his father had invited the monarch into the title of the mountains. The Tribunal regards this evidence as exceedingly significant in establishing what Ngāti Tūwharetoa's approach had been to the negotiations. It demonstrates that, despite the Crown's contention, there was indeed a fundamental misunderstanding over the concept of the *tuku*.

Putting this persuasive documentary evidence aside, there is a more fundamental reason why an outright gift of the mountains was improbable. Within the world-view of Māori, it would be anathema for a tribe to give away the very essence of their identity. Mr Winitana recalled to us the ascent of the maunga by the *tohunga* Ngātoroirangi. It was, he said, both a physical and a spiritual journey, generating understandings that have become part of the *wānanga* lore handed down to Ngātoroirangi's descendants.<sup>135</sup> As a result, all three of the mountains 'are physical representations of spiritual understanding'. That being the case, witnesses told us, it is inconceivable that the tribe would allow them to be gifted into the ownership of someone else, and especially to Crown.<sup>136</sup> As Mr Winitana said:

in reference again to the philosophy of gifting from our point of view, the mountains are not heirlooms like, say, a hair comb or weapon of some sort that can be gifted on. They are again, tribal emblems, and all that this means from the land to the sky, to the summit and back again. Not only could Horonuku not gift them because he singularly didn't own them, but the mountains philosophically are 'ungiftable'. The thinking is back to front. Tūwharetoa do not own the mountains. The mountains own Tūwharetoa.

In my opinion, Horonuku, who would have been entirely

au fait with all of the above, had no intention of gifting the mountains. He was instead trying to protect them because of everything they meant to him and his people.<sup>137</sup>

Indeed, as confirmed in evidence, no other *iwi* in the history of New Zealand has transferred its mountains by way of 'gift' to the Crown.<sup>138</sup>

#### **(4) Accounting for the Crown's misunderstanding**

Commenting on the evidence before the Tribunal, the Crown concluded:

Theoretically, it is certainly possible for misunderstanding to arise between cultures over the concepts 'tuku' and 'gift'. However, in this case the Crown is not convinced that the evidence in fact demonstrates such a 'cultural chasm'. There was broad agreement on a number of matters about the respective intentions of the Crown and Te Heuheu when the gift was made and the National Park was subsequently established. The Crown accepts that reciprocal obligations arose. The real issues in dispute appear to go more to the extent to which the outcomes kept faith with intentions of the founders.<sup>139</sup>

From an analysis of its submissions, we understand the Crown to argue that the deed of conveyance signed by Horonuku Te Heuheu, the letter he wrote that day to the Native Minister and the applications to the court for the vesting of peaks all point to a 'common understanding' of the arrangement.<sup>140</sup> In reaching this conclusion, the Crown cited five main pieces of documentary evidence drawn from the period leading up to 23 September 1887, which was the date when all three events occurred.<sup>141</sup> We look at each of those five pieces of evidence in turn, to examine to what degree they might be considered as indicative of a developing 'common understanding' between the Crown and the *tangata whenua* (and notably Horonuku Te Heuheu).

First, the Crown cites correspondence between Lawrence Grace and Ballance dating from January 1886, the content of which, according to counsel, suggests that Horonuku was aware of 'the Crown's desire to have the

peaks made inalienable reserves.<sup>142</sup> Among this correspondence is the letter that Grace wrote from Hawke's Bay on 6 January, in which he records that Ballance had earlier expressed to him a 'great desire' that (among other things) 'the Ruapehu, Ngauruhoe and Tongariro mountains . . . be made inalienable reserves.'<sup>143</sup> Other 'desires' of the Minister, according to Grace, were the purchase of land for the main trunk railway; settling Taupō Māori permanently on 'portions of their tribal lands'; and getting the court accepted into the Taupō district. Grace's January letter reported to Ballance that he had been to Taupō and taken 'opportunities of repeating to the Natives the above sentiments' which 'you had yourself and through your officers previously laid before them.' As the Crown notes, this comment suggests that not only did Grace have discussion with Taupō Māori about Ballance's various objectives but that some or all of those objectives had already been outlined on previous occasions to (unspecified) members of the tangata whenua. That said, we have no way of knowing how the ideas were put across – by Ballance, Grace, or anyone else – nor to whom. Nor do we know what emphasis had been laid on Crown acquisition of the mountains as against any of the other objectives listed. What is probable, however, is that on each occasion matters were discussed in te reo Māori rather than English, with the assistance of an interpreter where necessary. There is no mention of a national park in Grace's letter, so in any discussions about the maunga that may have taken place, the matter hinges on how the concept 'inalienable reserve' was conveyed and understood. It is possible that Grace used the phrases 'rāhui whenua' and 'whakatapua' – phrases which eventually appeared in Horonuku's letter – but we cannot be sure. While such phrases, like the term 'inalienable reserve', would convey the idea of protection, we cannot presume, at this early stage, a 'common understanding' about exactly what would happen to the maunga, and certainly not about the proposition of gifting the peaks for a national park. The latter may already have been in the Minister's mind, but we have no indication that the idea had been expressed to the tangata whenua.

Secondly, also from amongst the correspondence of January and February 1886, the Crown cited a telegram

from under-secretary Lewis to William Grace, written on 27 January, 13 days after the opening of the Taupōnuīatia court:

Hon Native Minister wishes you to take steps to have Ruapehu and mountains round it made a reserve for public purposes – The Natives will, probably, consent to this being done without the land being purchased.<sup>144</sup>

William reported back, on 11 February, that, in respect to 'the mountain portion' of Ōkahukura and Rangipō North, 'we are endeavouring as instructed to make reserves with good prospects of a general assent.'<sup>145</sup> There is no indication that the tangata whenua understood that the reserves were to be 'for public purposes', even though that was the Crown's intention and understanding.

Thirdly, the Crown cited James Cowan's account of how the 'gift' came about, adjudging it to be, in all probability, 'reasonably accurate.'<sup>146</sup> We have already discussed the first part of that account in the context of noting the paramount chief's anxiety about the prospect of the peaks being cut up and then perhaps one day being sold off piecemeal. The second half of the passage continues:

Mr [Lawrence] Grace agreed that it was undesirable to permit these famous mountains to be dealt with in the ordinary way. They should be regarded as tapu from private hands. 'Now,' said he to the old chief, 'why not make them a tapu place of the Crown, a sacred place under the mana of the Queen? That is the only possible way in which to preserve them for ever as places out of which no person shall make money. Why not give them to the Government as a reserve and park, to be the property of all the people of New Zealand, in memory of the Heuheu and his tribe?'

'Yes,' said the old man; 'that is the best course, the right thing to do! They shall be a sacred place of the Crown, a gift for ever from me and my people.'<sup>147</sup>

Cowan's rendering of this story is not an account that dates from the time the event took place but, as we have already noted, he explained in his preface that he owed 'much of the historical data' in his book to Lawrence and



John Grace.<sup>148</sup> We can therefore assume (since Lawrence was directly involved in the events described in the passage) that it is largely Lawrence's account, relayed through Cowan. We can also assume, since all three Grace brothers had been bilingual since childhood, that the exchange described in the account originally took place in te reo. The task is how to arrive at some knowledge of the content of that discussion through the medium of Cowan's text, filtered as it was through translation and through the perceptions of those conveying the information (Lawrence Grace and Cowan himself). One indication, it seems to us, is to consider the overall impact of the text. What are the strongest points to come through? We have already noted Te Heuheu's overriding sense of anxiety and concern about the maunga, in the first half of the passage. Particularly prominent in the second section quoted above are the notions of 'tapu' and 'sacred'. The peaks are to be kept 'tapu from private hands', 'a reserve and park', 'places out of which no person shall make money', 'a sacred place'. Taking this together with the passage discussed earlier, what comes through exceedingly clearly is that both parties were keen to preserve the peaks from private ownership. To that extent, then, there was certainly a common understanding.

What is less clear from the account is that there was, in fact, agreement over the mechanism for achieving this. Grace (through Cowan) refers to the peaks being 'given' to the government and coming 'under the mana of the Queen'. Flowing from that, the account has Horonuku agreeing that they will be 'a gift forever' from him and his people. However, there are two aspects of this description that raise doubts in our minds. First, we have already noted that the iwi and hapū associated with the mountains did not generally regard any mere mortal – be they chief, monarch or otherwise – as being able to hold mana over the mountains. Secondly, we have also noted that even though Pākehā almost invariably translated 'tuku' as 'gift', there was a lack of congruity between the two terms. Looking again at the account, with those considerations in mind, it seems to us that only a very slight change of vocabulary would paint a rather different picture: if the peaks were understood to be under the protection of the

Queen, and tukunga whenua rather than gifted outright, then the proposition takes on a different aspect – especially given the reference to them becoming 'the property of all the people of New Zealand, in memory of the Heuheu and his tribe', which carries a notion both of shared interest (Māori being part of 'all the people of New Zealand') and of Māori having an ongoing 'moral stake'. We readily acknowledge that this is again speculation, but it goes to underline that there is room for a degree of doubt about how much 'common understanding' there in fact was, beyond the clear, very strong, and mutually expressed desire to protect the mountains and keep them out of private ownership.

Fourthly, William Grace reported in early March 1886 that

an arrangement has been made with Te Heuheu and his fellow Chiefs to reserve in Okahukura circles of 2 and 3 miles radii around the mountains of Ruapehu, Ngauruhoe, and Tongariro which are intended in accordance with a suggestion made by the Hon the Native Minister as public recreation grounds.<sup>149</sup>

Once more, we have the idea of land being reserved out of private ownership, which accords with other accounts of Te Heuheu's (and the Crown's) views. Not clear, however, is where the particular idea of the peaks becoming 'recreation grounds' fits in. Was this suggestion actually conveyed to Horonuku and the other chiefs, or is this just an 'aside' by William, recording the Native Minister's intentions? To our mind, the text leaves room for doubt. It is certainly indicative of the Crown's thinking, but we are less convinced that it can be taken as evidence that the idea had been put to the chiefs – still less accepted by them, given the evidence cited earlier about the tangata whenua's strong opposition to the mountain-climbing exploits of people such as Dieffenbach.

Fifthly, William Grace reported a year later, in March 1887, that,

in passing the Rangipo North Okahukura and Mahuia Blocks through the Court, arrangements were completed with the

native owners (largely by the assistance of Mr LM Grace) whereby certain reservations, were made of the mountain tops of Ruapehu, Ngauruhoe and Tongariro . . . The names of Te Heuheu and certain subordinate chiefs were inserted in orders of Court, being selected by, and from amongst the owners of each block, for the purpose of executing a deed of trust, or other deed deemed best fitted to carry out the intention for which the reservations were made, viz: for 'Public Recreation.'<sup>150</sup>

This piece of evidence is, we feel, significant in that for the first time it mentions the mountain tops being held in 'trust'. We have already seen how the idea of a 'reservation' corresponded to notions of tapu and rāhui under which traditional mechanisms could be used to set aside and protect special places. We also know that the chiefs saw themselves as being put into the mountain titles on behalf of their iwi and hapū, and that in this capacity it would be their role to act as kaitiaki or 'caretakers'. Thus, from a Māori viewpoint, they would already hold a duty of trust in respect of protecting the maunga. The legal position was, however, quite different. As we have already seen in chapter 5, under the native land law of the time the chiefs could hold the peaks only as outright owners. This meant that for a duty of trust to legally exist, a further step was required: the land would have to be formally vested in a trust. The Crown knew that this was the case, but we are not convinced that the chiefs understood it (still less the tangata whenua more generally). Furthermore, we note that William's summary of the 'arrangements' no longer makes reference to the peaks being conveyed to the Crown. Obviously that would have been a 'given' in the Crown's understanding of what was to happen, but did 'the native owners' necessarily share the same understanding? And, again, was there explicit discussion of the 'reservations' being intended for 'Public Recreation'? William Grace says only that it was the intention but was it a shared one?

It seems relevant at this point to give some consideration to the situation regarding trusts, and what was possible in terms of a practical arrangement that might have met the needs and aspirations of both parties, Crown and

Māori, at the time. It is patently obvious that both sides sought to protect the mountains from private ownership. It also seems evident that both parties saw themselves as having a role in the mountains' future. From the Crown's perspective, the path to be followed was clear: the chiefs would be put into the title; they would convey the maunga to the Queen, to be held as a reserve for the people of New Zealand as a whole; and a trust would then be created to administer matters relating to the reserve. From the chiefs' perspective, however, did this new talk of a trust lend weight to a perception that the Queen could be involved in looking after the maunga alongside themselves?

The Public Domains Act 1860 made it clear that any land set apart as public domain was to be regarded as Crown land, which the Governor, as the Queen's representative in New Zealand, was authorised to 'manage and administer'. By Order in Council, the Governor could delegate to some other person any of the powers conferred on him by the Act.<sup>151</sup> In 1865, the latter provision was amended to allow for delegation of powers to more than one person, and under the Public Domains Act 1881, the Governor's powers of delegation (with certain exceptions) were extended to cover 'any person or persons or body corporate.'<sup>152</sup> Thus, the implication is that the rights of 'the Crown', in respect of public domain land, would be administered by or through the Governor. There is no indication of what would happen if the Governor chose not to undertake that duty of care.

This brings into the frame the matter of whether the Queen herself could be directly involved. Joseph Chitty's comprehensive work about British law relating to the prerogatives of the Crown, published in 1820, gives to understand that the monarch could hold land as a 'corporation sole', and could also (presumably by this means) hold land as a tenant in common with a subject, 'to have and hold to them and their heirs'. He or she could not, however, be a joint tenant because 'where the [monarch]'s right and that of a subject meet at one and the same time, the [monarch]'s shall be preferred.'<sup>153</sup> In theory, then, there does seem to have been the possibility of the monarch being a landholder along with one of his or her subjects. However, coming back to the fact that in New Zealand

the Queen appointed a Governor to be her representative in all matters, it seems most unlikely that, in practice, she would take on a direct interest in land here. Instead, to convey land in New Zealand to the Queen was effectively to convey it to the 'corporate New Zealand Crown'.

In terms of trusts, Crown counsel submitted in closing submission that 'the vesting of ownership in the Queen on Trust was rejected as not legally possible'.<sup>154</sup> Claimant counsel, however, in generic submissions on the 'gift', rejected this assertion, saying that the Crown can be a trustee, 'especially if the Trust is to be set up pursuant to legislation'.<sup>155</sup> We have found nothing to shed further light on the matter, other than a clause in the Public Trust Office Act 1872, which provides for the Governor in Council to

place in the Public Trust Office *any property held in trust* for the benefit of . . . public bodies or communities *by the Crown or by the Governor*. [Emphasis added.]<sup>156</sup>

In terms of the possibility of the Queen herself holding the position of a trustee, as a corporation sole, we note only that the Trustees' Power Delegation Act 1869 made it possible for a trustee living outside of New Zealand to delegate his or her 'powers of dealing with . . . lands and property to persons residing in New Zealand'.<sup>157</sup> Thus, in the event that it were possible for the Queen herself to become a trustee in the maunga, she could have delegated her powers to another, presumably to or through the Governor.

In short, whether or not formal legal advice was conveyed to the Minister to the effect that joint trusteeship between Horonuku Te Heuheu and the Queen or 'the Crown' was regarded as impossible, the Crown must have been aware that the legal picture was extremely complex – a knowledge most unlikely to have been shared by Te Heuheu. That is, in the period leading up to September 1887, the Crown's understanding of what could and would happen had been able to develop in ways which the paramount chief's had not. We will look in greater detail later at what might have been Horonuku's understandings. For the moment, we are of the opinion that the contemporary

written record says much more about what the Crown understood than what the tangata whenua (and particularly Te Heuheu) might have understood. We note the Tribunal's caution regarding the documentary record in the *Muriwhenua Land Report*:

the documentary record may be given a higher status than it deserves. Since the authors cannot be cross-examined, their opinions may appear more reliable than they are, and views may be perpetuated that in fact reflected personal agendas, temporary aberrations in public opinion or individual eccentricities. In addition, the pervasive written account presents only a European view. The understandings, the thinkings and the arguments are European, the chronicling of events is self-serving, and the repetition of opinions may be confused with corroboration.<sup>158</sup>

We consider that the Crown has relied too heavily on European views, demonstrated primarily through Crown correspondence, to deduce Māori actions in 1886. In doing so, it has likely failed to understand what Ngāti Tūwharetoa wanted to achieve by putting those 19 rangatira onto the list of owners. We agree, therefore, with Dr Robyn Anderson that there was a misunderstanding on the part of the Crown as to Ngāti Tūwharetoa's intentions.<sup>159</sup> Shared authority and ownership was at the core of the partnership envisaged by the *tuku*. Although we accept Andrew Joel's view that Lawrence Grace's involvement in the negotiations with Te Heuheu made it 'likely that government officials and ministers gained *some* appreciation of Te Heuheu's motives' (emphasis added),<sup>160</sup> our considered opinion is that the parties were talking past each other. We therefore do not agree with the Crown that Horonuku's letter, the signing of the deed, and the court application relating to the peaks are evidence of 'a common understanding'. However, there was some common ground that the mountains should be protected from falling into private ownership.

In addition to the nineteenth century historical record, however, the Crown also cited recent Ngāti Tūwharetoa statements to support its view that the tribe always intended to gift the mountains. One such statement came

in Napa Ōtimi's evidence to the central North Island inquiry, where he said that Ngāti Tūwharetoa decided:

to gift the sacred peaks of Tongariro to the nation, to be kept sacred for all people for all time. By doing so, their aim was to protect our lands and to meet the Crown's greed. A gift to all New Zealanders to be kept sacred – gifted to New Zealand for all New Zealanders but never to be touched (desecrated).<sup>161</sup>

In her submissions in reply, in our own inquiry, counsel for Ngāti Tūwharetoa stated,

As a matter of process, counsel objects to the Crown citing Mr Paranapa Otimi's CN1 evidence in its submissions . . . The Crown asked during hearing week 8 for this evidence to be placed on the record. The Tribunal directed Mr Otimi to indicate whether he consented . . . he said that he did not, for the reason given during cross-examination in Week 7, when Mr Otimi had explained that that evidence had been given before Ngāti Tūwharetoa had undertaken its traditional and oral history research, the culmination of which appeared in *Te Taumarumarutanga o Ngāti Tuwharetoa*. Mr Otimi's position was that his National Park evidence should be preferred over his CN1 evidence.<sup>162</sup>

We agree that Mr Ōtimi's National Park evidence has been informed by subsequent tribal research and should be preferred to his previous evidence given for the Central North Island inquiry.

The Crown also cited the following unattributed statement from Craig Potton's book, *Tongariro: A Sacred Gift*:

Although he was paramount chief, Te Heuheu could not transfer the lands in question without the cooperation of other Tuwharetoa chiefs. A special meeting of the Tuwharetoa was held at Rotoaira and the matter was widely debated. All finally consented that Te Heuheu would speak on their behalf and be the one to gift the land to the Crown; or as Tuwharetoa would express it: "Mau e tuku te taonga nei ki te karauna."<sup>163</sup>

Crown counsel pointed to the acknowledgements page of this book, where Potton thanked Sir Hepi Te Heuheu

and Stephen Asher for the Māori perspective contained therein. But we have no evidence before us to confirm that both men had read and authorised the actual wording of Mr Potton's text before it was published. We do not, therefore, consider it an authoritative source. Aside from that, our statement above about recent tribal research superseding previous statements applies equally to this example.

Within Potton's book, the Crown also directed our attention to the foreword written by Sir Hepi:

Welcome to Tongariro. One hundred years ago my great-grandfather, Horonuku Te Heuheu Tukino iv gifted the sacred summits of Tongariro on behalf of the Tuwharetoa to the Government to protect their tapu. In so doing he and his people established a three way bond between land, Maori and Pakeha. The gift says these sacred mountains are to be owned by no-one and yet are for everyone. My Tuwharetoa people wish the gift to be remembered for all time. The mountains of the south wind have spoken to us for centuries. Now we wish them to speak to all who come in peace and in respect of their tapu. This land of Tongariro National Park is our mutual heritage. It is a gift given many times over.<sup>164</sup>

We regard Sir Hepi's statement as a reliable source and consider it supports our conclusions above. First, we must provide some context to the foreword. Sir Hepi's foreword was written for a book commemorating the centenary of the tuku. Ngāti Tūwharetoa had marked the centenary by hosting a major celebration at the Chateau on Mount Ruapehu. Aside from the tribe, numerous Crown representatives attended to mark this important occasion. During the formal part of the ceremony, Sir Hepi spoke about his ancestor's intentions with respect to the mountains:

As a leader, Horonuku was afraid and concerned that his mana would be lost if the sacred mountains were taken. And so it was not given away, but handed over of the taonga, to be looked after by all people. He found a way to do the right thing that would ensure that the people and their mana would be preserved.<sup>165</sup>

In our view, Sir Hepi had little option but to use the word 'gift', given that he was communicating in English: there is no single English word that accurately conveys the concept of *tuku*, and this was not an appropriate occasion for him to give a lecture in semantics – 'gift' was the obvious choice in the circumstances. Yet the rest of his statement conveyed the *tikanga* that developed in 1886. That is, the mountains were to be 'handed over' into the protection of *kaitiaki* under *Pākehā* law. The handing over would establish, as Sir Hepi described it in the foreword, a 'three way bond between land, Maori and Pakeha' that Ngāti Tūwharetoa wished to be remembered for all time.<sup>166</sup>

The way that *Pākehā* New Zealanders have remembered the *tuku*, however, has failed to comprehend the true intent of Ngāti Tūwharetoa. The tribe has wanted to enlighten New Zealanders as to the fundamental misconceptions in historical accounts of the gift for some time. An English-style transfer of the mountains to Crown ownership was never intended. That was simply unimaginable. But the tribe has struggled to overturn popular belief that Horonuku Te Heuheu intended to convey ownership of the mountains to the Crown. We think this is why Sir Hepi remarked that the mountains 'are to be owned by no-one and yet are for everyone'. We agree with the claimants' closing submission that this was meant as a rebuke against the Crown's obsession with the *Pākehā* concept of ownership.<sup>167</sup> To us, the statement also reflected a century of frustration at persistent *Pākehā* beliefs. Those beliefs obscured the fundamental objective the tribe wished to achieve; to obtain the assistance of *Pākehā* law to protect the mountains for the benefit of both Māori and *Pākehā* forever.

### 7.6.2 What was agreed to and what reciprocal obligations existed for the Crown to fulfil?

With title orders in place by March 1886, nothing further was done with respect to the mountains during the year. The next significant event was a *kanohi ki te kanohi* meeting between the Minister of Native Affairs, John Ballance, and Horonuku Te Heuheu in January 1887 at Rotorua. At the meeting the two men discussed arrangements for the mountains, possibly in an effort to advance

the negotiations. Things had stalled after William Grace's over-hasty announcement in March 1886 that an agreement had been reached. From the documentary evidence available, this meeting took place in late January, at Rotorua, while Ballance was already in the region consulting about public works and the construction of the railway.<sup>168</sup>

The only account of this important meeting is provided over 30 years later by Horonuku's son, Tūreiti Te Heuheu. While there are short references to it in both James Cowan's book *The Tongariro National Park* and John Te Herekiele Grace's book on Ngāti Tūwharetoa, *Tuawharetoa*, neither of these two accounts records what was actually discussed. Given Tūreiti's account is some time after the events described, it should be acknowledged that memory can (and often does) alter over time. That is simply a well-known and frequently demonstrated aspect of human memory. However, that is not to say that Tūreiti's recollection of events is therefore inaccurate. Importantly, Tūreiti's 1920 account is consistent with his statement in the court in 1908.

As mentioned above, Tūreiti Te Heuheu met with the government in 1920 to protest his removal from the Tongariro National Park Board. In the context of his discussions with the Minister of Tourist Health Resorts, William Nosworthy, Tūreiti recounted what had happened at the *kanohi ki te kanohi* meeting with Ballance 33 years earlier. This account was an extremely important and valuable piece of evidence for the Tribunal. It provided insight into Horonuku's intentions with respect to the mountains. Although a record of the discussion translated from English into Māori, what distinguishes it from other source material is that it is an account of events that was not filtered through the mindset of any other contemporary player in the negotiations. What this account conveys in terms of Horonuku's understanding is also corroborated by surrounding documentary evidence, particularly a statement that Tūreiti made in the court in 1908. We discuss this below.

From Tūreiti's account, it appears that Horonuku Te Heuheu, John Ballance, and Lawrence Grace (as interpreter) congregated in Rotorua after Ballance asked

Lawrence Grace to arrange a meeting. In Cowan's account, another Ngāti Tūwharetoa rangatira, Hōri Te Tauri, is also recorded as having attended, which is confirmed by Sir John Grace in *Tūwharetoa* (although possibly based on Cowan's account, which Grace cites in his bibliography).<sup>169</sup> At the time of this meeting, the 19 rangatira still had equitable interests in the maunga blocks, arising from the court's interlocutory orders of February and March 1886.

## (1) *The Minister's starting point in the negotiations*

Ballance's starting point in this kanohi ki te kanohi meeting was that Horonuku Te Heuheu had previously agreed to gift ngā maunga tapu into Crown ownership. From the Crown's perspective, that was the reason why the Ngāti Tūwharetoa komiti had agreed to put the blocks in the names of Te Heuheu and 'certain subordinate chiefs'.<sup>170</sup> Whatever Ballance understood of Horonuku's kōrero at this meeting, it seems the Minister had a predetermined outcome in mind. That outcome was to secure his agreement to give the mountains to the Crown and, thus, secure agreement for the establishment of the National Park. For Ballance, this meeting represented an opportunity to confirm that arrangement with the paramount chief, kanohi ki te kanohi.

Events following this meeting substantiate this as the Minister's agenda. First, the agreement was widely publicised in the press:

Te Heu Heu and the chiefs of the Ngatitūwharetoa have expressed in the *Land Court* their desire to make a free gift to the Government of Tongariro, Ruapehu, and Ngauruhoe Mountains with the land around them as far as the level country, for the purpose of establishing a national park. [Emphasis added.]<sup>171</sup>

Published a year after the court issued interlocutory orders for the mountain blocks, this item reflected the view that Horonuku Te Heuheu and the chiefs had already expressed their desire to give the mountains to the Crown – a case of misreporting since, as we have discussed (see section 7.6.1(3)), no mention was made at the court

hearings in early 1886 of an intention to eventually hand the blocks over to the Crown, and there had been no other hearing in the interim.

Secondly, in internal correspondence, Ballance made a comment to under-secretary Lewis after one chief, Te Huiatahi, had protested the announcement publicised in the press: 'He must have been aware of what took place in the Court.'<sup>172</sup> That is, Ballance, too, seems to have believed that the chiefs had previously stated in the court, back in February and March 1886 that they had decided to give the mountains to the Crown. The Minister was surprised and confused by Te Huiatahi's opposition.

Ballance, therefore, approached this meeting with a clear expectation that he would confirm an existing commitment on Horonuku's part to hand the mountains over. This belief permeated all subsequent events. We will see, however, that this was not Te Heuheu's intention, or indeed what the paramount chief believed he agreed to.

## (2) *Te Heuheu's understanding of the negotiations*

We turn now to Tūreiti's full account of the meeting to assess what his father's understanding was and what, if anything, was agreed to. Tūreiti recounted:

The native land contained in that Park was partitioned by the Court, and there were only two partitions made in 1887. The first subdivision was the four peaks of the mountains, and for a mile from the top of each peak there was a sort of circle made around each peak. Now that subdivision was made in favour of my Father by the Court. He was the only one in the Title of that partition, but I am not quite sure of the area. I think about 22,000 acres, but the remainder outside this boundary my Father put the Chiefs of the different tribes on to. That year Mr Ballance heard about the subdivision being made. Mr [Lawrence] Grace was Member for Tauranga – Mr Ballance wanted a report, and wired to Mr Grace. He took my Father to Rotorua to see him – my Father went there. When my Father arrived at Rotorua he saw Mr Ballance, and Mr Ballance made a request to him that he should sell the Mountains so that they might be made into a National Park; and my Father asked him how he desired

the sale to take place, and Mr Ballance explained that his reason for buying the Mountains was in order that the property could become the property of the public for this country for all time. My Father then said to him that he was quite agreeable for all those Chiefs that he had put into the land (that is the other partition – being the land outside the boundary set out above) to sell, but he would not sell himself because his prestige depended on his retaining these Mountains which were the proud possessions of his forefathers from their very first ancestor. They had always been the property of the ruling Chief – not only that but his own Grandfather is buried on the top of Tongariro, and that is the reason why he would not sell the peaks or the mountains inside that boundary – outside that boundary the Government might purchase; when my Father agreed to have the rest of the land bought by the Government, he asked Mr Ballance to have an Act passed by Parliament making sacred the peaks of those mountains, and for those mountains to be *his own property*. [Emphasis added.]<sup>173</sup>

Tūreiti's account then goes on to describe a subsequent agreement reached between Lewis and his father, which we outlined at the beginning of our analysis.

When my Father returned to Taupo township, Mr Lewis [Under-Secretary of the Native Department] followed him there. It was then that an agreement was entered into between my Father and Mr Lewis setting out the request made to the Prime Minister, which they agreed to, that this portion of the mountains should be held sacred. Mr Lewis made a statement to my Father in this manner: That seeing the other Rangatiras my Father put into the other sub-divisions had consented to sell, and the Government were acquiring that part of the country, and also that the Prime Minister had agreed that the portion asked for by my Father be set aside for himself, and should be held sacred, he made a request at that time (Mr LM Grace was Native Interpreter at this meeting) (that is, Mr Lewis made the request) that my Father should agree that the Queen be put into the Title along with himself, so that the Crown should be represented in the Title . . . I was present and my Father (I was his only son) asked me what I

thought about that arrangement. I then said to my Father that I thought he should agree to the request made by Mr Lewis, as it would be a very great honour to him to have the name of the Queen as co-owner<sup>174</sup>

The evidence set out above confirms, firstly, that Horonuku Te Heuheu had requested certain action on the part of the government to guarantee the protection of these taonga in the future. But his letter of 23 September 1887 also suggests that some form of agreement existed between Ballance and himself at this particular time. That was signalled by Horonuku's reference to fulfilling his spoken word to the Minister in Rotorua. This suggests that the paramount chief had made a commitment of significant importance to Ballance that was given effect to through the deed of 23 September 1887.

Secondly, the evidence confirms that a subsequent agreement was reached in Taupō between Lewis (on behalf of the Crown) and Horonuku Te Heuheu that perhaps refined the broad terms discussed in Rotorua. According to Tūreiti, the terms of this agreement were written down 'on a blue form' and kept by Lewis at the time.<sup>175</sup> We discuss this agreement further below (see section 7.6.4(1)).

We note at this point, however, that there are some inconsistencies, as claimant submissions highlighted, in Tūreiti's account. Tūreiti referred to a subdivision of the mountain blocks which had not taken place by the time of this meeting in January 1887. We agree with counsel for Ngāti Tūwharetoa that these inconsistencies are due to Tūreiti's conflation of following events.<sup>176</sup> Putting this aside, the key points to extract from Tūreiti's kōrero are:

- ▶ Horonuku would allow the government to purchase the other chiefs' interests in the maunga blocks.
- ▶ He would not alienate his interest.
- ▶ His mana depended on retaining the mountains.
- ▶ He requested an Act to make the mountains sacred while they nonetheless remained 'his own property'.

The last point, in our view, is the most significant for two reasons. First, Horonuku Te Heuheu had requested legislation to protect the tapu of te kāhui maunga. The

paramount chief's assent to all terms of an arrangement, therefore, was contingent on the government passing legislation to protect its tapu. Secondly, Tūreiti indicated that his father's understanding was that this arrangement would ensure that the mountains remained 'his own property'. This statement, in our view, reflected Horonuku's determination to remain in the title, thereby retaining some control in the mountains alongside the Crown.

But what would this mean? To answer that question we need to first set out some commentary on the arrangement that is available in the documentary record.

According to Ballance's introductory speech on the Tongariro National Park Bill:

A large portion of this [National Park] has been set aside by the Natives, and is to be vested in the Crown and placed under Trustees for the purposes of a National Park for ever. The Natives expressed, some time ago, their intention of doing this, at the suggestion of myself; and the head chief of Ngatituwharetoa came forward in the most generous way and offered to have the land vested by the Court in a small number of Trustees, who are reliable persons, and will hand it over to the Government without any conditions. The sole stipulation made by the tribe, or by the head chief of the tribe, was that he should be one of the Trustees; and it is proposed by this Bill to appoint a chief of the tribe – a principal man, and one who has taken a most active part in having the land set aside for national purposes – as a Trustee for life . . . the Act is not to come into operation until the whole of the land has been legally conveyed to the Crown, so that there can be no possibility of any complications in this matter. As soon as the Act is passed a deed will be made out, and the Natives asked to sign in accordance with their promise; and within a short time – I hope, within six months or so – the whole of this land will be legally conveyed to the Crown, and the Act passed by the Legislature in operation.<sup>177</sup>

There is no specific evidence to explain who originally suggested placing the park 'under Trustees', but it is probable the idea developed out of Horonuku's request, through Lawrence Grace, to be a kaitiaki of the taonga. Ballance would most likely have interpreted this request as a desire

for the paramount chief to retain some influence in the future administration of the park. The Minister probably considered this quite reasonable in the circumstances. After all, he was acquiring the mountains for the nation. But Ballance did not conceive trusteeship as expressing legal ownership on behalf of a beneficiary class, and in that respect, was at odds with prevailing law. The 'board of trustees' that was in his mind was akin to a delegated authority governing the park.

The Minister appears to have believed he could establish Horonuku's kaitiakitanga by passing law that delegated authority to govern the park to a board and ensure the paramount chief was one of the 'Trustees'. That reflected Ballance's starting point in the *kanohi ki te kanohi* negotiations, which was that the Crown would obtain ownership of the mountains via a gift. The Minister is likely to have remained wedded to this belief throughout his discussions with Horonuku at Rotorua in January 1887.

But Lawrence Grace had also attended the meeting at Rotorua and reported, via William Grace, that

Te Heuheu held an interview recently with the Hon Native Minister at Rotorua, when this subject [of executing a deed to give effect to a reserve for public recreation] was discussed, and a deed of trust vesting the lands in a Nominee of His Excellency the Governor, Te Heuheu and an [*sic*] European resident in the District was to be prepared in Wellington and sent to me [William] for execution by the owners named in orders of court, with authority to expend an amount not then specified in obtaining their signatures.<sup>178</sup>

This evidence suggests Lawrence understood that a deed would give effect to Te Heuheu's kaitiakitanga by 'vesting' the mountain blocks in the three trustees. But what was Grace's understanding of the legal effect of vesting? Did he, for instance, believe it would extinguish the underlying ownership determined in court the year previous? Contemporaneous law suggests that vesting was understood as the legal transfer of property at the time Grace made this statement. The Trustee Act 1883, for instance, equated vesting with being 'seised' or 'possessed' of lands in trust:



'Seised' is applicable to any vested estate for life, or of a greater description, and shall extend to estates at law and in equity, in possession or in futurity, in any lands

'Possessed' is applicable to any vested estate less than a life estate at law or in equity, in possession or in expectancy, in any lands.<sup>179</sup>

We cannot say for certain one way or the other what Lawrence understood by vesting, but we highlight the fact that the court had previously appointed him a trustee for minors in some of the Taupōnuiātia subdivisions.<sup>180</sup> That suggests he most likely understood the legal position of a trustee. More importantly, Tūreiti appeared to believe that kaitiakitanga equated to legal ownership of the maunga in trust. He recalled in 1920:

It was the wish of the then Minister in power that the name of the Sovereign should be included along with my name [that is, Te Heuheu] in the Title to the land.<sup>181</sup>

The problem, therefore, is that the two key participants at the meeting, John Ballance and Horonuku Te Heuheu, appeared to have had different ideas on the title implications of kaitiakitanga. Evidently, this was a case of parties 'talking past each other'. Tūreiti's account makes it clear that, as a kaitiaki, his father would remain a legal owner in the taonga. Vesting the maunga in trust with the paramount chief and the Queen as kaitiaki is, in our view, the most important reason why Te Heuheu thought the mountains would still be 'his own property', but now also shared with the Queen and her people.

Lawrence Grace and the Minister appeared to share an understanding when it came to the number of kaitiaki. In their mind, there would be three: Horonuku, a nominee of the Governor, and a European resident in the district. What is apparent from Tūreiti's account, however, is that his father believed this arrangement was founded on a partnership with the Queen. We pick up the lack of clarity surrounding this arrangement later in our analysis.

Crown historian, Andrew Joel, argued that Tūreiti's account of events conflated notions of title and trusteeship.<sup>182</sup> In particular, Mr Joel referred to two pieces of

evidence: first, Tūreiti's statement that his father agreed to the Queen and himself becoming 'life members' of the board; and, secondly, subsequent comments of Minister Nosworthy and translator Captain Vercoe regarding Tūreiti's primary concerns in 1920:

**Captain Vercoe:** His point Sir is this: he does not in any way wish to take an active part in the conduct or control of the National Park. All he wants is the right of his Father, and his Father before him to that land, in his name.

**Hon Mr Nosworthy:** He wants his name perpetuated alongside of the ruling Monarch of the Empire, as Trustee in joint with the Sovereign. He wants to be honorary trustee of the National Park?

**Captain Vercoe:** That is just it. He does not want the name of His Father or his own name lost in connection with the thing.<sup>183</sup>

We agree that Tūreiti's account conflates notions of title and trusteeship. At law, a trustee holds title to property on behalf of the beneficiaries of that trust. That was the law as it stood in 1886, so it is understandable that Tūreiti would conflate these concepts in his kōrero to the Minister. But conflating these two concepts only presents a problem if we take Ballance's understanding of trusteeship, which was at odds with prevailing law in 1886, as our starting point. We cannot do so.

Mr Joel speculated that the passage above was an indication that Tūreiti understood his own place to have 'the status or prestige' of sharing title with the Queen.<sup>184</sup> We do not accept that Tūreiti was solely interested in status and prestige. The documentary evidence and Ngāti Tūwharetoa's traditional evidence suggests otherwise. While we accept that all Ballance was really offering in these negotiations was representation on the Tongariro National Park Board, we do not think that is how Tūreiti understood matters. We remind parties of Tūreiti's unambiguous statement 12 years prior to his meeting with Minister Nosworthy:

In the Tongariro National Park the only person included with me in the title is the King of England.<sup>185</sup>

According to Tūreiti, legal ownership underpinned his father's understanding of this arrangement. To accept Mr Joel's contention would, ultimately, require the Tribunal to accord Ballance's understanding greater weight than Horonuku's, as recalled by Tūreiti. Again, we cannot do so.

We consider that the exchange between Vercoe and Nosworthy highlights ongoing difficulties that the Crown had in understanding what Horonuku Te Heuheu's intentions were. Tūreiti's explanation of the negotiations 33 years earlier set out the nature of agreements reached *kanohi ki te kanohi*. That explanation conveyed the sense that the paramount chief would retain a legal stake in the maunga. But Vercoe and Nosworthy appear to have interpreted Tūreiti's account in light of subsequent events – events that had seen Tūreiti appointed a representative on a three-person statutory board of management and then removed from the board altogether in 1914. Thus, as this account highlights, both Vercoe and Nosworthy were grappling with how to address what they perceived as Tūreiti's concerns in 1920, rather than exploring his father's original purpose in negotiating an arrangement for the taonga.

Part of the problem with ascertaining what actually took place was that the key participants in the negotiations, Horonuku Te Heuheu, Ballance, and Lewis, died soon after title to the mountains was gifted to the Crown. Something of the spirit of what was intended in 1886 and 1887 and a more complete understanding of the title implications of the agreement, therefore, was lost with their passing. What the evidence available to us today demonstrates, though, is that Horonuku was intent on retaining a legal stake in the mountains. This would provide a basis from which he could guarantee tribal authority in the future care and protection of this sacred taonga. In our view, *kaitiakitanga* (or trusteeship), with the paramount chief as the representative on behalf of the various tribes, was the strategy adopted to achieving those objectives.

Given our conclusion above, why would Horonuku have requested to be *kaitiaki* for the tribe? Horonuku's request to be recognised as *kaitiaki* in partnership with the Crown resided in the realm of tribal authority and

mana, and reflected a belief that he exercised overriding authority over the mountains. This was encapsulated in the famous *pepeha*, recounted in his letter to the Minister:

*Ko Tongariro te maunga*

*Ko Taupō-nui-a-Tia te moana*

*Ko Ngāti Tūwharetoa te iwi*

*Ko Te Heuheu te tangata*

This *pepeha* was an assertion of Horonuku's mana and *rangatiratanga* over these lands. It was also an affirmation of his position as paramount chief and of Ngāti Tūwharetoa's relationship with the mountain and environs.<sup>186</sup> In this arrangement, Horonuku expected his mana would be recognised and cemented through a relationship with the Crown.

Horonuku's acceptance of the government purchasing interests from other chiefs in the maunga blocks, as recounted by Tūreiti, reflected his awareness of the reality that individual titleholders then faced. By January 1887, Ngāti Tūwharetoa had lost considerable quantities of land through Crown purchasing. The rapid alienation of land was exacerbated by debt associated with the cost of putting land through the court and the purchase of necessary supplies to enable attendance at prolonged hearings. Furthermore, Ballance's legislation had not granted Māori the ability to manage and control their lands in the manner that they wished.<sup>187</sup> Alienation of other interests in the mountain blocks would therefore have seemed a distinct probability at that moment in time. In the circumstances, the paramount chief established an arrangement that ensured that the tribe would not lose their *rangatiratanga* over the taonga.

In our view, Horonuku agreed to *tuku* the taonga into shared *kaitiakitanga* to safeguard them for the tribes, and guarantee their protection under Pākehā law. From Horonuku's point of view, we think that was what he understood to be the key outcome of his meeting with the Minister. To our mind, the *tuku* was the paramount chief's acceptance of a partnership with the Crown, through shared *kaitiakitanga* of *te kāhui maunga*. This

was an act of rangatiratanga by the paramount chief of Ngāti Tūwharetoa. It reflected the chief's determination to guarantee Ngāti Tūwharetoa's Treaty rights over a specific taonga. In negotiating this arrangement, though, we consider that Horonuku did not understand this as an outright legal transfer of the mountains to the Crown. Rather, we see this as Te Heuheu inviting the Queen to share kaitiakitanga of the taonga – and in doing so, the Crown would obtain a legal interest in each of the five mountain titles – because he thought it would guarantee not only the protection of the mountains, but also Ngāti Tūwharetoa authority over te kāhui maunga forever.

### (3) *Demythologising 'the gift'*

In demythologising 'the gift', we need to set out why we consider that Horonuku Te Heuheu could not possibly have agreed to give the mountains over to the Crown. The first factor to take into account is the Māori world-view, and specifically that of Ngāti Tūwharetoa: the mountains were the legacy of the spiritual journey of Ngātoroirangi and they symbolised the mana of the tribe, accumulated over centuries. This was not something to be given away. We refer to Tūreiti Te Heuheu's statement of 1920:

The prestige of my people depends upon our holding those Mountains for all time, or an interest in them; and money is nothing. If you gave me a million pounds tomorrow, I would not give the prestige which is contained in those Mountains. It is my mana.<sup>188</sup>

But, within this paradigm, there is an even more fundamental reason why giving away this taonga would not have entered Horonuku's conceptual framework: as Tūreiti explained, Tongariro represented the physical embodiment of Mananui Te Heuheu's head:

[Mananui] considered his body to be similar to the land, one of his thighs on Titiokura, the other on Otairi, one of his arms on Pare te tai tonga, one on Tuhua mountains, His [*sic*] head on Tongariro, his body lying on Taupo. That his word made sacred the land, a region of his mana, a region where Pakeha

were forbidden to enter, land never to be lost to the Pakeha. This was the greatest concern to him.<sup>189</sup>

It is simply impossible, in our view, to conceive that Mananui's son, Horonuku Te Heuheu, would have intended to give away his father's head – the most sacred part of the body – to the Crown.<sup>190</sup> That would undoubtedly have dire consequences for him and the tribe as a whole.

Secondly, aside from anything relating to a Māori world-view, there is a legal reason why Horonuku would not have agreed to give the mountains up to the Crown. We discussed earlier that the paramount chief was instrumental in placing the names of 19 rangatira in the list of owners for the mountain blocks. He had done this in an effort to install certain rangatira as kaitiaki of the taonga for ngā iwi o te kāhui maunga. And he had been inclusive in that regard. But as the holder of a one seventh share in each of the blocks, Horonuku had no right to negotiate the alienation of those blocks on behalf of the other owners. At law, all he could negotiate for was his legal interest in those blocks.

Thirdly, there is a political reason relating to the power of the paramount chief vis-à-vis the tribe that would have made such a gift impossible for Horonuku to entertain. Ngāti Tūwharetoa is one of the few tribal groups which came to have an ariki, or paramount chief, and it is a role that has sometimes been misunderstood. Throughout the nineteenth century, Crown officials generally construed the paramountcy of the Te Heuheu line as being outright rule over the tribe.<sup>191</sup> Certainly, the role was (and is) one that commanded wide respect, and even Ngāti Tūwharetoa's own traditional and oral history report refers at one point to the ariki having been seen as 'tantamount to a God or absolute ruler'.<sup>192</sup> However, taking all the evidence together, the picture becomes considerably more nuanced. As the Ngāti Tūwharetoa report also says, a leader generally only rose to such a position 'by virtue of his heritage, prowess as an orator, scholar, warrior and sheer force of personality and charisma'.<sup>193</sup> Even then, said the report,

The Arikitanga is a conservative and cautious institution, not prone to irrational, severe or extreme actions which could undermine the confidence and support from the membership of the tribe . . . humility, service before self, modesty, affability and friendliness are all qualities that ensure appeal and continuing support by the tribe.<sup>194</sup>

This statement is reinforced by academic research. In his study of Te Kani-a-Takirau, of the East Coast, Victor Walker explained that an ariki was the rangatira ‘who was capable, above all others, of exhibiting the widest range [of leadership attributes] at the highest level relative to the time and circumstance in protecting and enhancing the situation of their people.’<sup>195</sup>

The function of a ‘paramount chief’, as Dr Angela Ballara has commented, was to express the wish of the whole tribe, not to rule it unilaterally. A paramount chief would, ideally, not speak until he was certain of the consensus decision of his people. Furthermore, the ariki’s authority was recognised only as long as the hapū consented to it. The relationship between the ariki and the hapū was reciprocal. The ariki depended on the support and allegiance of the hapū for his position.<sup>196</sup>

In the case of Ngāti Tūwharetoa, the Te Heuheu line’s rise to paramouncy took place over time, as we saw in chapter 2 (see section 2.4.2(5)). Ngāti Tūwharetoa correspondence and records of meetings published in the Māori newspapers from 1870 suggests that the paramouncy was in the ascendancy in Horonuku’s time. While during this period Ngāti Tūwharetoa’s letters were more often than not signed by a collective of chiefs, Horonuku came to be given a particular pre-eminence over time.<sup>197</sup> In 1873, for instance, he was referred to as ‘te tino rangatira o te iwi’ (the great chief of the tribe) by a fellow chief, Hōhepa Tamamutu, at Taupō in 1873.<sup>198</sup> Again, in 1878, when a committee was formed to settle a land dispute between Ngāti Waewae and Ngāti Hikairo, it was Horonuku who was the chairman – the other members of the committee being Hōhepa Tamamutu, Hamuera Takurua, Maniapoto, Tōpia Tūroa, and Waaka Tamaira Te Tuatara.<sup>199</sup> In other words, the evidence demonstrates that Horonuku operated with the support of fellow chiefs in the 1870s.

By the mid-1880s, Horonuku’s mana was recognised by most within Ngāti Tūwharetoa (and even some outside it). Even Hitiri Te Paerata, of Ngāti Wairangi and Ngāti Te Koherā, a consistent antagonist, acknowledged Horonuku had ‘supreme mana in Taupō’.<sup>200</sup> In fact, Hitiri was one of the chiefs in support of the Taupōnuīātia application. But, again, this did not mean that Horonuku Te Heuheu had outright decision making powers, for Te Paerata, as we showed in chapter 4 (see section 4.6.3(3)(a)), was quick to question his right to decide the subdivisions of the Taupōnuīātia block. This is also evident from the number of applications for rehearing of the Taupōnuīātia block discussed in chapter 5.

In short, it is clear that Horonuku depended on the support of the people to sustain his position as paramount chief of Ngāti Tūwharetoa. In our view, therefore, it is unlikely that Te Heuheu would have decided on a course of action that directly undermined that support within Ngāti Tūwharetoa.

At the completion of their kanohi ki te kanohi discussion, Ballance understood and agreed to Horonuku’s two requests: to pass an Act for the protection of ngā maunga tapu and for the paramount chief to be a kaitiaki. What Ballance most likely did not understand was that Te Heuheu could not give away the mountains of his own volition. Te Heuheu’s authority did not amount to absolute and unfettered rule over the tribe. That would be a fundamental misapprehension of tribal politics that could only serve to perpetuate the Crown’s mistaken belief that it would obtain fee simple title to the mountains.

### **7.6.3 What action did the Crown take to give effect to the agreement and did this achieve the intended result?**

Upon reaching an agreement with Horonuku Te Heuheu kanohi ki te kanohi, the government set about implementing its understanding of that agreement. The process was a long and drawn out one and there were several distinct phases to it. First, the boundaries of the park were formulated and a National Park Bill introduced to parliament. Then, a deed of conveyance was drafted and delivered to William Grace with instructions to acquire the mountain blocks. With the Bill failing to become law and Grace’s

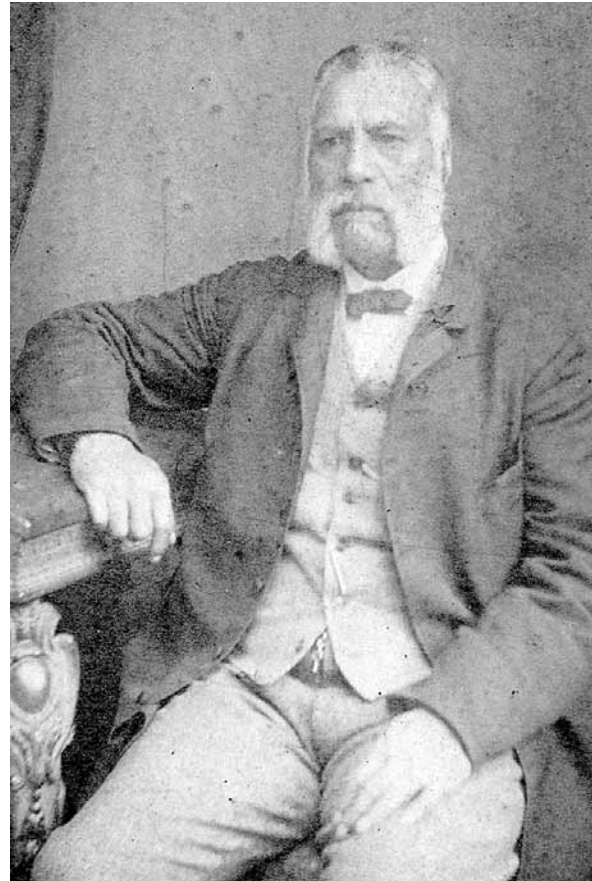
**Tōpia Peehi Tūroa**

c 1820–1903

*Tōpia (Tobias) Tūroa was an upper Whanganui chief whose influence extended to Lake Taupō. In 1847, his father Te Peehi Pakoro Tūroa opposed the sale of land for Wanganui township, and his son took part in the fighting that ensued. Initially known as Te Mutumutu, he took the name Tōpia at his baptism in 1858.*

*Tōpia was a supporter of the king movement, and was reportedly offered the kingship twice, but turned it down. His people joined Pai Marire in 1864, and the following year, Tōpia was wounded when his people were defeated in battle at Ohoutahi. He remained opposed to the Government throughout the 1860s.*

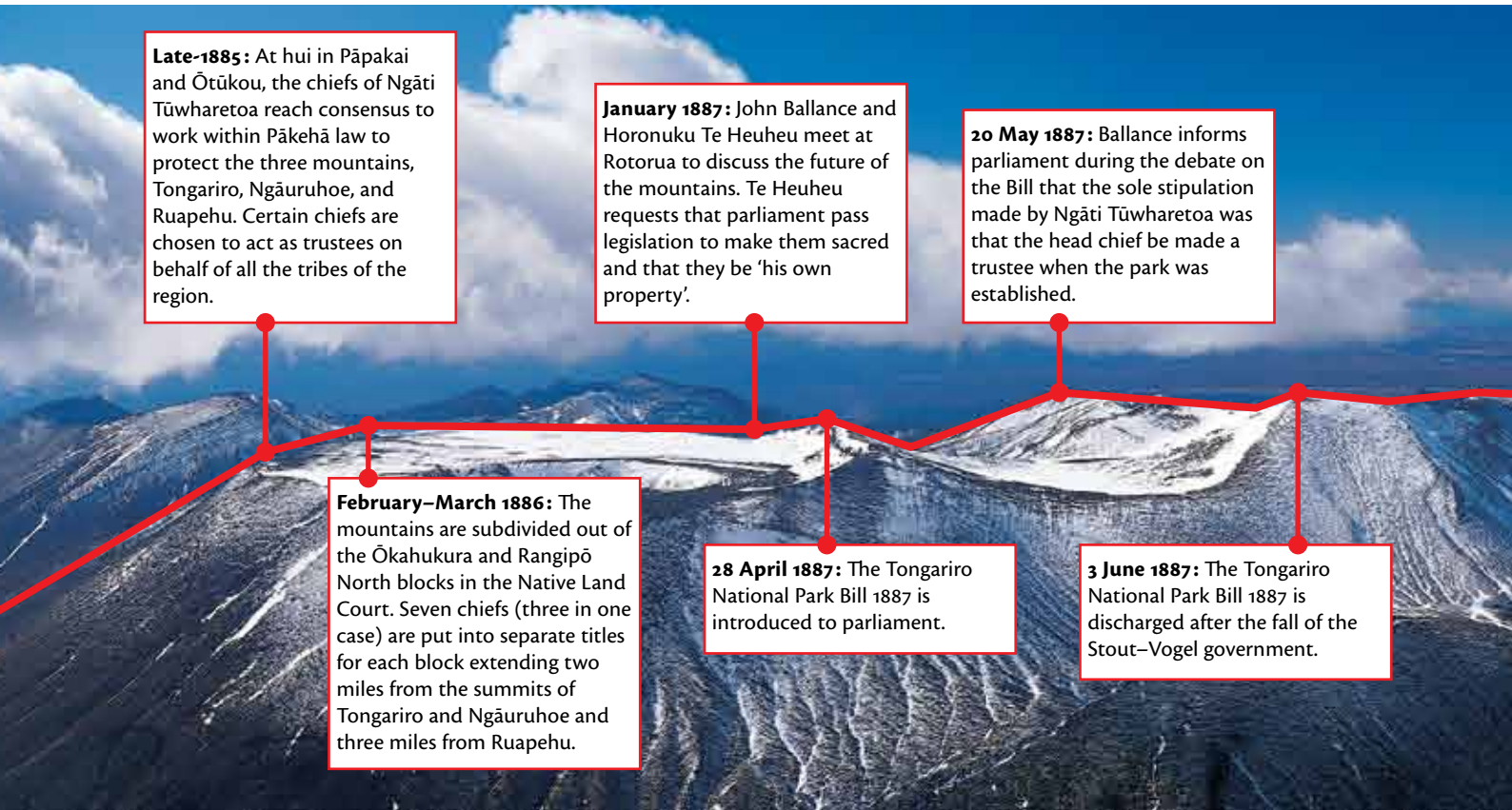
*In the late 1860s, however, Tōpia grew disillusioned with the king movement and transferred his support to the government, agreeing to support Te Keepa in his military pursuit of Te Kooti, and himself becoming a major in 1870. In 1884, Tōpia renewed his connection to the king movement, travelling to London with Tawhiao to petition the Queen, although their petition was merely referred back to the New Zealand Government. With Hori Ropiha, Tōpia convened a meeting for Kīngitanga supporters at Poutu in 1885. Tōpia became paramount chief of the Whanganui tribes in 1887, and from that point he was less engaged in Taupō affairs. In his final years, he remained supportive of the Government.<sup>1</sup>*



limited success in acquiring individual interests, the peaks of the mountain blocks were subdivided into Horonuku's name alone and transferred via deed to the Crown. Legislation was eventually passed in 1894 and the Crown acquired all outstanding individual interests in the blocks by 1903. Twenty years after Horonuku signed the deed, the Governor finally proclaimed the legal existence of the park. In this section, we determine if the steps taken by the Crown fulfilled Ngāti Tūwharetoa's expectations.

Our attention in this part is focused on the maunga

blocks, because these were the special blocks that Ngāti Tūwharetoa wished to protect in partnership with the Crown. These were the blocks involving high level negotiations between the government and Ngāti Tūwharetoa. In chapter 6, we discussed how the Crown acquired other lands required for the national park through standard purchase practices; indeed ones we concluded were in breach of Treaty principles. We do not discuss that process of acquisition here again. We do examine in sections 7.8 to 7.12, though, the circumstances in which several other



**Late-1885:** At hui in Pāpakai and Ōtūkou, the chiefs of Ngāti Tūwharetoa reach consensus to work within Pākehā law to protect the three mountains, Tongariro, Ngāuruhoe, and Ruapehu. Certain chiefs are chosen to act as trustees on behalf of all the tribes of the region.

**January 1887:** John Ballance and Horonuku Te Heuheu meet at Rotorua to discuss the future of the mountains. Te Heuheu requests that parliament pass legislation to make them sacred and that they be 'his own property'.

**20 May 1887:** Ballance informs parliament during the debate on the Bill that the sole stipulation made by Ngāti Tūwharetoa was that the head chief be made a trustee when the park was established.

**February–March 1886:** The mountains are subdivided out of the Ōkahukura and Rangipō North blocks in the Native Land Court. Seven chiefs (three in one case) are put into separate titles for each block extending two miles from the summits of Tongariro and Ngāuruhoe and three miles from Ruapehu.

**28 April 1887:** The Tongariro National Park Bill 1887 is introduced to parliament.

**3 June 1887:** The Tongariro National Park Bill 1887 is discharged after the fall of the Stout–Vogel government.

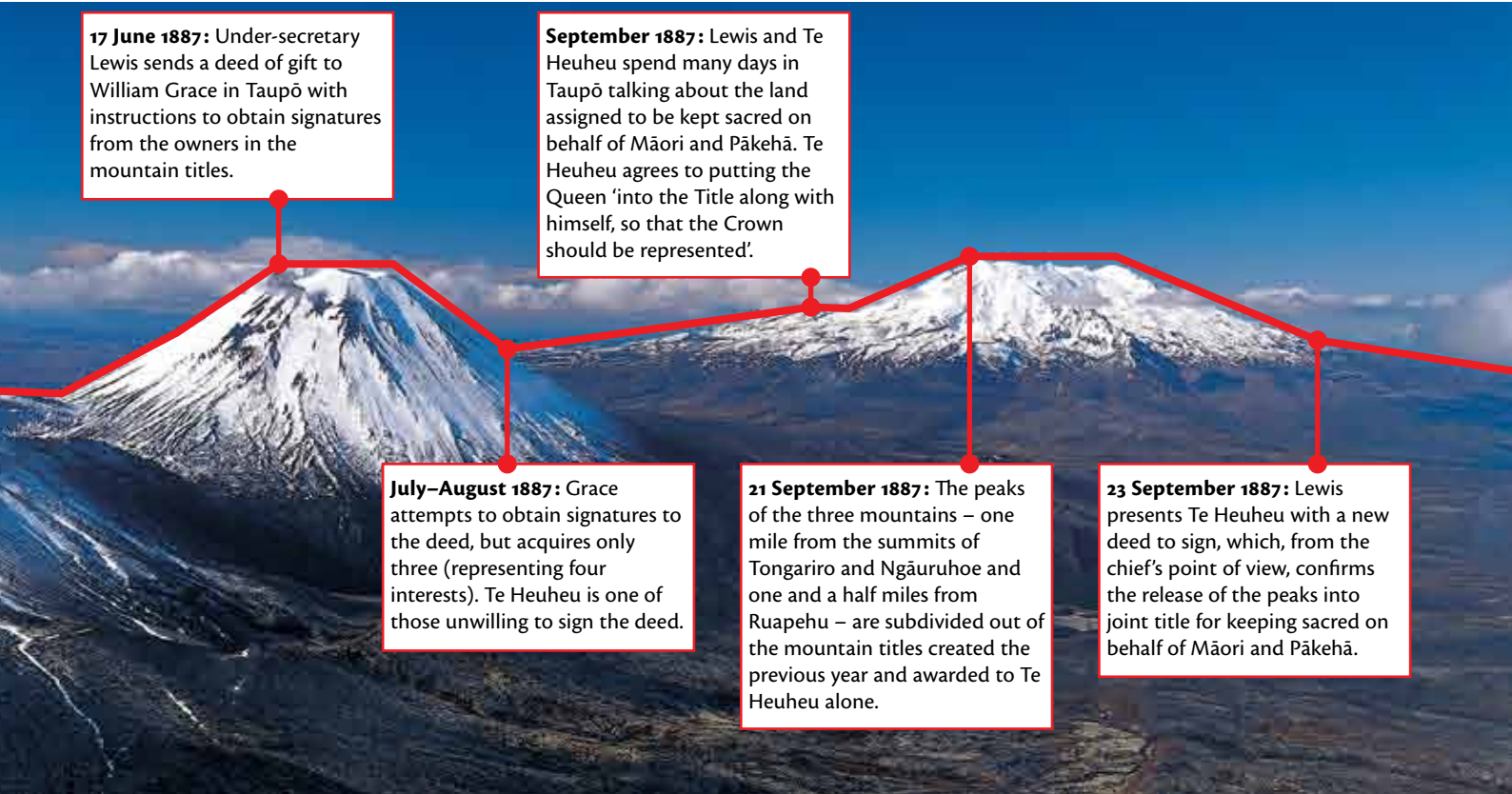
Timeline of key events, 1885–87

parcels of land included within the defined boundaries of the park became Crown land. Ownership of these parcels, as we shall see, was directly affected by the Crown's legal implementation of the park.

**(1) Formulating the boundaries and the failure of the first Bill, February–June 1887**

After meeting with Horonuku Te Heuheu, Ballance initiated steps toward establishing the park. The two immediate tasks confronting him were, first, the need to determine its boundaries and, second, passing law governing its existence. Prior to doing either of these tasks, though, the press proudly trumpeted, in February 1887, that:

Te Heu Heu and the chiefs of the Ngatituwharetoa have expressed in the Land Court their desire to make a free gift to the Government of the Tongariro, Ruapehu, and Ngauruhoe Mountains, with the land around them as far as the level country for the purpose of establishing a national park. The land has already been marked, and a Bill is now being prepared in order to give effect to the wishes of the chiefs. That Bill will be first circulated among the donors, and if it meets with their approval it will be submitted to the Legislature in the coming session. Mr Ballance proposes to vest the park in a Board consisting of three trustees, one of them to be Te Heu Heu, the principal chief of the tribe, the other the Resident Magistrate of the district, and the third to be named by his



**17 June 1887:** Under-secretary Lewis sends a deed of gift to William Grace in Taupō with instructions to obtain signatures from the owners in the mountain titles.

**September 1887:** Lewis and Te Heuheu spend many days in Taupō talking about the land assigned to be kept sacred on behalf of Māori and Pākehā. Te Heuheu agrees to putting the Queen 'into the Title along with himself, so that the Crown should be represented'.

**July–August 1887:** Grace attempts to obtain signatures to the deed, but acquires only three (representing four interests). Te Heuheu is one of those unwilling to sign the deed.

**21 September 1887:** The peaks of the three mountains – one mile from the summits of Tongariro and Ngāuruhoe and one and a half miles from Ruapehu – are subdivided out of the mountain titles created the previous year and awarded to Te Heuheu alone.

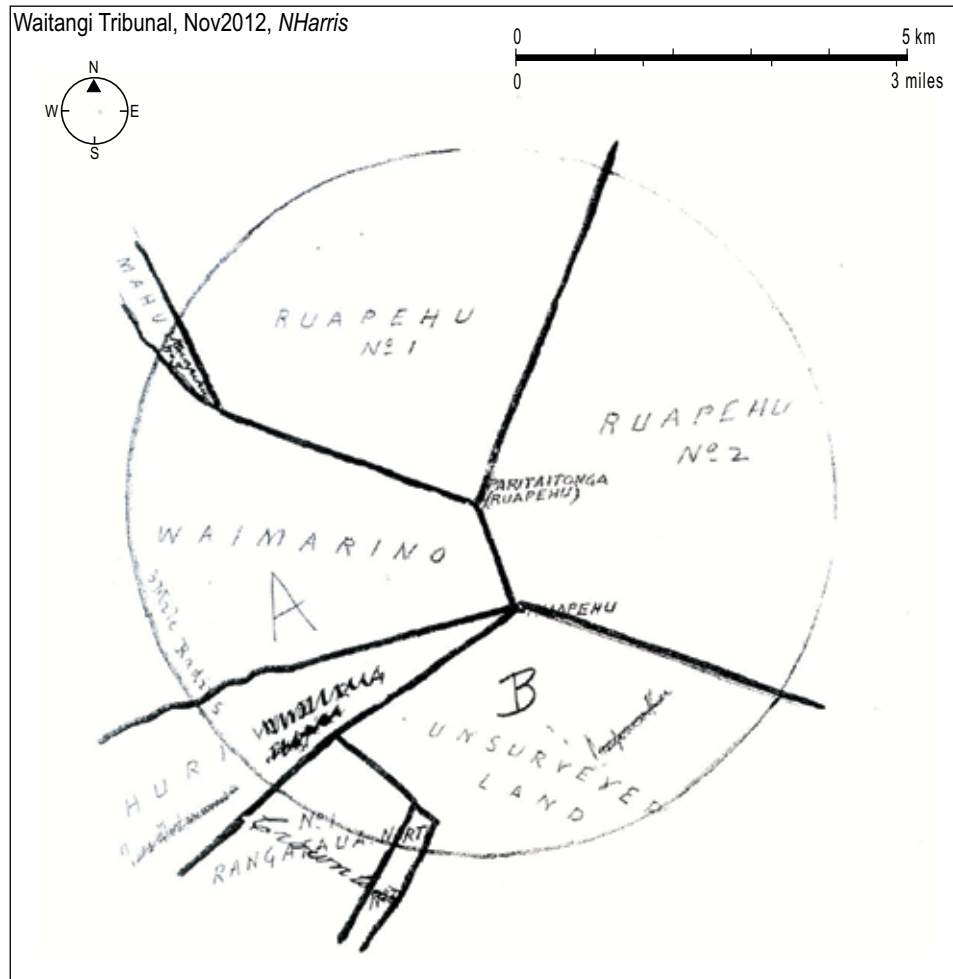
**23 September 1887:** Lewis presents Te Heuheu with a new deed to sign, which, from the chief's point of view, confirms the release of the peaks into joint title for keeping sacred on behalf of Māori and Pākehā.

Excellency the Governor . . . The offer of the chiefs is considered a most generous one, and it marks more distinctly perhaps than anything the expansion of the native mind, for it must be remembered that hitherto Tongariro has been highly *tapu*.<sup>201</sup>

It is plain from this report that Ballance believed that he had secured the paramount chief's agreement to gift the mountains to the Crown. He therefore instructed his officials to determine what land the Crown owned around the mountains so he could determine the extent of the proposed park.

Ballance was not clear at that time what land the Crown

owned in the region. He settled on a three-mile radius around the peaks of Tongariro and Ngāuruhoe and a four-mile radius around the peak of Ruapehu, and he requested that officials determine the Crown's landholdings within those limits.<sup>202</sup> Ballance was particularly interested in the southern boundary. After a series of telegrams with William Grace, the assistant surveyor-general eventually provided a map.<sup>203</sup> That map indicated that the Crown owned only one of the southern blocks around Mount Ruapehu, that being Rangataua. Furthermore, the map indicated that there was a large section of land within the four-mile radius around Paretaitonga that had not yet passed through the court. Instructions were swiftly issued



for agents to keep watch over these southern sections of the proposed park.<sup>204</sup>

Ballance also instructed his department to draft a Bill from some brief handwritten notes.<sup>205</sup> Ballance envisaged circulating the draft Bill for tribal approval first before it got to parliament. It was, according to William Grace, who advised that the Bill had been 'extensively circulated' in the district.<sup>206</sup> But, as Mr Joel conceded, we have no evidence one way or the other to confirm the tribe approved of it as drafted.<sup>207</sup>

Around the same time, another senior Lands Department official, Patrick Sheridan, requested information regarding the ownership of the mountain blocks passed through the court in 1886. He asked, 'Do the orders of Court vest them in the Crown for that purpose [that is, for the creation of a park] or has a title been obtained to them by deed of gift or conveyance[?]'<sup>208</sup> Grace responded:

Tongariro No1 and 2 Ruapehu No1 and 2 and 3 are not vested in Crown by order of Court but each block is vested in



the names of five to seven persons each. Am writing you fully on subject.<sup>209</sup>

As referred to above (see section 7.6.2(2)), Grace then explained that an agreement had been reached between Ballance and Horonuku to vest the land in trustees. The trustees were three in number: a nominee of the Governor, Te Heuheu, and a European resident in the district. Grace, therefore, requested the following:

What is wanted now, to enable me to proceed with matter is a deed engrossed on above lines, and the sooner this is forwarded to me so much the sooner will the transaction be completed. Without a deed being executed any action in the direction of having a Bill drafted for the purpose of having same passed by Legislature may be premature.<sup>210</sup>

To Grace's mind, the government would supply a deed of trust that he would then ask the titleholders to sign. Despite his request, no deed was prepared at this time. Lewis advised Grace that conveyance of the park to the trustees 'must remain in abeyance until Bill has passed'.<sup>211</sup>

What is important to note at this point is that there is an element of confusion amongst officials regarding how to implement this agreement. Sheridan understood that the maunga blocks would be vested in the Crown, but Lewis referred to the need to pass legislation before the land could be conveyed to the trustees. Lewis' understanding converged with that of the Grace brothers, yet William considered that a Bill might be premature without executing a deed first. This correspondence highlights different understandings as to how the arrangement reached between Horonuku and Ballance would be implemented.

The differences in understanding amongst officials at this time suggests that the actual detail of how to give effect to the paramount chief's wishes was not clearly understood in the *kanohi ki te kanohi* discussions. Apart from a mutual understanding on the fundamental issues – Horonuku's request for legislation and his 'trusteeship' – there appears to have been no mutual understanding on the legal and political implications of this agreement. Each of the participants appeared to have quite different

ideas regarding what was necessary to give effect to Te Heuheu's requests.

Meanwhile, in mid-April 1887, the *Evening Post* published the following article:

Te Heu Heu, as has already been announced, has, with the full consent of his tribe, offered to dedicate the whole of the lands surrounding Tongariro and Ruapehu to the public use, as a national park . . . The Minister of Lands has prepared a Bill to provide for the reservation and management of national parks generally and of this one in particular . . . With regard to the Tongariro National Park, the Governor is to proclaim it as soon as the native owners formally cede the land to Her Majesty. *This they are prepared to do as soon as the Bill is passed* authorising the acceptance of the gift. The Board of Trustees for this park is to consist of the Native Minister for the time being, Te Heu Heu Tukino, and another person to be appointed by the Governor; and this Board is to possess all the Governor's powers in respect to such parks. *Te Heu Heu is to be a trustee and Chairman of the Board for life, or until he shall resign one or both of the offices, and on his decease or retirement, a successor as trustee is to be elected by the Ngatituwharetoa tribe, and each trustee so elected, and each one appointed by the Governor, is to hold office for a term of four years. The Chairman, after Te Heu Heu ceases to hold the office, is to be appointed by the Governor.* [Emphasis added.]<sup>212</sup>

What this article makes clear is that Ngāti Tūwharetoa's first priority was the passage of legislation protecting the mountains. According to an article published in the *Star* a day later, Ballance's draft Bill, 'The National Parks Act 1887', provided for 'the setting apart of tracts of land as national parks' in 'various parts of the Colony'.<sup>213</sup> This article, and the 15 February 1887 *Evening Post* article, indicated the government's intention that Te Heuheu was to be both a trustee on a board responsible for administering a Park in the Tongariro district and its permanent chair. However, that was not the case under the Tongariro National Park Bill introduced to parliament a month later; that Bill did not propose to make Te Heuheu a legal trustee and the Governor had sole discretion to appoint the

chair. We have no evidence to determine why Ballance's Bill was redrafted between April and May 1887. Ngāti Tūwharetoa may have expressed opposition to the idea of generic legislation, prompting the Minister to rethink his legislative approach, but we cannot say on the evidence available to us. The reasons why Te Heuheu was removed as the permanent chair under the revised Bill is, unfortunately, another issue we cannot explain.

What is significant about the description of the board in both articles is that it marks yet a third combination of trustees. The common elements in all three combinations were the inclusion of Te Heuheu and a nominee of the Governor. Each version differed, though, in who the third trustee should be. Ballance's notes for the draft Bill and the article in the *Evening Post* stated that the third trustee would be the resident magistrate.<sup>214</sup> William Grace's correspondence to Sheridan, however, suggested that a Pākehā resident of the district was the third trustee.<sup>215</sup> Then, in the two April 1887 newspaper articles, the Native Minister was identified as the third trustee. For us, the uncertainty as to the third trustee confirms our earlier conclusion that Horonuku did not agree to a three-person Board proposal. If he did, there should have been some consistency in the identity of that individual in subsequent documentary evidence. The three different versions floated suggests that the Minister was considering a range of options before settling, we think unilaterally, on himself, as Minister of Native Affairs, as the third trustee.

Governor Jervois' speech to the Legislative Council and the House of Representatives in April marked the beginning of the parliamentary session for 1887 and foreshadowed parliamentary business for the year. He drew particular attention to

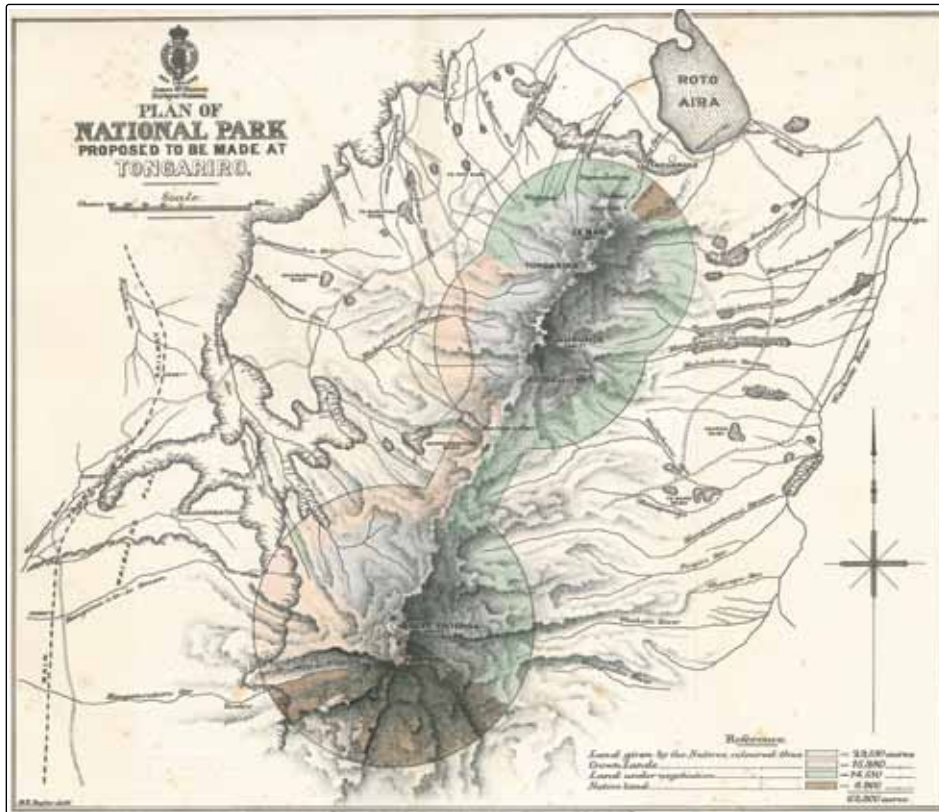
The good feeling that is being exhibited by the Maoris towards the Government [which] has been evinced in a marked manner by the generous offer to the colony of the Ruapehu, Tongariro and Ngauruhoe Mountains by the Ngatituwharetoa Tribe, who desire that a large area of land should be set aside as a national park. You will be asked to legislate on the subject in order that effect may be given to their wishes.<sup>216</sup>

The Tongariro National Park Bill was introduced a few days later and given its second reading towards the end of May. The Schedule to the Bill specified that the park would encompass all the lands within a four-mile radius around Mount Ruapehu and a three-mile radius around Mount Tongariro and Mount Ngauruhoe, including the adjoining land between the mountains. This encompassed more land than Ballance had proposed in February, presumably because the Graces informed him of the extent of the Crown's landholding and because much of that land was of 'park-like character'. The result was an area of land that resembled the shape of a dumbbell and encompassed the three mountains of Tongariro, Ngauruhoe and Ruapehu.<sup>217</sup>

Ballance explained during the parliamentary debate that

A large portion of this [park] has been set aside by the Natives, and is to be *vested* in the Crown and *placed under* Trustees for the purposes of a National Park for ever. . . . The sole stipulation made by the tribe [Ngati Tuwharetoa], or by the head chief of the tribe, was that he should be one of the Trustees . . . the Act is not to come into operation until the whole of the land has been legally conveyed to the Crown, so that there can be no possibility of any complications in this matter. As soon as the Act is passed a deed will be made out, and the Natives asked to sign in accordance with their promise; and within a short time . . . the whole of this land will be legally *conveyed* to the Crown, and the Act passed by the Legislature in operation. [Emphasis added.]<sup>218</sup>

This passage demonstrates that the Crown agreed to provide Horonuku Te Heuheu with an ongoing role through the provision of a seat on a board of trustees, with Ballance commenting in his speech that 'the sole stipulation made by the tribe, or by the head chief of the tribe, was that he should be one of the Trustees'. As section 4(1) of the Bill makes clear, Horonuku would hold office for the term of his life. The Governor would appoint his successor, who would 'be elected at a public meeting of the Ngatituwharetoa Tribe to be convened for the purpose'. What is also clear, though, is that Ballance never viewed



Map 7.3: Boundaries of the proposed national park, 1887

trusteeship in the sense of legal ownership. Rather than vesting the land in trustees, Ballance told the House that the land would be vested in the Crown and 'placed under' trustees. He added that

The gift is a valuable one, and is perhaps the most generous action on the part of the Natives that we know of, and it is one, I think, for which they should receive the thanks of the House.<sup>219</sup>

Just prior to this speech, Ballance had become aware that there was discord over the arrangement. Evidently, not all the titleholders were prepared to gift their interests in the manner that the Crown expected. As referred to above (section 7.6.2(1)), Ngāti Waewae rangatira and

titleholder, Te Huiatahi, objected on behalf of 580 others to Horonuku's decision, for

it is not 'good' (right) that 'one person' should give away our land, seeing that our ancestors and grand-fathers all belonged to Tuwharetoa, and that we ourselves inherit our mana from the same.<sup>220</sup>

Lewis promptly discredited Te Huiatahi to Ballance, linking him to prophet leader Te Kere, an advocate of Māori self-government and staunch opponent of the court:

This is from one of Te Kere's followers now in Wellington waiting to see you – I think his letter when the interview is over might be forwarded to Mr WH Grace for his reports

THE TONGARIRO NATIONAL PARK BILL 1887

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A BILL INTITULED

An Act to authorize the Setting-apart of a certain Tract of Land around and in the vicinity of the Tongariro Mountain as a National Park.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is ‘The Tongariro National Park Act, 1887.’

2. The Governor in Council, by Proclamation in the *Gazette*, shall, so soon as the whole of the lands within the territory described in the Schedule hereto have been ceded to Her Majesty by the Native owners thereof, declare the same to be a national park under this Act, to be known as the Tongariro National Park.

All persons who shall locate or settle upon or occupy the same, or any part thereof, except as hereinafter provided, shall be considered trespassers and removed therefrom.

3. The said park shall be under the control of the Governor, who may manage and administer all the lands therein, and it shall be deemed to be a public domain or domain within the meaning of ‘The Public Domains Act, 1881;’ all the sections of which Act shall apply to such park in the same manner as they apply to public domains, and shall be read *mutatis mutandis* for the purposes of this Act, and be deemed incorporated therewith.

4. The Native Minister for the time being, Te Heuheu Tukino, Chief of the Ngatituwharetoa Tribe of aboriginal natives, and such other person as the Governor shall appoint, are hereby constituted Trustees of the said park, and for the purpose of the management thereof are hereby invested with all the powers which the Governor is capable of delegating under ‘The Public Domains Act, 1881,’ to trustees of public domains for the management thereof.

(1) The aforesaid Te Heuheu Tukino shall hold office as Trustee for the term of his life, subject that he may at any time resign such office.

On the death or resignation by Te Heuheu Tukino of his office as Trustee, his successors to such office shall respectively hold office for four years only, shall be elected at a public meeting of the Ngatituwharetoa Tribe to be convened for the purpose.

The Governor may convene any such meeting, and appoint the time for any such election, make all requisite appointments, and otherwise do all things necessary, by regulations or otherwise as he thinks fit, for the conduct of any such election.

In the event of no such election taking place, or by mischance or neglect no person being elected, or a Trustee not being duly elected, the Governor may nominate any person to be a Trustee in the place of the Trustee who should have been elected; and the person so nominated shall hold office as if he had been duly elected thereto.

(2) The Trustee to be nominated by the Governor shall hold office for four years only, and his successors shall respectively be appointed for a similar term by the Governor.

(3) Every successive nominated or elected Trustee may resign his office by letter to the Governor, who shall appoint his successor, or direct his election to be held, as the case may be.

(4) The Governor may from time to time nominate any member of the Board to be the Chairman thereof, and fix the time during which he shall hold office; and may remove any Chairman and appoint to any vacancy to such office.

The Chairman of the Board may at any time resign his office by letter to the Governor.

5. The Governor in Council may from time to time make, alter, or revoke any regulations which he may think necessary for the better administration of this Act and the management of the said park, in addition to any powers he may possess of a like character under 'The Public Domains Act, 1881.'

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SCHEDULE.

**TONGARIRO NATIONAL PARK**

ALL that territory in the Counties of East Taupo, West Taupo, and Wanganui, containing by admeasurement 62,300 acres, more or less, comprehended within a circle around Trig H on Ruapehu, having a radius of 4 miles from that point, together with the area comprehended within a circle having a radius of 3 miles from Trig D all Ngauruhoe, together with so much of the area comprehended within a circle having a radius of 3 miles from a point on the line connecting Trigs D and O (on Ngauruhoe and Te Mari), distant 2½ miles from D as is not included in the circle around D; also that area 2 miles wide between the circles around H and D which is bisected by a line connecting those points.

– this is the first I have heard of any disagreement respecting the setting apart of Tongariro – the fact that the writer presumes to sign for 580 others shows that his letter is not worth much.<sup>221</sup>

Ballance responded to Lewis that Te Huiatahi must have been aware of what had taken place in the court between February and March 1886. That statement, as we noted earlier, indicates Ballance's belief that the paramount chief had, on behalf of Ngāti Tūwharetoa, already agreed to hand over the mountains to the Crown during the court's session. We also know from our discussion in chapter 6 (see section 6.5.4(5)) that, by this time, Ballance was clearly dissatisfied with Grace's purchase operations in Taupō, which he thought were becoming 'a mess'.<sup>222</sup>

William Grace confirmed Lewis' advice about Te Huiatahi soon after:

I have the honour to report that Te Huiatahi, writer of the attached letter is a man of little importance in the District, and has only lately come into notice owing to his being a strong advocate of Te Kere's, but has no following. The N'Tuwharetoa tribe proper do not number 580 persons for whom he presumes to sign, and I am sure he never received any authority from them to write the letter. I have made enquiries but cannot find a single native who knows of the letter having been written. The Governors Speech, also the National Park Bill, have been extensively circulated in this District, and I have not as yet heard of any disapprobation being expressed towards the Bill.<sup>223</sup>

### The Māori Version of the Tongariro National Park Bill

In te reo Māori, the full title of the Tongariro National Park Bill 1887 is: 'He Ture whakamana mo te wehe atu i tetahi wahi whenua taiawhio noa i roto hoki i te takiwa o Tongariro Mauna hei whenua ahuaireka mo t katoa'. Section 2 reads:

Ka ahei te Kawana i roto i tona Kaunihera te panui i roto i te *Kahiti* i muri tonu iho i te tukunga o nga whenua katoa e nga Maori whai take kia te Kuini i roto i te takiwa e whakaaturia ana e te Apiti ki tenei, a ka whakataua taua whenua he whenua ahuaireka no te katoa i raro i tenei Ture, kia mohiotia ai ko Tonriro Whenua Ahuaireka mo te katoa.

Section 4 says:

Ko te Minita Maori o te takiwa me Te Heuheu Tukino, Rangatira o te iwi Maori tuturu o Ngatituwharetoa, me ia tangata e whatu ria[sic] ana e te Kawana ka whakaturia i konei hei Kaiatiaki [sic] mo taua whenua ahuaireka, a mo runga i te huarahi whakahaere a taua mea ka tukuna atu i konei nga mana katoa e ahei ai te Kawana to uku atu i raro i nga tikanga o 'Te Ture Whenua Ahuaireka o te Katoa, 1887', ki nga Kaiatiaki o nga Whenua Ahuaireka o te Katoa hei whakahaere i aua whenua.

There is no further discussion of Te Huiatahi's complaint in the documentary record. This suggests that the government was satisfied that this particular chief had no support and that the tribe was aware of arrangements for the mountains, as foreshadowed by information provided to them.

But the government received a second letter of protest from another titleholder, Reupena Taiamai. He wished to let the government know that 'the transfer of Tongariro to you by us . . . is wrong', and that he knew that this was 'the work of Mr Grace'.<sup>224</sup> In other words, there were warning

signs that all was not well with the arrangement. Both letters of protest reflected opposition to the government's view of the arrangement. In our view, the government should have taken more notice of these warning signs and made further checks on people's understanding of the agreement than it in fact did.

As we discussed in chapter 5, some chiefs were unable to attend the Taupōnuīātia hearings because of conflicts with various court hearings. Te Huiatahi was one of those casualties. Before the Native Affairs Committee in November 1887, Te Huiatahi referred to his ignorance of decisions made by the Taupōnuīātia komiti during the original subdivision hearings:

**Chairman:** Were you one of the grantees in the block?

**Te Huiatahi:** I do not know; I was not present. I have never seen a copy of the list of owners.

**Chairman:** Did you get notice of the first Court sitting at Taupo?

**Te Huiatahi:** We received no notice of the sitting of the Court at Taupo. We were here in Wellington attending Parliament when we first heard of that Court.

**Chairman:** Were there any of your tribe at that Court?

**Te Huiatahi:** Yes, Paranihi [of Ngāti Waewae] who is now present attended that Court.

**Chairman:** Did Paranihi tell you afterwards to whom the land was awarded?

**Te Huiatahi:** Paranihi did not tell me to whom the land had been awarded.

**Chairman:** How do you know the land was awarded to Te Heuheu?

**Te Huiatahi:** I became aware of it by hearing the Governor's Speech at the opening of Parliament last Session.<sup>225</sup>

For us, this testimony confirms several points. It affirms our earlier conclusion (see section 7.6.1(3)) that, in the absence of all 19 chiefs in the court, Horonuku Te Heuheu and the Taupōnuīātia komiti acted to protect the interests of them and their hapū. Te Huiatahi stated that he was not in the court when the orders were issued in 1886, and yet he was still included in the list of owners.

Te Huiatahi was in Wellington at the time he wrote his objection. Being away from his tribe, he appeared to react to information he had received solely via the press. The press, however, was perpetuating the government's view of the arrangement.

While the Tongariro National Park Bill passed its second reading, it was discharged soon after because the government fell. As we discuss later, legislation was not passed until 1894, after Te Heuheu, Ballance, and Lewis had all passed away. The key objective that Te Heuheu and Ngāti Tūwharetoa sought, therefore – namely law to keep te kāhui maunga in the protection of kaitiaki, charged with keeping the taonga sacred – was not delivered at this time. The 1887 Bill, if it had been enacted, would have gone some way to meeting those objectives. Te Heuheu was to be a 'trustee' for life and, under section 4 of the Tongariro National Park Bill, the Governor was capable of delegating all powers of management to the trustees.<sup>226</sup> This would have provided the trustees with significant power to manage the land. But because the Bill did not pass in 1887, the authority of the tribe could not be guaranteed by law. We discuss the consequences of this below and also in chapter 11.

## **(2) *The drafting and delivery of a deed, June 1887***

After the second reading of the 1887 Bill, Ballance instructed the Native Department to draft a deed of conveyance for the transfer of the Tongariro 1 and 2, and Ruapehu 1, 2, and 3 blocks to the Crown. His instructions were issued amidst significant uncertainty over the stability of the Stout–Vogel government. Five days prior, Cabinet had unanimously recommended to the Governor that parliament be dissolved after it lost the vote on its Customs Duties Bill. Premier Stout had simultaneously proposed, however, to request limited supply from parliament in order to allow the government to pass a new representation Bill for the upcoming elections.<sup>227</sup> The Governor accepted Cabinet's recommendation for the dissolution of parliament, as well as Stout's proposal on supply. This decision meant all other Bills, including the Tongariro National Park Bill, were discharged in early June, just after Ballance requested the deed of conveyance.

Ballance's decision to proceed with the drafting of a deed demonstrates his determination to secure the mountain blocks for the Crown. In general, carrying on with land purchases might be considered business-as-usual policy, but, to our mind, proceeding with the acquisition of these blocks did not constitute business-as-usual, and especially not for a defeated caretaker government. This arrangement had high level political implications and was nationally significant. Furthermore, it was a most unusual arrangement for the time. We remind parties of Tūreiti's explanation of the agreement his father reached with the Minister in January 1887:

when my father agreed to have the rest of the land bought by the Government, he asked Mr Ballance to have an Act passed by Parliament making sacred the peaks of those mountains, and for those mountains to be his own property.<sup>228</sup>

Horonuku Te Heuheu's assent to this arrangement, therefore, depended on the passing of legislation for the protection of these mountains. Given the government was unable to deliver on his key request before it fell, it is surprising that Ballance was evidently prepared to proceed with the acquisition of individual interests.

A further action by Ballance is telling of his determination to obtain these taonga. Just prior to requesting the deed of conveyance, under secretary Lewis had asked the chief judge of the Native Land Court if it was necessary to convene a meeting of the titleholders in these blocks before the deed could be signed, to which the chief judge affirmed this was the correct procedure. Lewis advised Ballance:

Nothing further can be done to obtain conveyance of these lands until Court has given final judgement and title is ascertained within meaning of section 4 NL Act 1886 and meeting of owners held in accordance with NL Act.<sup>229</sup>

Section 4 of the Native Land Court Act 1886 solely related to Lewis' first point that legal conveyance could not be obtained until the court had issued final orders. But reference to the meeting of owners may have reflected

the requirement to obtain consent of all owners to any alienation, as specified in the 1873 Native Land Act. It may also have reflected the protection granted under the Native Land Administration Act 1886, particularly section 20, which required a meeting of owners before land was conveyed.

Immediately after receiving this advice Ballance instructed Lewis to prepare a deed.<sup>230</sup> That was standard procedure, as officials needed to have a document ready to put before the designated Māori owners for their consideration and signature. But we have no evidence to suggest that Grace called a meeting of owners, suggesting none took place. Ballance's willingness to acquire signatures to the deed just a few weeks later is a sign of his determination to obtain ownership of the mountains. In his advice to Lewis, the judge had explained that obtaining individual interests, deriving from the court's interlocutory orders, would not be valid unless an individual was confirmed a legitimate owner in the court's final orders. Those orders did not become final, though, until 24 September 1887 when the court issued its judgment. That was over two months after the first signatures to the deed were acquired (see below).

Following Ballance's instructions, the Native Department drafted a deed of trust for the five mountain blocks: Tongariro 1 and 2 and Ruapehu 1, 2, and 3. The legal effect of the deed was to vest these blocks in the Queen to hold in trust as a national park, presumably on behalf of a beneficiary class, Māori and Pākehā, and for them to be administered subject to the provisions of the Public Domains Act 1881.<sup>231</sup> It was then passed to the solicitor-general, Leo Reid, for scrutiny.

The solicitor-general advised that the government should draw up an ordinary deed of conveyance, rather than a gift by deed poll. An amended version of the deed was sent back to the Minister for his approval. This amended draft conveyed the mountain blocks to the 'Queen Her Heirs and successors forever'.<sup>232</sup> No trust provision was included in this amended draft deed. Briefing the Minister after receiving Reid's advice, Lewis advised that

The habendum in one we furnished not being it is stated according to law as the Queen cannot be made a Trustee neither can land be conveyed to Her Majesty as a National Park, the terms at present not being known to law.<sup>233</sup>

It would seem that Lewis was mistaken on that point. It appears that the Queen and her representatives were capable of holding property on trust. Our view is based on a series of cases covering the period 1750 to 2012. We set these out in chronological order:

- ▶ *Penn v Lord Baltimore* (1750): In this case, the court found that the character of Sovereign is not incompatible with that of being a trustee.<sup>234</sup>
- ▶ *R v Fitzherbert* (1872): In this instance,

No formal act of reservation was ever made by the Crown, and no express trust was ever declared in writing; but officers of the Colonial Government and of the Crown frequently treated the sections in question as reserves available for the Natives only.<sup>235</sup>

However, the Queen had never expressly declared any trust in writing and, as a consequence, the court did not consider itself

at liberty to declare that the acts of the officers of the Crown and Colonial Governments, so far as they are made to appear on these findings, bind the estate of the Crown in those lands, so as to compel the Crown to hold the lands impressed with a trust as Native reserves.<sup>236</sup>

- ▶ *Rex v Mayor, etc, of Blenheim* (1907): The Supreme Court held that the land in question was clearly held by the Crown as trustee:

Although the sovereign cannot be compelled to accept a trust, he may sustain the character of a trustee by accepting the trust, and he undoubtedly has the capacity to take the estate and execute the trust.<sup>237</sup>

The court further stated that,



Where a statute vests public property in the sovereign for particular purposes, then the sovereign, being named in the statute, . . . and having the power to sustain the character of a trustee, and the capacity to take the estate and execute the trust, holds the property on the trusts created by the statute.<sup>238</sup>

- ▶ *Civilian War Claimants Association Ltd v The King* (1932): In this case, Lord Atkin stated that ‘There is nothing, so far as I know, to prevent the Crown acting as agent or trustee if it chooses deliberately to do so.’<sup>239</sup>
- ▶ *Tito v Waddell* (1977): Although the court held that there was an alternative explanation to a trust in this instance, it stated:

If money or other property is vested in the Crown and is used for the benefit of others, one explanation can be that the Crown holds on a true trust for those others.<sup>240</sup>

- ▶ *Commonwealth v Mewett* (1997): Here, the court stated that ‘it was well settled that a trust of which the trustee was the Crown was a validly constituted trust.’<sup>241</sup>
- ▶ *Attorney-General v Nissan* (1969): In this case, Lord Pierce stated:

There is nothing to prevent the Crown acting as agent or trustee if it chooses to do so, as Lord Atkin said in *Civilian War Claimants Association v The King*.<sup>242</sup>

- ▶ *Wakatu Inc v Attorney-General* (2012): Although there was not the sufficient degree of certainty of intention to create a trust in this instance, the court noted that

there is, as Lord Atkin acknowledged in 1932, nothing – at least as far as he was then aware – to prevent the Crown acting as agent or trustee if it deliberately chooses to do so.<sup>243</sup>

The case law suggests therefore that the sovereign or her

representatives could be trustees. Lewis was clearly mistaken that ‘the Queen cannot be made a Trustee’. Whether the Queen could operate jointly with another person or body, especially in matters of ownership is less clear however. Nonetheless, Lewis passed the amended deed to William Grace with the following instructions:

The Minister desires that you will devote your whole attention to the obtaining of the necessary signatures to this deed, and that you will report frequently for his information, by telegraph, what progress you have been making. I enclose a copy of the Tongariro National Park Bill which was introduced last session and passed its second reading in the House of Representatives, but owing to the shortness of the session did not become law. You will be able to explain its provisions to the Natives signing the conveyance.<sup>244</sup>

Lewis’ instructions conveyed the Minister’s urgency in this matter. He was keen to deliver what he had promised to the House and the New Zealand public. The *Evening Post* trumpeted that ‘it is no slight honour to Mr Ballance that he should have inspired the native owners with the confidence and patriotism which their actions show them to possess.’<sup>245</sup> The stakes were, therefore, high and significant political capital was involved. With an election due in a few months, Ballance was eager to secure the gift before he went to the polls.

In closing submissions, the Crown acknowledged that some form of trust arrangement was closest to Horonuku’s understanding of the arrangement. It also accepted that there were reciprocal obligations associated with the tuku. One of those obligations was that Te Heuheu was to be a trustee of the national park. The Crown understood, therefore (then and now), that this was not an unconditional gift. Ngā iwi o te kāhui maunga required that the paramount chief of Ngāti Tūwharetoa continue to exercise authority down succeeding generations. But if the Crown had carefully inquired into the conditions of the tuku, it could not have failed to uncover the true meaning of what Horonuku intended. The Crown could also have discovered it at any time after Horonuku’s death, from his

### The Final Version of the Deed is Dispatched to Taupō for Signature and Suffers a Mishap

On 17 June 1887, Lewis, at Ballance's direction, forwards the replacement deed for Tongariro blocks 1 and 2 and Ruapehu blocks 1, 2, and 3 to William Grace with instructions that he shall get it signed as soon as possible. He adds:

I enclose a copy of the Tongariro National Park Bill which was introduced last session and passed its second reading in the House of Representatives but owing to the shortness of the session did not become law. You will be able to explain its provision to the Natives signing the conveyance.

Grace acknowledges receipt of the package some days later but reports that '[o]wing to accident to mail coach being upset in Kawakawa River the Deed is quite spoilt'. He

requests a replacement and comments that, in any case, he would have needed to wait a week before being able to get anything signed 'owing to Te Heuheu being absent at Hawkes Bay'.

Lewis telegraphs back:

Very sorry deed damaged. You had better obtain parchment and engross deed yourself. I assume original is legible, as it was most carefully packed on a roller & enclosed in several wrappings of brown paper. You can get plan put on by draftsman.

He follows this up with a further telegraph instructing Grace to 'proceed to Napier by first coach to obtain signatures', presumably including that of Te Heuheu.<sup>1</sup>

son, Tūreiti, whose description as recorded in 1908 and 1920 was quite clear – although very much after the event.

### (3) Attempts to acquire signatures, July–August 1887

Between June and August 1887, William Grace acquired as many interests in the mountain blocks as he could. Those interests were acquired prior to further subdivision of the blocks in September 1887 (see below). The matter was regarded with some urgency, because Grace's leave home was cut short under Lewis' instructions to follow Taupō Māori and obtain signatures at the court session in Napier.<sup>246</sup> While there, Grace succeeded in obtaining the interests of three chiefs, representing four shares in those original blocks (see map 7.1). They were paid between £90 and £100 for each share:

- ▶ Wīneti Paranihi of Ngāti Waewae for his shares in Tongariro 2 and also Ruapehu 3 (15 July 1887).
- ▶ Tōkena Te Kehakeha of Ngāti Turumākina for his shares in Ruapehu 2 (16 July 1887).
- ▶ Kumeroa of Ngāti Waewae for his shares in Tongariro 2 (18 July 1887).

According to Grace, Kumeroa's signature was acquired 'after considerable trouble'. In fact, Grace had to 'promise in writing to recommend Govt give him one hundred acres in Waimarino block' because

nothing less would satisfy him and that delay was giving outsiders who were following him about the opportunity of dissuading him from signing and abandoning the whole concern.<sup>247</sup>

Lewis responded tersely:

Minister has no power to make grants of land unless authorised by legislation – you should not make promises to Natives which cannot be carried out – or any other promise without authority first obtained.<sup>248</sup>

This episode is revealing for how William Grace conducted his purchase negotiations. Offering significant inducements to secure signatures, even without authority from superiors, was poor practice indeed. As discussed

### The 'Promise' of a 100-Acre Reserve

Promising to recommend Kumeroa receive a 100 acre reserve in the Waimarino block appears to have been the only way William Grace could persuade the chief to part with his share in the Tongariro 2 block. Nonetheless the evidence in our inquiry showed that the government rejected Grace's proposal out of hand. Evidently, Grace had no authority to conduct his negotiations in this way and the government was annoyed at Grace for doing so. Under-secretary Lewis's response made that plain.

Ngāti Waewae claimants submitted, however, that the Crown failed to properly investigate this proposal, and instead relied on a legal technicality to avoid the issue altogether. In their view, there was no reason why the Crown could not have granted Kumeroa a reserve in the Waimarino block. Ultimately, John Rewiti explained, Kumeroa believed that Grace's promise to recommend equated to a Crown promise to deliver.<sup>1</sup>

We agree with claimants. If the Crown's agent had no authority to make such an offer then the deal was concluded under false pretences. That would compromise, fatally in our view, the terms of agreement reached for Kumeroa's share in the land. In accordance with the Treaty duty of good faith, the Crown was obliged to provide a reserve as had been promised. Otherwise, it should have offered Kumeroa a satisfactory alternative or declared the deal null and void.

in chapter 6 (see section 6.5.4(5)), it seems Grace had few instructions on his negotiation strategy. Prices appear to have been left in his hands early on, and he may have interpreted this as conferring the freedom to do whatever was necessary to secure the mountains for the Crown. The situation appears to have changed quickly, though, after the Crown learned of Grace's promise to Kumeroa. Thereafter, Lewis specified the prices he considered appropriate for the blocks in question. For instance, Grace's

proposal to give Ngāti Waewae chief, Paurini Karamu, £100 for his two shares in Tongariro 1 and Ruapehu 1 was met with an instruction not to pay more than £50.<sup>249</sup> The government was growing irritated by their agent's actions in these important negotiations.

Grace encountered resistance from the remaining title-holders from this point onward. Dr Anderson stated that it is not entirely clear why this was so, but speculated that it reflected concern about the way the deal was shaping up.<sup>250</sup> The failure of the Tongariro National Park Bill to pass into law was probably a significant factor. The title-holders, and thus the people, had no guarantee that any chiefly authority would be maintained over the taonga, as they had intended.

There appeared to be other reasons too. We know, for instance, that Horonuku sent a telegram to the government requesting further concessions and advising that he 'will not do anything more until he obtains replies from Minister or his Dept to letter and telegram which . . . he has forwarded Wellington.'<sup>251</sup> Unfortunately this telegram has not survived, but Lewis provided at least a partial picture of what the paramount chief wanted:

The Government would of course fence in and reserve his [Te Heuheu's] father's grave if he so desired, but any exchange or gift of land would require ratification by Parliament – for this reason Kumeroa's application for a reserve in Waimarino cannot be entertained but I see no objection under the circumstances to his other demands being complied with.<sup>252</sup>

Fencing in and reserving Mananui's grave possibly reflected Horonuku's desire to prevent desecration of this site in the future. Reserving and erecting a fence around it would ensure it remained free of unwarranted interference. As Lewis explained, though, the government could not offer an exchange or gift of land because it required ratification by parliament first. Lewis' telegram, however, referred to 'other demands' that would be 'complied with'. Examining subsequent events, it is possible that these related to Ketetahi Springs and its subdivision from the mountain blocks, as well as who would succeed Horonuku as trustee of the taonga.



**The Waimarino, looking west towards Mount Taranaki**

Irritated by Grace's failure to obtain further signatures, Lewis sent the following telegram:

After the way Te Heuheu has been treated by the Government Mr Ballance considers that it is certainly to his interest to sign at once . . . Report number of signatures obtained and outstanding.<sup>253</sup>

Grace did inform Horonuku of Lewis' telegram, but it appeared to change little. He could still not persuade any of the other titleholders to sign the deed.

In an effort to clarify his understanding of the arrangement, Lewis wrote to Ballance:

Mr Grace appears to take it for granted that every signature to Park deed is to be paid for. I understood that Te Heuheu and all the principal men would sign without payments and that payment was only required in the case of a few who did not fall in with the proposal to give the mountains as a

National Park. So long as Te Heuheu and other leaders refrain from signing I think matter should be allowed to remain in abeyance until Court meets on 1st Sept.<sup>254</sup>

The Minister agreed. Calling a halt to the negotiations, Lewis subsequently advised Grace that the 'Native Minister is disappointed that Te Heu Heu and the others delay to carry out the arrangement – in the meantime no payment can be authorised on this account.'<sup>255</sup> At that point, correspondence on the matter ceased.

It is apparent that not only did the minds of Te Heuheu and the Crown not meet on the proposed arrangement, but there were clear misunderstandings from Ballance's agents as to how to implement it. Lewis' instruction to wait until the opening of the court probably foreshadowed his own intention to attend the next session in Taupō. That could provide the under secretary with an opportunity to clarify the government's understanding of the arrangement and ensure the safe passage of the gift. The

negotiations had stalled and Ballance's chief negotiator set out to get things back on track.

#### 7.6.4 Why did Ngāti Tūwharetoa subdivide the maunga blocks and was the deed valid?

The subdivision of the mountain blocks, granting Horonuku Te Heuheu exclusive title to the peaks, and his subsequent transfer of title to the Crown of those subdivided blocks were the final key steps taken in the negotiations. These events took place over several days in late September 1887; one month after the documentary record goes silent on the whole arrangement. There is thus little documentary evidence available to determine why these final steps were taken. In this inquiry we had two historical reports examining events surrounding the transfer of the mountains into Crown ownership. Both Dr Anderson, for the claimants, and Mr Joel, for the Crown, conceded that the motivations and understanding of Te Heuheu at this point are a matter of interpretation, given his death shortly afterwards.<sup>256</sup> Both historians offered interpretations without reaching definitive conclusions on Horonuku's understanding of events. Neither historian, however, had the benefit of the traditional evidence of Ngāti Tūwharetoa when researching their reports. Their interpretations were based on the limited documentary evidence available.

In closing submissions, Ngāti Tūwharetoa argued that the Crown pressured Horonuku to gift the mountains as repayment for the leniency shown toward him after the battle of Te Pōrere. His shaky signature on the deed, in counsel's view, suggested an element of coercion involved in effecting the transfer.<sup>257</sup> The Crown, however, saw the paramount chief as having had a consistent intention to gift the mountains to the government for a national park, which was confirmed by the decision to subdivide the mountain blocks and then transfer ownership of them via the deed. Faced with opposition to the gift amongst the other rangatira on the titles, the Crown argued that Horonuku gifted just the peaks to the government in an effort to assert his mana.

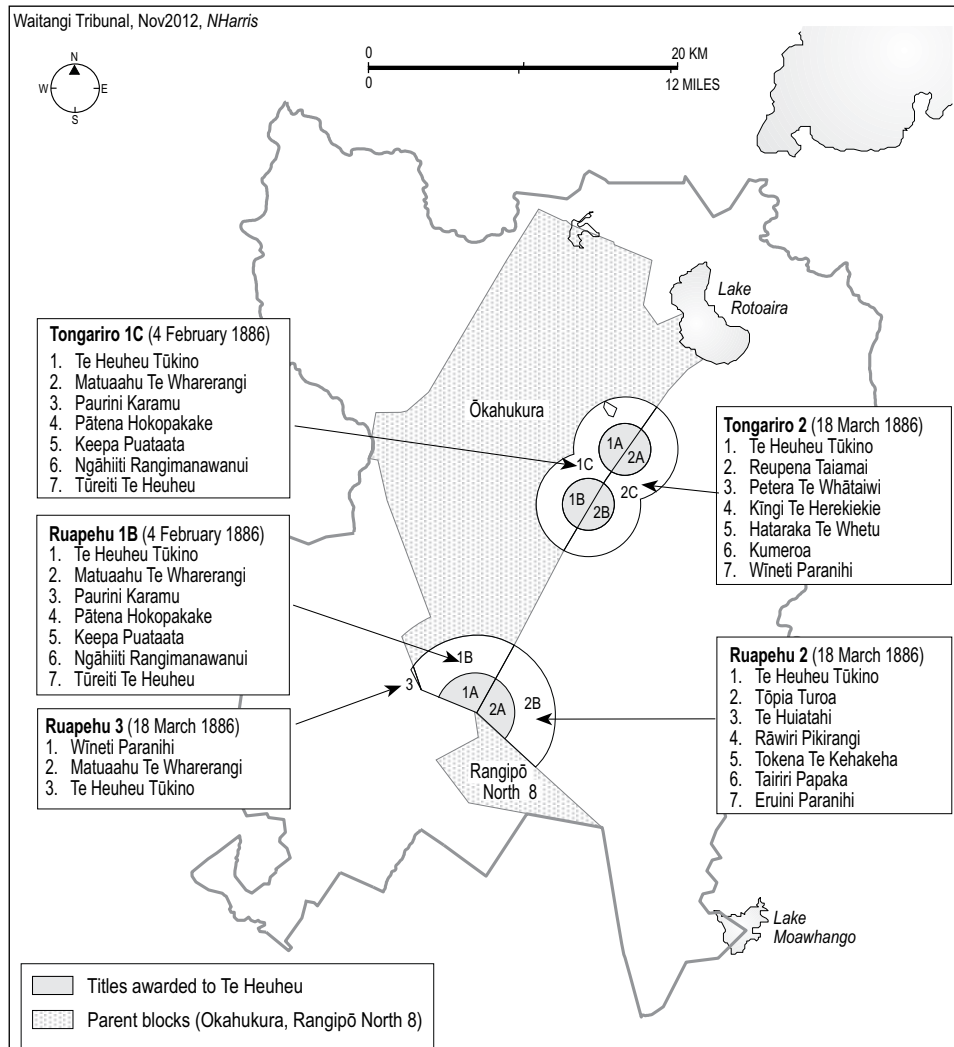
To answer the question we have posed for ourselves in this part, we must consider the final steps of the process

toward the alienation of the peaks. Only through an analysis of this process can we hope to gain any understanding of why the blocks were subdivided and what Te Heuheu understood the effect of the deed to be. We will also analyse the arguments of parties.

#### (1) *The final steps towards the alienation of the peaks*

Between 16 August and 20 September 1887, there is no reference in the press or documentary record to the negotiations or to any associated activity. The first sign of progress was the subdivision of the mountain blocks in the court on 21 September 1887. From court minutes, we were able to identify a total of four different titleholders in the mountain blocks applying for these subdivisions. Pātēna Hokopakake and Tūreiti Te Heuheu applied for a subdivision of the Tongariro 1 block, requesting that Horonuku alone be granted one-mile half-circles around Tongariro and Ngāuruhoe maunga 'for the purpose of conveying same to the Crown as a gift for a park'. At the same time, they applied for a subdivision of Ketetahi Springs out of the Tongariro 1 block. Title to the springs would be granted to the original seven chiefs, including Horonuku, listed in Tongariro 1. The remainder of the mountain blocks, the applicants requested, should also be awarded to the seven chiefs listed for Tongariro 1. Horonuku Te Heuheu's share in each, it was specified, was 'not to be greater than' the others listed on the title. With no objections raised in court, the Judge simply issued new interlocutory orders in accordance with these applications.<sup>258</sup>

Three additional subdivision applications and awards followed. First, Pātēna and Tūreiti applied to award Horonuku a one-and-a-half-mile semicircle around the summit of Mount Ruapehu in the Ruapehu 1 block. The remainder of the block was to remain in the names of the seven chiefs listed for Ruapehu 1 in equal shares. Secondly, Petera te Whatāiwi applied to subdivide the Tongariro 2 block in the same fashion as Tongariro 1 (with the exception of the special provisions concerning Ketetahi Springs), and, thirdly, Tairiri Papaka applied for the Ruapehu 2 block to be subdivided in the same way as Ruapehu 1. Again, in the absence of objections, the court made the awards in favour of the paramount chief.<sup>259</sup>

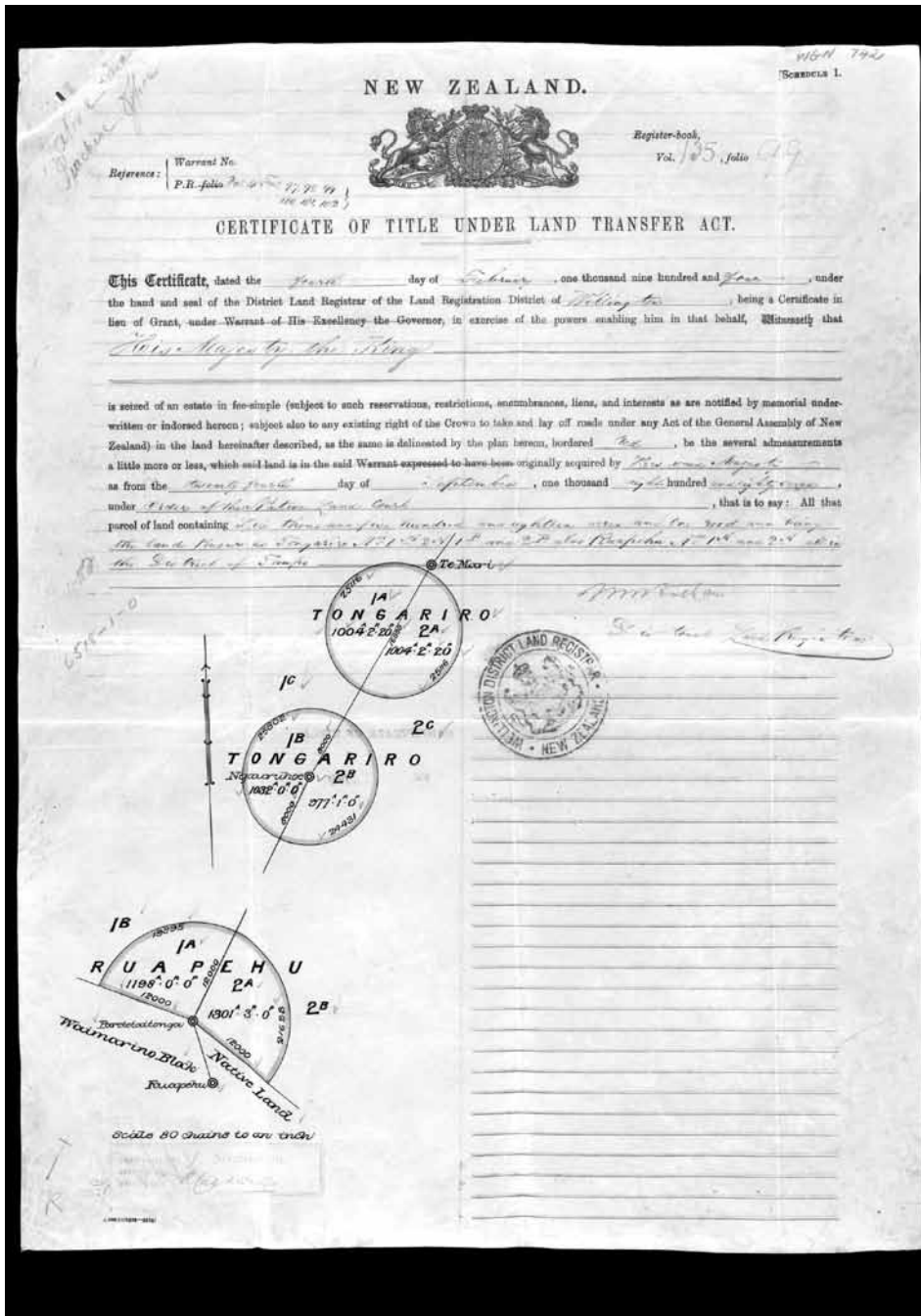


Map 7.4: Subdivision of the maunga blocks

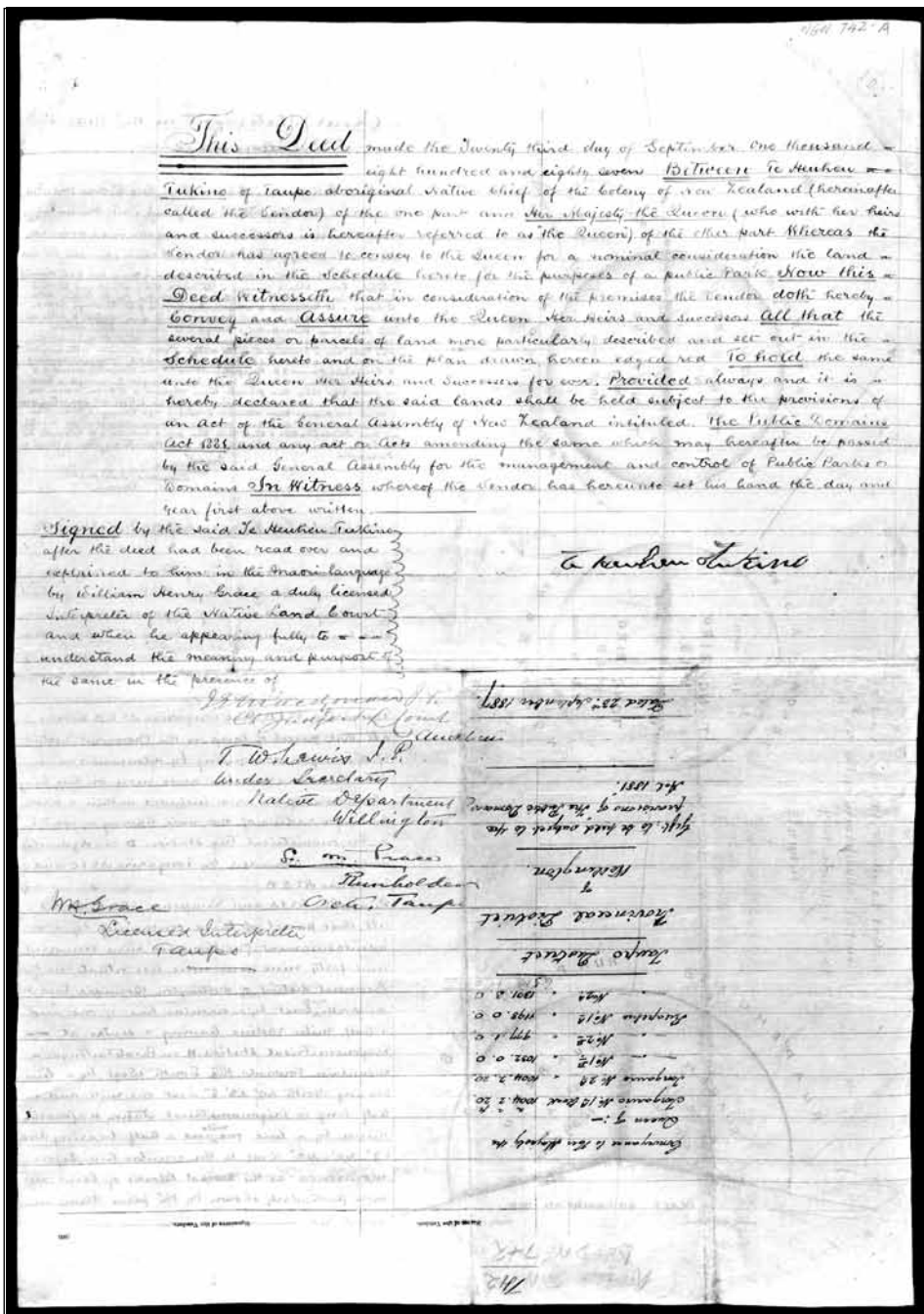
Two days later, on 23 September 1887, Horonuku came before the court and, according to the minutes,

made an application to the Court that the above blocks [Tongariro 1A, 1B, 2A, and 2B and Ruapehu 1A and 2A] be awarded to the Crown, as a gift from himself for the purpose of a National Park.

He also requested that ‘when the Trustees are appointed he be one and his son Tureiti Te Heuheu succeed him on his death’. Having the deed ‘read over and explained to him in the Māori language’ by William Grace, Horonuku then signed it in the presence of those in the court. The legal effect of the deed was that Te Heuheu transferred his interests in the peaks to the Crown for a ‘nominal

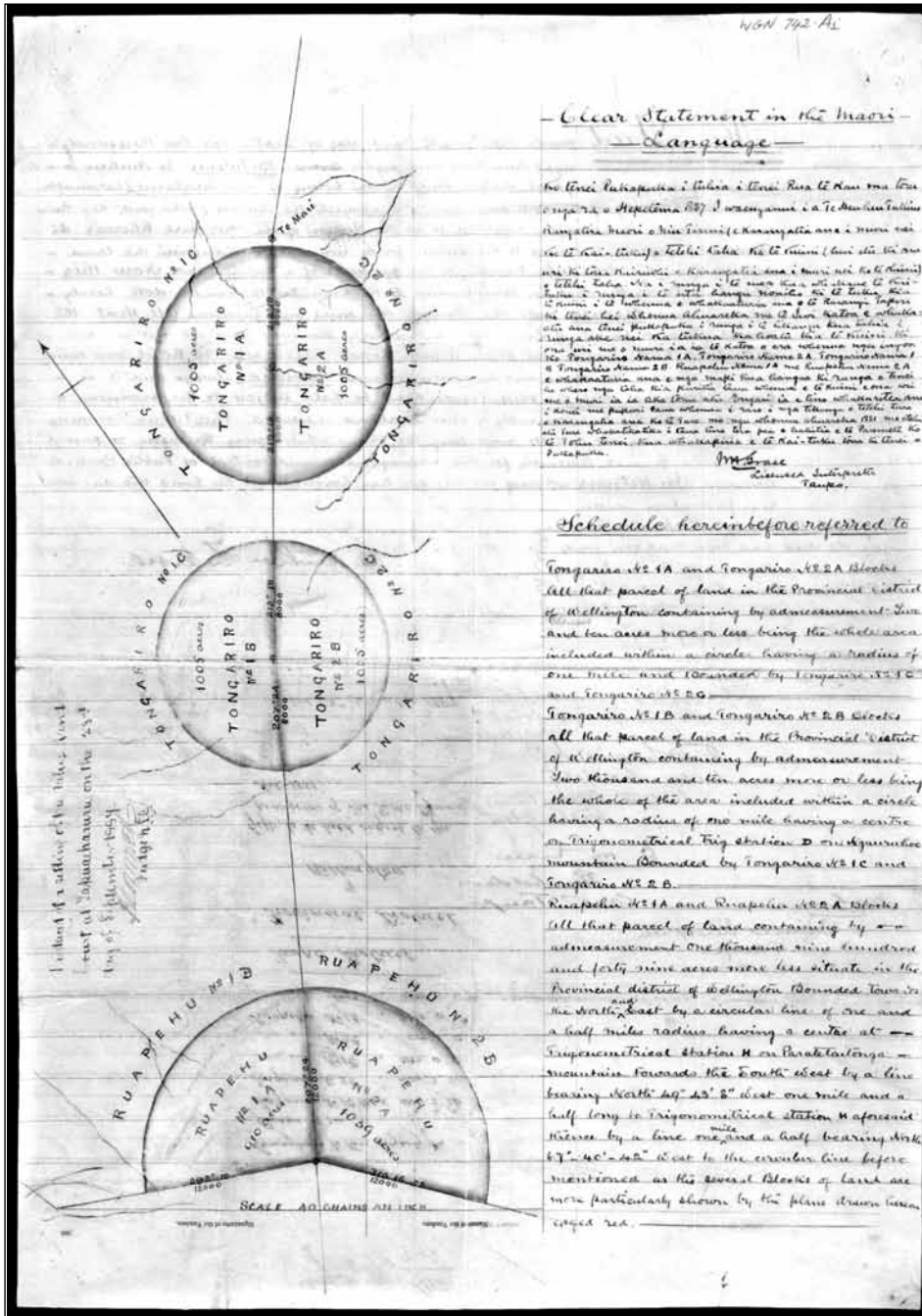


The deed of conveyance. Signed by Horonuku Te Heuheua on 23 September 1887, this deed became the legal basis of New Zealand's first national park.



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consideration, which was neither specified nor paid at that time. Lewis, who was present in the court, accepted the gift on behalf of the Crown.<sup>260</sup>

Upon signing the deed, Horonuku drafted his letter to the government. He informed Ballance that he and his people had spent ‘many days talking with Mr Lewis’ about the arrangement, because they regarded it as ‘a matter of great importance’ and some of the tribe ‘were not clear on the subject’. He stated that the court had awarded the tops of the mountains to himself because he was ‘the person’ to whom the following proverb applied:

*Tongariro the mountain*  
*Taupō the sea*  
*Tūwharetoa the tribe*  
*Te Heuheu the man.*

Having signed the deed, Te Heuheu remarked that he had fulfilled his ‘word spoken’ to Ballance at Rotorua. He then requested two things to complete the agreement: first, that the government erect a tomb for the depositing of Mananui’s bones after their removal from Tongariro; secondly, that Tūreiti be appointed the trustee to succeed him after his death.

### (2) *The coercion theory*

In closing submissions, Ngāti Tūwharetoa alleged that the Crown imposed pressure on the paramount chief in order to extract the gift. That gift, according to counsel, must be viewed as Te Heuheu repaying his debt to the Crown for its lenient treatment of him after associating with Te Kooti at Te Pōrere. As discussed in chapter 3, Horonuku surrendered to the government in October 1869, relocated to Napier, and was eventually taken on a ministerial tour around Northland. No land was confiscated from the tribe at the time. Claimant counsel alleged, however, that 18 years later, having failed to extract the gift out of Te Heuheu willingly, Crown agents used that historical leniency to coerce him into relinquishing the mountains. As an indication of the specific application of that pressure, the claimants referred to under-secretary Lewis’ comment to William Grace regarding Te Heuheu’s unwillingness to

sign the previous deed circulated amongst the tribe in July 1887:

After the way Te Heuheu has been treated by the Government Mr Ballance considers that it is certainly to his interest to sign at once.<sup>261</sup>

In closing submissions, counsel for the claimants asked the Tribunal to consider why Horonuku would act in September when he was reluctant to proceed only a couple of months earlier.<sup>262</sup>

The claimants agreed with Dr Anderson’s interpretation that Lewis’ comment was ‘vaguely threatening’ and an indication of Crown pressure to secure a cession of land. This was the topic of much discussion at our hearings. In response to questions from counsel, Dr Anderson suggested that Lewis’ statement probably referred to the absence of any land confiscation from Ngāti Tūwharetoa after Te Pōrere.<sup>263</sup> Counsel for Te Iwi o Uenuku, questioned Dr Anderson further:

**Mr Pou:** That’s really the threat behind the veil though, isn’t it? “We’ll treat you like that again”.

**Dr Anderson:** That seems to be implicit. I have to make the point that this is an internal correspondence, so it’s difficult to say whether this was conveyed, but since it’s Grace, I mean, who knows what Grace is saying to him?

**Mr Pou:** But there seems to be an enormous amount of pressure for Te Heuheu to give up this land fast, quickly?

**Dr Anderson:** I do think he is under a lot of pressure, yes.<sup>264</sup>

Crown counsel put it to Dr Ballara that Crown coercion of Horonuku was in fact implausible. She responded:

Coercion might be a little bit strong. Persuade might be a little bit nearer. But somewhere between coercion and persuasion. You have to remember that the attitudes that came out of the wars which finished in 1872 didn’t just disappear. Things like whether you have been on the Heuheu side, or whether you had been on the Government’s side were thrown at people in the Land Court for years afterwards . . . 15 years was not long enough for those attitudes to disappear.<sup>265</sup>

This testimony accorded with Ngāti Tūwharetoa oral traditions, which record that William Grace placed Horonuku under detention in the Hawke's Bay after Lewis condemned his delaying tactics.<sup>266</sup> During the second week of hearings, Napa Ōtimi, giving evidence for Ngāti Tūwharetoa, raised a second period of confinement for Te Heuheu which he said occurred 'around 1885–1887'. This evidence would draw a closer link between the gift and the house arrest period.<sup>267</sup>

Ko te kōrero ā Ngāti Tūwharetoa, nā te herehere-ā-whare o Te Heuheu ki Heretaunga i whakapehi nei ki runga ki ā ia, mana hei tuku i ngā maunga hei koha ki te ao. Nā te kitenga o tētahi wahine whakatika whare nō Ngāti Tūwharetoa i hoki mai ai ki te kāinga, ka kōrero 'kua mauheretia a Te Heuheu ki tētahi kāinga'. Ka tae ki te wa i tohua a Te Heuheu ka puta a ia o ēnei na kōrero: '*Ka wareware au, i tohua*'<sup>268</sup>

It is said in Tuwharetoa history that Te Heuheu was placed under house arrest in Hastings to put pressure on him to exercise his authority to grant (koha) the mountains to the world. It was observed by one of the woman servants of the house where he was held, who was also a descendant of Tuwharetoa, who said when she returned home that Te Heuheu was imprisoned in a home. Later, Te Heuheu would describe this experience in this way: '*Lest I forget, it will beforever symbolised*' [emphasis in original].<sup>269</sup>

This second house arrest would have added weight to the Ngāti Tūwharetoa thesis, but it could not be corroborated; it was founded on an obscure oral account and the year of the arrest was calculated from the date of the housekeeper's death. We also note that a second house arrest was not raised at all by Ngāti Tūwharetoa's counsel in closing submissions.<sup>270</sup>

The Crown's historian, Mr Joel, could find no evidence of house arrest or coercion in the documentary record. He argued that Lewis' telegram is ambiguous and cannot be taken to imply a specific threat to Horonuku to cede the maunga. He stated that the comment must be seen in the context of the government's overall negotiations where Te Heuheu was imposing conditions on his cooperation.

According to Mr Joel, Lewis' statement could refer to the government's positive treatment of the paramount chief, including the granting of a pension to him earlier that year, and the Minister's agreement to make him a trustee of the park.

Even if that was not the context, Mr Joel concluded that the sentence by itself was too ambiguous to show it referred to the Crown's lenient treatment after 1869. As we discussed in chapter 3, correspondence after Horonuku's surrender made it clear that his lenient treatment was linked to several factors:

- ▶ the belief that Te Heuheu's association with Te Kooti was less than voluntary;
- ▶ the assistance that Te Heuheu provided to the government in its pursuit of Te Kooti;
- ▶ the perception that Te Heuheu could be a useful ally in the future; and
- ▶ the prevailing view that confiscation had been an unwise policy.<sup>271</sup>

We agree with Mr Joel's assessment. Despite the testimony of Mr Ōtimi, we think it highly unlikely that Horonuku was coerced into signing the deed. There is no other evidence in support of this theory. In fact, Tūreiti suggested it would be a 'very great honour' for his father to sign this deed.<sup>272</sup> Coercion, therefore, is an unlikely explanation for the final steps taken toward implementing this arrangement. We do accept, however, that some pressure was being exerted by the government, through the Grace brothers, to bring matters to a speedy conclusion. Nevertheless, for coercion to be established, the evidence would need to show that Horonuku saw himself as being forced into something he did not want – namely, a transfer of sole ownership of the peaks to the Crown. In our view, the evidence demonstrates that neither Horonuku nor Tūreiti understood the deed in such a way. Rather, as we have discussed, Horonuku saw the transaction as a means whereby he and the Crown would be able to share in the peaks. Thus there would have been no need for coercion.

### (3) *Accounting for the decision to subdivide*

Having rejected the coercion theory, how do we account for the decision to subdivide the mountain blocks?

As indicated above, Lewis travelled to Taupō in early September 1887 and met with Lawrence Grace, Horonuku, and Tūreiti, possibly in an effort to clarify the arrangement. We know this happened because of the evidence supplied by Tūreiti in his meeting with the government in 1920. At the meeting, further negotiations took place that, we think, led to further changes to the arrangements for the mountains. It also led to an oral agreement between Horonuku and the Crown, which proposed to insert the Queen into the title of the mountains with the paramount chief. But before that, the mountain blocks were subdivided, and the peaks of each were put into his name alone.

For Horonuku Te Heuheu and supporting chiefs, as we have shown, the primary objective was to preserve a legal stake in the heart of the taonga in any arrangement reached with the Crown. That objective was consistent throughout the negotiations. Retaining a legal stake would provide a basis from which the tangata whenua, through the paramount chief, could continue to exercise authority over the taonga. Initially, Horonuku believed that legislation would establish him as a tribal trustee, but the failure of the National Park Bill, internal opposition to the negotiations – generated in part by misleading statements in the press – and the rapid alienation of significant parts of the tribal estate into Crown ownership forced a change in approach. Horonuku was now confronted by an inescapable issue in those final days of hearings – what should he do to protect the taonga?

That was possibly when Lawrence Grace suggested subdividing the peaks into his name alone and conclude an agreement for that part. Why? For the Crown, subdivision allowed Horonuku the opportunity to acquire control of the peaks which he could then legally gift to the government, thus completing what it was believed he intended to do all along. But why did Te Heuheu agree to this step? In our view, there were several reasons why he would have supported the subdivision proposal. We turn to those now.

Fundamentally, subdividing the peaks into his name alone allowed Horonuku the ability to cement an agreement with the Crown for the protection of this taonga. In the absence of legislation protecting the tribes' interests,

Te Heuheu probably viewed an agreement over the peaks to be a satisfactory compromise to the agreement reached with Ballance in January 1887. The main difference, of course, was that the land it applied to would change because of the subdivision. Under Grace's proposal, partnership would be given effect to through the sole method of the title system, specifically title shared by the Queen and the paramount chief of Ngāti Tūwharetoa. That would ensure the tribe's authority over te kāhui maunga would be secured forever.

In that sense, there was a protective element to the decision to subdivide. We indicated above that Horonuku was under pressure to resolve this arrangement with the Crown. Negotiations at the time would have been intense. With an election on 26 September, Ballance and Lewis may have been annoyed at Te Heuheu and the Graces for their inability to bring the negotiations to a completion.

From Horonuku's perspective, it should be remembered, too, that Māori had lost considerable quantities of land by this point and there was the prospect of losing the mountains by ordinary Crown purchase. Three of the titleholders in the mountain blocks had already sold their interests, before a basis for Māori authority had been able to be established. Te Heuheu would probably have understood that if he did not go ahead with subdivision, the Crown could seek to partition out its interest at the top of the mountains under section 24 of the Native Land Court Act 1886. This was an approach the Crown readily employed elsewhere and would certainly have been brought home to Te Heuheu when the Crown partitioned out for itself the 'A' blocks of Rangipō North in the days leading up to the subdivision, all of which surrounded the lower slopes of the maunga.<sup>273</sup> If that happened in the mountain blocks themselves, the Crown would have acquired the spiritual apex of the taonga. The Crown could then have abandoned any commitment to sharing authority for the protection of the taonga. Losing the mana over Ngāti Tūwharetoa lands was, as the *Evening Post* reported upon his death, the very thing that Te Heuheu fought throughout his life to avoid.<sup>274</sup>

Not only did title-sharing represent a satisfactory compromise to the original agreement, but it also presented an

opportunity for Horonuku to assert his mana in the eyes of both Ngāti Tūwharetoa and its neighbouring iwi.

Despite rejecting the coercion thesis, the Crown accepted that there was a perception Horonuku had discredited the family name after his association with Te Kooti and that restoration of mana was a reason for him to act as he did. Sir John Grace's historical account refers to this:

During the Court investigations Te Heuheu Horonuku was ably assisted by his son-in-law Lawrence Marshall Grace . . . Grace saw that, in the eyes of the Government and some of the visiting chiefs who had stood by the Crown during the Maori Wars, Te Heuheu Horonuku had discredited the family name, Te Heuheu, by some of his past indiscretions. To the old chief he stressed the importance of re-establishing his mana in the eyes of all who were in Taupo attending the Court.<sup>275</sup>

In our view, there were two reasons why Horonuku wished to assert his mana via the *tuku*. First, subdividing out the peaks and entering an arrangement with the Crown presented an opportunity to cement his authority. In chapter 2 we explained that the historical record showed occasional challenges to the paramountcy of the Te Heuheu line. In 1877, for instance, Dr Ballara identified some dissension over Horonuku's election to chair the Ngāti Tūwharetoa komiti. This, in her view, suggested that Horonuku's leadership was far from universally accepted within the tribe at that time.<sup>276</sup> By the 1880s, Horonuku's authority appeared to be more widely accepted internally, but it was far from entrenched. Grace's proposal of 1887 presented Te Heuheu with an opportunity to assert his mana and entrench the paramountcy.

Another piece of evidence supports our interpretation. The original proposal, as captured in the first park Bill, was for the tribe to elect a successor to Horonuku Te Heuheu on the board. This reflected the desire of the tribe to maintain its control over future kaitiaki for te kāhui maunga. In September 1887, however, Horonuku requested that his son's name be inserted into the legislation constituting the national park. As Tūreiti later explained:

When the Board was set up the Queen's name was mentioned as being a life-member of the Board, . . . and at his [Horonuku's] death I was to take his place, and be also appointed a life member of that Board during my life-time.<sup>277</sup>

The change to a hereditary trusteeship, in our view, suggests a desire to entrench the paramountcy of the Te Heuheu line on Ngāti Tūwharetoa.

The second reason Horonuku wished to assert his mana was to increase his standing in the eyes of neighbouring tribes. The threat of claims by Whanganui Māori and Ngāti Kahungunu to lands surrounding te kāhui maunga was something that several historians have referred to when explaining Te Heuheu's motivation of 1887.<sup>278</sup> We recall his famous response to Te Keepa's Taupō land claim in the court during the 1880s: 'Show me your fires! You cannot for they do not exist! Behold I show you my fire of occupation brought by my tipuna Ngatoroirangi centuries ago. Behold!'<sup>279</sup> Entering an arrangement with the Crown for the peaks, as Dr Anderson concluded, linked the names of Tongariro, Te Heuheu, and the Queen permanently in public consciousness.<sup>280</sup> It established his mana over Tongariro for all to see.

For both these reasons, we believe this was an opportunity too attractive for Horonuku Te Heuheu to resist. We, therefore, agree with Sir Hepi Te Heuheu who commented on his great grandfather's motivations at the centenary celebrations of the 'tuku' in 1987:

The first is that it was a political act by a leader who recognised that the odds were against him and it was therefore necessary to perform an act so courageous as to save his people and his land.

The second is that I believe that Horonuku was motivated equally by the spiritual dimension of the Act of giving his gift, because by that very act he decisively established his mana, his ahi kaa or his fire place, against all other claims to his land and his mountains.<sup>281</sup>

In subdividing the mountains, Horonuku had some support. The evidence of the Native Land Court minutes showed that the paramount chief had the support of at

least four of the 19 titleholders to subdivide the mountain blocks. It is possible there were others whose support was simply not recorded in the minute books, particularly if Sir John Grace is correct in stating that ‘the majority of those chiefs, in the end, agreed to a suggestion made by [Lawrence] Grace that the mountains [that is, the peaks] be vested in Te Heuheu alone.’<sup>282</sup> The other chiefs, meanwhile, still kept an interest in the subdivisions on the flanks of those mountains.

#### (4) *Te Heuheu’s understanding of the deed*

In this section, we address whether Horonuku Te Heuheu understood the legal effect of the deed. In response to questioning by Crown counsel, Dr Ballara conceded that it would be fair to say that, by the 1880s, Horonuku would have understood what he was alienating when attaching his name to any deed.<sup>283</sup> Dr Anderson agreed, conceding that Horonuku would have understood he had relinquished legal ownership of the peaks:

**Mr Soper:** Do you think they understood or at least Te Heuheu understood that it would go out of their ownership at least?

**Dr Anderson:** Their legal ownership, yes.<sup>284</sup>

But Dr Anderson also suggested that recognition of the paramount chief’s authority was a condition of the transfer of the peaks to the Crown.<sup>285</sup> Furthermore, she later conceded to the presiding officer, Deputy Chief Judge Isaac, that her view of Te Heuheu’s understanding did not take account of the Māori version of Te Heuheu’s 1887 letter or the deed of conveyance.<sup>286</sup>

We have already examined the Māori version of Horonuku’s letter to the government, which had been written on the same day that he signed the deed of conveyance. In doing so, we largely agreed with Mr Winitana’s modern retranslation, as it more fully encapsulated the language and values underpinning the Māori words. From that letter, we concluded that Horonuku believed he was establishing a partnership with the Crown by releasing te kāhui maunga into the protective custody of kaitiaki, namely the paramount chief of Ngāti Tūwharetoa and

the Queen together. The kaitiaki would be responsible for protecting the taonga for all people, Māori and Pākehā. Horonuku did not agree merely to gift fee simple title of the peaks to the Crown as a national park. This was based on a fundamental misunderstanding of the tikanga associated with Horonuku’s actions. He acted to protect his, and by extension his tribe’s, authority over the sacred taonga by inviting the Queen into the title of the peaks with him to cement a partnership. Although this was a deliberate and intentional change to the status of the maunga, it was a widening, not a narrowing. The Queen would join Te Heuheu in the title and both would protect the mountains through Pākehā law and a sharing of authority.

The deed itself was written in both English and Maori. We must, therefore, assess Te Heuheu’s understanding of the deed to determine whether it alters our conclusions above. In assessing the deed, we are also mindful of previous Tribunal jurisprudence and rules of international law. The Ōrākei Tribunal, for instance, emphasised that common law principles require agreements involving indigenous peoples to be interpreted in the spirit in which they were developed. This necessitated a consideration of the surrounding circumstances, and the declared and apparent objectives of parties to agreements.<sup>287</sup> Assessing agreements within their total context meant considering oral undertakings as an equal component of such agreements. As the *Whanganui River Report* stated:

American precedent is undoubtedly correct in asserting that, in treaties with indigenous people of oral traditions, spoken promises are as much a part of the treaty as those written in the formal document.<sup>288</sup>

The language within deeds, therefore, was not determinative in distilling the intentions of the parties. As stated in other Tribunal reports, agreements across cultures had to take into account the total context before determining those issues.<sup>289</sup>

American case law, particularly the 1899 Supreme Court decision *Jones v Meehan*, was also influential in establishing rules for the interpretation of bilingual treaties. The decision argued that treaties with Native

Americans should be construed 'in the sense in which they would naturally be understood by the Indians.' This was described as the *contra proferentem* rule, which specified that, where ambiguity existed, provisions within treaties 'should be construed against the party which drafted or proposed those provisions.'<sup>290</sup> We apply this rule and jurisprudence when considering Te Heuheu's understanding of the deed below.

The deed which Horonuku signed on 23 September 1887 comprised two parts: an English text and a Māori translation, or 'Clear Statement in the Maori Language'. The English text specified that, upon signing the document, Te Heuheu 'doth hereby convey and assure unto the Queen Her Heirs and Successors' the peaks of the three mountains, Ruapehu, Ngāuruhoe, and Tongariro, to be held subject to the Public Domains Act 1881.<sup>291</sup> The English text was, therefore, clear that title to the peaks would transfer into Crown ownership.

According to the Crown, Horonuku understood that he was 'releasing, giving over, or gifting the mountains into a new kind of protective arrangement, under the mana of the Crown or the Queen.'<sup>292</sup> Horonuku's decision to remove his father's bones from the side of Tongariro was referred to in support of the Crown's case. Earlier in the negotiations, Te Heuheu had requested that his father's remains on Tongariro be fenced in and reserved. Having now signed the deed, he wished to remove the bones altogether and place them in a specially built tomb.

We have considerable reservations over the Crown's submission. There are a few possible explanations why Horonuku decided to remove his father's bones. One relates to the role that the remains served on Tongariro. It must be remembered that Iwikau Te Heuheu had deposited his brother's bones on the maunga in the 1850s to establish his claim to the paramountcy. Since that time the presence of the remains served as a constant reminder to the tribe of that claim – placing the name of Te Heuheu alongside that of Ngātoroirangi who had first ascended the mountain and established his mana over it. Horonuku's understanding of this latest agreement, though, was that it add 'another layer of prestige' to his name by linking his own to the Queen, and both – at law – to Tongariro

maunga.<sup>293</sup> If, as he believed, the Te Heuheu name was to become fixed to the mountain forever, it is possible Mananui's kōiwi no longer fulfilled the symbolic role of establishing the Te Heuheu line's claim to the paramountcy as it once did. In the circumstances, Mananui's remains could return to the protection of the tribe.

Another possible reason relates to the tapu nature of the kōiwi. Since it had not been possible to establish a burial reserve exclusive to Te Heuheu's people, it seems reasonable that Horonuku would want the remains removed to ensure they could be treated with proper respect. He may have been willing to share the mountain with the Queen, but it does not necessarily follow that he would also want to share his father's burial place.

As explained above, Te Heuheu's signature on the deed would have been directly informed by the oral agreement he believed he had reached with under-secretary Lewis through Lawrence Grace's translation. According to Mr Ōtimi, Te Heuheu was not conversant with English. He was raised in a traditional Māori world, and although he learnt to write in Māori, it is thought that he could not speak English. This would have limited the extent to which he understood Pākehā culture and Pākehā norms.<sup>294</sup> Horonuku's cultural framework was derived primarily from tikanga Māori, raising significant doubts in our mind about his level of understanding of the English text.

The Māori text of the deed is reproduced in full on the next page with significant phrases italicised.

In his brief of evidence, Mr Winitana provided the Tribunal with a modern retranslation of this Māori text. According to him, some of the words used in the deed cannot be rendered accurately in English because the cultural paradigms are profoundly different. For that reason, he argued that there was a 'huge chasm' in beliefs and values over concepts such as tuku and gift. A tuku has strings attached through the imposition of reciprocal obligations that bind the donor and donee on into the future. Also, a tuku does not mean that a donor's connection with the property is completely severed.<sup>295</sup> To refer to Te Heuheu, therefore, as 'te kai tuku' did not convey that Te Heuheu was gifting fee simple title of the peaks to the Crown, in a

### A Clear Statement in the Māori Language

‘KŌ TENEI Pukapuka i tuhia i tenei rua tekau ma toru o nga ra o Hepetema 1887. I waenganui i a Te Heuheu Tukino Rangatira Maori o Niu Tirenī (e karangatia ana i muri nei ko *te kai tuku*) o teteahi taha ko te Kuini (hui atu ki ona uri ki tonu kairiwhi e karangatia ana i muri nei ko te Kuini) o tetahi taha. Na i runga i te mea kua whakaae *te kai tuku* i runga i te utu hanga noaiho ki te tuku kia te Kuini i te whenua e whakaturia ana e te Rarangi Tapiri ki tenei hei Whenua Ahuareka mo te iwi katoa e whakatu ana tenei pukapuka i runga i te tikanga kua tuhia i runga ake nei. Ka tukua ka hoatu kia te Kuini ki ona uri me o muri i a ia te katoa o era whenua nga ingoa ko Tongariro nama 1A, Tongariro nama 2A, Tongariro nama 1B, Tongariro nama 2B, Ruapehu nama 1A, me Ruapehu nama 2A e whakaaturia ana e nga mapi kua hangaia ki runga o tenei he whero nga taha kia puritia taua whenua e te Kuini e ona uri me o muri ia ake tonu atu. Engari ia e tino whakaritea ana i konei me pupuri taua whenua i raro i nga tikanga o teteahi ture e karangatia ana ko te ture mo nga *Whenua Ahuareka 1881* me etehi atu ture whakatikatika i tana ture tera pea e hahitia e te Paremete ko te tohu tenei kua whakapiria e te kai-tuku tona ki tenei pukapuka.

‘WH Grace

‘Licensed Interpreter

‘Taupo [Emphasis added.]’<sup>1</sup>

one-off, finite, transaction after which he would no longer have any mana over the peaks. Mr Winitana translated ‘te kai tuku’ as ‘grantor’, a word that more accurately conveys the sense that Te Heuheu believed he was bestowing only an interest in the mountains. Bestowing an interest was, in our view, the method by which he envisaged the Queen obtaining a share in the title.

The Māori text also stated that the peaks would be

placed under the protocols and laws known as ‘Whenua Ahuareka 1881.’ This was supposed to be a translation of the English phrase ‘Public Domains Act 1881.’ Under that Act, the Governor and his representatives could manage domain lands for the purpose of recreation and public amusement.<sup>296</sup> But ‘whenua ahuareka’ means ‘a pleasant land to behold’, as Mr Winitana has translated,<sup>297</sup> which has a quite different sense from ‘public domain.’ The Māori words chosen thus conveyed little or no sense of how the Crown planned to manage the taonga from then on. We agree with Mr Winitana that, in the absence of a precise explanation of the law and how it was to be applied, there was nothing to arouse concern in Te Heuheu, or any of his supporters present in the court, about this dimension of the deed. To our mind, Te Heuheu would have simply understood it to be referring to an Act that would ensure he was a trustee with the Queen for the purpose of protecting the taonga.

The deed in English and the full statement in Māori were, therefore, incompatible. Most importantly, the Māori translation did not convey what the Crown was intending. Te Heuheu and those present in the court appeared still to believe, after William Grace had read the Māori text aloud, that he and the Queen would come to share the legal ownership of the peaks. Evidently, there was nothing in that text that caused significant alarm at the time. We are reasonably confident, therefore, that Te Heuheu understood the Māori text in terms of the oral agreement that had been reached earlier, and that he was happy with it.

For that reason, we conclude that there was no mutuality of understanding in this transaction. From the evidence put before us, it appears that Horonuku and Tūreiti Te Heuheu understood the agreement and the deed differently from the Crown. According to the *contra proferentem* rule, if there is ambiguity, the deed should be construed against the Crown. It is thus the shared understanding of Horonuku and Tūreiti that must hold sway.

We now turn to other issues raised by claimant counsel with respect to the legality of the deed of conveyance.

Counsel for Ngāti Tūwharetoa argued in closing submissions that the deed may have been invalidated by



several legal technicalities. We consider these points below.

## **(5) Was the deed of conveyance properly executed?**

Counsel for Ngāti Tūwharetoa argued that a deed at common law must be executed by both parties and must be sealed for it to be valid. On that basis, she questioned whether the deed was properly executed.<sup>298</sup>

While we accept that is the position at common law, the Property Law Consolidation Act 1883 governed conveyancing in New Zealand in 1887. The Act was in force until 1906, but was amended twice, in 1885 and 1895. The 1885 amendment is relevant to this discussion because it impacts on attestation of a deed.

For a deed to be valid, it required the signature of the party bound by the deed and attested by at least one witness. The witness attesting the deed had to include their address and occupation. Sealing a deed was not necessary except when it was made by a corporation.<sup>299</sup>

When conveying fee simple title, schedule 1 of the Property Law Consolidation Act did not require the person purchasing the land to sign the deed, only the person bound by the deed. Subsequent legislation required deeds entered into to be attested by a native interpreter and a justice of the peace, postmaster or solicitor.<sup>300</sup> This, however, was not a legal requirement until 1894, approximately seven years after Te Heuheu signed the deed.

Basic statutory interpretation, therefore, leads us to conclude that the deed signed by Te Heuheu and witnessed by Lewis, and also by William and Lawrence Grace, was, in conveyancing terms, valid.

## **(6) Was nominal consideration given and required?**

Counsel for Ngāti Tūwharetoa also referred the Tribunal to the term 'nominal consideration' used in the deed. In their view, consideration was required to give contractual force to the deed, and it appeared that Te Heuheu received none.<sup>301</sup>

From our assessment of the evidence, however, various expenses totalling £158 10s 10d were paid towards these blocks by the government. Of that, £135 10s 10d was for the survey lien on the peak blocks, £4 10s was paid to William

Grace for horse hire and feed, and 10 shillings was paid to William Cussen for preparing the plan on the deed. Ten pounds was provided to Tūreiti as a gratuity for 'services at NLC re National Park', and £8 was supplied to Te Heuheu for clothes at court appearances.<sup>302</sup>

Even though Te Heuheu and Tūreiti Te Heuheu collectively received only £18 'consideration', this was sufficient in the eyes of the law. As with modern contract law, the consideration must only be of some value. Without further statutory definition of 'nominal consideration', therefore, the £18 was sufficient to give contractual force to the deed.

## **(7) Does the absence of the chief judge's signature on the deed invalidate it?**

Counsel for Ngāti Tūwharetoa then argued that the deed may be invalid because it was not authorised by the chief judge of the Native Land Court. She cited section 41 of the Native Land Court Act 1880, to support her contention.

For completeness, we set out both section 41 and the preceding section:

40. The Governor may, at the request of the Native claimants to any Native land, cause surveys and plans thereof to be made, and may defray the cost of such surveys out of any money appropriated by the General Assembly for that purpose: Provided that if such request is made by less than two Natives, the cost of such survey must be prepaid by such Natives.

The amount of such a cost shall, if the Governor think fit, be repaid by the Native owners of the land surveyed. If the amount be objected to, the same shall be determined by the Court.

If the same be not paid when required, the Court shall, on the application of the Governor, order that a defined portion of the land surveyed be sold by public auction under the direction of the Court, and the proceeds so far as necessary applied to the repayment of the said cost, and in payment of all fees and charges in respect of the same land or any other land owned by the same Native, or may order that such defined portion be vested in Her Majesty in satisfaction and discharge of the said cost, fees, and charges.

41. Conveyances or transfers of land *so sold* shall be executed by the Chief Judge in his own name, and so executed shall be valid and effectual for the conveyance or transfer thereof. The land therein purported to be conveyed or transferred shall thereupon be held for an estate in fee-simple free from incumbrances. [Emphasis added.]

Section 41 is located in the part of the Act that deals with surveys. It is clear when reading sections 40 and 41 together that the conveyances and transfers requiring execution by the chief judge are those that are sold for repayment of survey costs (section 40), not general conveyances or land transfers. Furthermore, even if statutory interpretation supported the argument that section 41 was intended to cover any conveyance or transfer of land sold, the Crown had the broad discretion under section 62 of the 1880 Act to amend any defect in a document. Given that the Taupōnuīatia hearings were conducted under the 1880 Act this provision still applied in 1887. We also note that Chief Judge MacDonald was present in the court when Te Heuheu signed the deed and even attached his signature to the deed as a witness.

Having considered these specific issues, we do not accept counsel's submission that the deed was invalidated by these technicalities. We conclude that the deed was, in these respects, a valid legal instrument. Nonetheless, we have shown that the deed was invalid in a broader sense.

**(8) Do the circumstances in which the Crown secured title to the mountains give rise to a constructive trust?**

Finally, counsel for Ngāti Tūwharetoa submitted that the Tribunal should consider whether the deed of conveyance gives rise to a constructive trust. According to counsel, a constructive trust is said to occur in circumstances where a fiduciary has wrongly benefited from a particular action.<sup>303</sup> The nature of a constructive trust attaches by law to specific property, which is held by a person in circumstances where it would be inequitable to allow them to assert full ownership over the property because of the circumstances in which it was acquired. Such a property will often be held in a fiduciary capacity.<sup>304</sup>

The Crown does not accept that it abused its position as a fiduciary at the time the gift was made, or that a constructive trust arose.<sup>305</sup>

In our view, this matter hinges on a point of law. We are a commission of inquiry, not a court of law. If a court were to find that a constructive trust arose in the circumstances described, creating a fiduciary obligation, then that would of course heighten the Crown's ordinary Treaty duty of active protection. As it is, we make no pronouncement.

**7.6.5 Did the Crown's response to Māori opposition fulfil its duty of active protection?**

As discussed earlier, when the Governor announced, at the opening of parliament in April 1887, that the mountains were to be 'gifted' to the Crown, some Māori from the region voiced their opposition. As noted above (see section 7.6.3 (1)), at least one rangatira even protested the much-publicised gift as the 'work of Mr Grace'.<sup>306</sup> Initially, Ballance appeared quite surprised at the emergence of opposition. At the beginning of May, he stated in parliament that he knew of no dispute over the ownership of the lands proposed for inclusion in the park.<sup>307</sup> The emergence of protest, however, now raised doubts in the Minister's mind. He requested a report from his chief negotiator and purchase agent, William Grace, to reassure him that there were no problems.

Grace responded by dismissing such opposition as the voices of minor men. He also assured Ballance that the Bill was widely distributed in the area and had met with no disapproval.<sup>308</sup> Aware that Ballance was anxious to conclude the deal, he no doubt wanted to assure the Minister that he was fully in control of the negotiations. In any case, Grace believed that Te Heuheu supported the arrangement to (as Grace understood it) gift the mountains to the Crown in exchange for his position as a trustee. Armed with Grace's assurances, Ballance thus took no action in response to opposition.

In closing submissions, the Crown acknowledged that it was under a Treaty duty to act reasonably and in good faith in its negotiations over the establishment of the park, and implementing the gift. It accepted that '[g]iven the

significance of the taonga involved, the protective standard required of the Crown was a high one.<sup>309</sup> We concur with the Crown. If the Crown was acting reasonably and in good faith, it should have taken absolute care in its negotiations to ensure that opposition to the negotiations were properly investigated and appropriately addressed.

In our view, the evidence of opposition in May 1887 should have prompted Ballance to a greater level of scrutiny. He had received letters of protest from two rangatira with legal interests in the maunga blocks, but rather than engage kanohi ki te kanohi with those dissentients over their grievance, he relied on the advice of Grace, trusting that he (Grace) was correct in asserting that the Bill had support and that Te Huiatahi was indeed a 'man of little importance'. The dissolution of parliament then provided Ballance with a reason to suspend the negotiations. But it was left to under secretary Lewis and the Grace brothers to resolve any matters of opposition to the arrangement. In our view, the Minister's response to these events falls short of what the Treaty required.

It is of even more concern to us that the government then failed to adequately respond to renewed opposition after Te Heuheu finally signed the deed of conveyance. Having signed the deed, Lewis advised his new minister that he considered 'the old chief has behaved very well and that his gift should be suitably acknowledged'. He advised that the two specific requests Te Heuheu made were 'very reasonable' and should be granted.<sup>310</sup> There is no evidence, however, that Lewis or any other Crown officials were as assiduous in advising the new Minister of fresh opposition to the gift.

As early as November 1887, the documentary record reveals substantial opposition to the gift. Eruini and Wīneti Paranihi, of Ngāti Waewae, applied to Chief Judge MacDonald for a rehearing of the southern Taupōnuiātia blocks, 'including the land ceded by Te Heuheu as tribute to the Queen.'<sup>311</sup> Te Huiatahi (also of Ngāti Waewae) and several other owners in the maunga blocks, including Tōpia Tūroa (of Ngāti Patutokotoko), and Rāwiri Pikirangi (of Ngāti Tama and Ngāti Whiti), also applied for a rehearing of these blocks. The application stated that

We have now heard that Tongariro has been ceded to the Queen as a land for sport [a park]. Friend, that action is not at all correct, for there is no land in this island dealt with thus: carefully consider this wrong.<sup>312</sup>

Soon after filing this application, Te Huiatahi told Chief Judge MacDonald:

Had Te Heuheu been the proper owner of the land it would have been right for him to give the land to the Queen.<sup>313</sup>

Then, in May 1889, Wīneti Paranihi requested the Native Minister investigate the various grievances that were being voiced. On behalf of numerous signatories, he advised that

We consider that the appointment by the Court of the six persons by whom Tongariro was given as a present to the Government is wrong, because the award was not made by the entire people.<sup>314</sup>

This opposition provides evidence that some within Ngāti Tūwharetoa, as well as some outside, were aggrieved at Te Heuheu's perceived actions. It also demonstrates that the Crown received further notice of dissension within the tribe. The government, however, did very little to address these grievances (see section 5.5.3(6)). In Dr Anderson's view, this was because it was reluctant to do anything that would risk a challenge to its ownership of the mountains or other lands in the southern portion of Taupōnuiātia.<sup>315</sup> As we have already shown in chapter 5, we agree with Dr Anderson's conclusion. However, the Crown was on notice that some of the title-holders took issue with the negotiations and the gift.

## **7.6.6 What obligations was the Crown required to fulfil upon Te Heuheu signing and did it fulfil these?**

As we have discussed above, Te Heuheu believed that he was entering a partnership agreement with the Crown for the protection of te kāhui maunga. That arrangement had the following key features:

- ▶ Te kāhui maunga was to be made a ‘rāhui whenua ka whakatapua nei’ [land assigned to be made sacrosanct and kept inviolate] for the benefit of both Māori and Pākehā; and
- ▶ Te Heuheu and the Queen would be trustees, holding the peaks of ngā maunga tapu in joint title.

We have also seen (see section 7.6.1(1)) that Te Heuheu made two specific requests of the Crown upon signing the deed. These two requests are outlined in Te Heuheu’s letter to Native Minister Ballance in September 1887:

‘I have, however, two words to make known to you – First: My father, Te Heuheu Tūkino, who was overwhelmed at Te Rapa, is laid on that mountain, and it is my wish that he be removed to some other place. He was, as you know, a chief of very high rank, and it is right that the government should erect a tomb for him, because both my people and I are unable to do so. Your friend Mr Lewis has agreed to this word of mine, subject to your approval. The second word is, that I am an old man, and the affairs of my people are conducted by my only son, Tureiti Te Heuheu Tukino: it is my wish that he be authorised, that is to say, that his name be inserted in the National Park Act; that is, that he be the trustee appointed to succeed me after my death. Mr Lewis has also agreed to this word of mine, subject to your approval.’<sup>316</sup>

The Crown was obligated by the principle of reciprocity to ensure that it fulfilled these two requests. As we have emphasised, the Crown’s fundamental obligation to Te Heuheu and Ngāti Tūwharetoa was to legislatively empower the two trustees, Te Heuheu and the Queen, to exercise their authority over te kāhui maunga. Implicit within Te Heuheu’s actions was a belief that his rangatira-tanga would be provided for through his trusteeship. Te Heuheu and the Queen would, thenceforth, exercise their authority and control to keep the mountains sacred for time immemorial. Whether or not the legislation enabled Te Heuheu’s descendants to exercise trusteeship on into the future, and whether the mountains were indeed kept sacred, will be addressed in chapter 11 of our report. At this point, we examine whether the legislation governing

‘YOUR . . . request that your son, Tureiti Te Heuheu Tukino, should be appointed trustee for the park after your death, has also been agreed to by Mr Mitchelson, and provision will accordingly be made in any Bill introduced relating to the national park.’

Thomas Lewis to Horonuku Te Heuheu<sup>1</sup>

the park fulfilled Te Heuheu’s primary expectation of the trusteeship. Secondly, we focus on the two specific requests mentioned in Te Heuheu’s letter.

### (1) *Legislating the trusteeship*

We now turn to the important issue of whether the Crown’s legislation fulfilled the expectations of Ngāti Tūwharetoa. As we have outlined above, our view is that Ngāti Tūwharetoa’s expectation was that legislation would empower Te Heuheu to be a trustee proper, holding the peaks jointly with the Queen. We have already explained that Ballance’s Bill of 1887 (which lapsed) did not provide this. Nor did the deed Horonuku signed on 23 September 1887. At this point, we consider whether the Tongariro National Park Act 1894 did fulfil those expectations.

The evidence available to us indicates that, at no point beyond Te Heuheu’s signing of the deed, did the Crown entertain the prospect of legislating to make Te Heuheu a trustee proper of the National Park. The Crown was consistently identified as the legal owner of the mountains during the passage of legislation. Section 2 of the Tongariro National Park Act 1894 stated that, after proclamation, all the lands described in the schedule would ‘be vested in Her Majesty’ and native title over the aforesaid territory ‘shall be deemed to be extinguished’.<sup>317</sup>

It is important, in our view, to determine why the Crown failed to rectify the problem created by its deed of 1887. As we explained, both Horonuku and Tureiti believed the deed of 1887 established joint title of the peaks. With a Bill

before parliament seven years later, there was an opportunity for the Crown to re-examine that original agreement and ensure that it fulfilled the understandings of Ngāti Tūwharetoa. In our view, this would have happened if the Crown consulted Ngāti Tūwharetoa fully about the legislation establishing the National Park. If in the course of such consultation minds did not meet, there was an opportunity for the Crown to rectify any issues legislatively. To have not adequately consulted would, therefore, represent a significant missed opportunity for the Crown. We apply this standard to our assessment of consultation.

In their statement of claim, Ngāti Tūwharetoa alleged that there was no consultation over the 1894 National Park legislation.<sup>318</sup> The focus of the legislation was a matter of huge importance to ngā iwi o te kāhui maunga. For the Crown to follow a Treaty-compliant process, it therefore needed to consult widely on the provisions proposed for inclusion. Consultation was an essential part of the Crown's reciprocal obligations to all the iwi affected (and Ngāti Tūwharetoa in particular, given Te Heuheu's central role) in determining future governance arrangements for this sacred taonga. How else would the Crown know if the Act met the expectations of those whose interests were directly involved? Only through consultation could the Crown hope to obtain the informed consent of the tangata whenua to any law affecting their rangatiratanga over te kāhui maunga. Moreover, consultation was a duty the government understood at the time. As the *Evening Post* highlighted in February 1887:

[A] Bill is now being prepared, in order to give effect to the wishes of the chiefs. That Bill will be first circulated among the donors, and if it meets with their approval it will be submitted to the Legislature in the coming session.<sup>319</sup>

Crown historian Mr Joel concluded that the documentary record reveals only a partial picture of the extent to which the government consulted with Ngāti Tūwharetoa over the legislation. As we shall discuss later, the Crown has conceded that there is no evidence of any consultation with Maori of the Whanganui River. Although the

evidence does not reveal any detail as to the extent of consultation between government representatives and leading chiefs of Ngāti Tūwharetoa, Mr Joel stated that there is evidence that Tūreiti Te Heuheu conferred with the government over the final shape of the Act.<sup>320</sup>

As discussed above, the government first tried to pass legislation in 1887, but the fall of the government meant that the Bill was discharged. The next attempt to pass legislation was in 1893, when the Liberal government tried to pass a modified form of the 1887 Bill. The Bill was modified in one particularly significant way: clause 2 was changed so as to provide the Governor with the power to compulsorily vest in the Crown any Māori land not already acquired.<sup>321</sup> The change, according to Mr Joel, was partly because of the Crown's slow progress in acquiring the remaining interests in the maunga blocks.<sup>322</sup> Several Ministers had reported after 1887 that 'a large number of the Natives interested in the land declined to sell.'<sup>323</sup> The Minister of Lands, John McKenzie, therefore defended the inclusion of a compulsory taking provision in the 1893 Bill on the grounds that, without it,

the country would never get a Tongariro Park at all. His experience of dealing with the Natives taught him that it was always with them a matter of delay – always put off, always postpone till some other time; and when that time came there would be another request for postponement . . . and seeing that they were prepared to give the full value to the Natives for any interests they had in the matter, he did not think any injustice could be done to them.<sup>324</sup>

The addition of this clause in the 1893 Bill, however, caused significant concern within parliament. One Māori member, Hoani Taipua, mentioned that he had received a letter from Tūreiti requesting the postponement of the Bill until he arrived in Wellington and could discuss with the government. Tūreiti recalled:

. . . I came down to Wellington, and was present at the time this Bill was brought down. Hone Taipea (?) was at that time Maori Member for the Western Electorate, and he asked me if

### THE TONGARIRO NATIONAL PARK ACT 1894

AN ACT to authorise the Setting-apart of a certain Tract of Land around and in the Vicinity of the Tongariro Mountain as a National Park. [23rd October, 1894.]

WHEREAS, as set out in Parliamentary Paper G-4, Session II, 1887, the late Te Heuheu Tukino, Chief of the Ngatituwharetoa Tribe, by deed of gift dated the twenty-third day of September, one thousand eight hundred and eighty-seven, ceded to Her Majesty the Queen portions, aggregating six thousand five hundred and eight acres, more or less, of the lands described in the Schedule hereto, for the purposes of a national park:

And whereas the residue of the lands so described is of no use or benefit to the Native owners thereof, and is being acquired from time to time by Her said Majesty, through the purchase of the shares or interests of such Native owners therein, with the view of carrying out the intention of the original gift:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is 'The Tongariro National Park Act, 1894.'

2. The Governor in Council, by Proclamation in the *Gazette*, may declare that the whole of the lands within the territory described in the Schedule hereto shall, on and after the date of such Proclamation, become and be vested in Her Majesty as a national park under this Act, to be known as 'The Tongariro National Park'; and on and after the date aforesaid the Native title over the aforesaid territory shall be deemed to be extinguished.

In case there shall be at the aforesaid date any Native owners of the said territory whose shares or interests therein have not been acquired by Her Majesty, the Governor, failing any agreement being made as to compensation to be paid for the said shares or interests, may cause the amount of such compensation to be ascertained under any Act for the time being in force relating to the taking of Native lands for a public work, and the assessment of compensation for the same.

And for the purposes of the said sections, taking land under this Act shall be deemed to be taking land for a public work within the meaning of 'The Public Works Act, 1882.'

3. The said park shall be under the control of the Governor, who may manage and administer all the lands therein as Crown lands.

All persons who shall locate or settle upon or occupy the same, or any part thereof, except as hereinafter provided, shall be considered trespassers and be removed therefrom.

4. The Minister of Lands for the time being, the Surveyor-General, the Director of the Geological Survey, together with Te Heuheu Tukino the younger, the chief of the Ngatituwharetoa Tribe of aboriginal natives, and such other persons as the Governor shall appoint, are hereby constituted Trustees of the said park, and, for the purpose of the management thereof, are hereby invested with all the powers which the Governor is capable of delegating under 'The Public Domains Act, 1881,' to trustees of public domains for the management thereof.

(1.) The aforesaid Te Heuheu Tukino the younger shall hold office as a Trustee for life, and the other persons appointed by the Governor for the term of five years, subject that they respectively may at any time resign such office.

On the death or resignation by the aforesaid Te Heuheu Tukino the younger or other nominated persons of their office of Trustee, or on the expiry of the term of office of such other nominated persons, their successors shall be appointed by the Governor, and such successors shall respectively hold office for five years only, when fresh nominations shall be made to the vacancies by the Governor.

Every successive nominated Trustee shall hold office for five years only, and may resign his office by letter to the Governor, who shall appoint his successor:

Provided that one of such successors shall, if possible, be a member of the Ngatituwharetoa Tribe.

(2.) The Minister of Lands shall be the Chairman of the Board, and preside at all their meetings; but in case of his absence at any meeting the members of the Board present may from time to time nominate any member of the Board to be the Chairman thereof for such meeting.

5. The Governor in Council may from time to time make, alter, or revoke any regulations which he may think necessary for the better administration of this Act and the management of the said park, and by such regulations may impose penalties for breaches thereof, not exceeding five pounds, and may prescribe such fees and tolls to be levied by the Board as he shall think necessary for the due administration of this Act.

6. The cost of administration of this Act shall be defrayed out of the penalties, fees, and tolls arising under this Act, together with the moneys accruing to the Board from time to time under 'The Public Domains Act, 1881,' supplemented by such moneys as may from time to time be appropriated for the purpose by Parliament.

I knew about the arrangement with my Father and the Under Secretary, and Mr Ballance – my Father died in 1888, and I had taken his place. He told me to go to Captain Mair who was then Native Interpreter here. The Bill was to be presented to the House at 7:30 that evening – the contents of the Bill were set out in this manner: that there were no Maori rights at that time – I wrote my objection at the time, and it was translated into English by Captain Mair. . . . Sir Robert Stout received my letter in Parliament. When the Bill was put before the House to be passed, and the Speaker asked if there were any objections, (I was present there at the time) Sir Robert Stout objected to the Bill passing through. The Speaker again put it to the House, thinking that perhaps it was just an objection not really meant, but Sir Robert Stout again objected to the Bill passing through. When he was asked why he objected to the Bill passing through the House, Sir Robert Stout said

he had received a letter from the son of Tūkinō. The Bill was then held up.<sup>325</sup>

Another member, William Rolleston, also objected in parliament, arguing that 'he wished the Natives to look at this' as there was a 'large amendment in the Bill, which probably amounted to confiscation.'<sup>326</sup> Sir Robert Stout recommended adjourning the debate on the Bill, and advised McKenzie to meet with Te Heuheu and come to an arrangement. As Mr Joel recorded, Premier Seddon agreed, and adjourned proceedings until the Minister had conferred with Te Heuheu and the Bill had been translated into Māori.<sup>327</sup>

The 1893 Bill was subsequently withdrawn, however, and an almost identical version was introduced in July 1894. In his introductory comments, McKenzie claimed

to have made ‘full arrangements with the Natives in this matter’ in the interim. This, according to the Crown historian, Mr Joel, suggests that McKenzie did consult with Tūreiti, probably in 1893.<sup>328</sup> We turn to the evidence upon which Mr Joel’s conclusion is made.

First, Mr Joel refers to the statement of Māori Member, Hone Heke, who informed parliament on 11 October 1894 that Tūreiti had requested a preamble to the Bill, setting out that the land was to be ‘handed over to the Queen’. The first version of the Tongariro National Park Bill introduced to parliament in July 1894 did not include a preamble, but McKenzie indicated that he would add one during the second reading of the Bill on 11 October 1894.<sup>329</sup> The first part of it read:

Whereas, as set out in Parliamentary Paper G-4, Session 11, 1887, the late Te Heuheu Tukino, Chief of the Ngatituwharetoa Tribe, by deed of gift dated the twenty-third day of September, one thousand eight hundred and eighty-seven, ceded to Her Majesty the Queen portions, aggregating six thousand five hundred and eight acres, more or less, of the lands described in the Schedule hereto, for the purposes of a National Park . . .<sup>330</sup>

The preamble had a second part stating the lands were ‘of no use or benefit to the Native owners’ and that the interests of such owners were being acquired for ‘carrying out the intention of the original gift’. But, according to Mr Joel, there is no evidence to suggest it was added at Tūreiti’s request.<sup>331</sup>

Secondly, Mr Joel referred to statements made by McKenzie during the third reading of the 1894 Bill, specifically acknowledging the aid of Tūreiti who:

assisted him very materially to at last bring the other Natives to give their consent to this Bill becoming law. Honourable members must know the great difficulty there was in getting a Bill through the House when the Natives objected. It was their opposition that had delayed the Bill during two previous sessions. But this year the Native chief, the grandson [*sic*] of the original grantee, came down and assisted him very

materially in getting the bill through by getting all opposition from the Natives removed. He therefore thought he should not be doing what was right unless he acknowledged the valuable assistance this Native chief had given in the passing of the Bill.<sup>332</sup>

After the third reading, the Bill was forwarded to the Legislative Council for consideration. Its passage through the Council is referred to by Tūreiti in his *kōrero* of 1920, and provides the third key piece of evidence Mr Joel cited to demonstrate the government’s consultation with Te Heuheu. Tūreiti recalled that:

[The Bill] was then referred to the Committee of Native Affairs . . . I was sent for by that Committee shortly afterwards to be present in connection with this matter. The Chairman of the Committee asked if I was the son of Tūkino, and how many children he had. I said I was his son, and that he had five [children], I being the only male. In the agreement [the deed of 23rd September 1887] it was stated that at my Father’s death I was to take his place in connection with this matter. He then asked me where this agreement was. I told him that Mr Lewis had the agreement. We had a copy of it but Mr Grace had it at that time. The proceedings in connection with the Bill were then adjourned for a week until they had time to find where the agreement was. It was found, the Committee again assembled, and I was sent for. The agreement was written on a blue form. Mr Laurie Grace wrote the agreement out. I was then asked if I could recognise the agreement, and said ‘yes’, and when it was shown to me, I recognised it. The Committee then undertook to have the Bill so framed that it would contain all the matters set out in the agreement. If you should be in possession of that Bill, you will see that what I say is absolutely correct.<sup>333</sup>

As Tūreiti stated, the 1887 Bill was subsequently modified in the Native Affairs Committee to ensure that his name was included on the membership of the board of trustees. Horonuku had specifically requested this in his letter to the government in 1887, but the first, second, and third versions of the 1894 Bill simply required one of the



trustees to be 'one of the chiefs of the Ngatituwharetoa Tribe of aboriginal natives'.<sup>334</sup> Only through Tūreiti's intervention in the Native Affairs Committee did clause 4(1) get changed to 'Te Heuheu Tukino the younger shall hold office as Trustee for life'.<sup>335</sup> Under section 4(1) of the final Act, the Governor would appoint his successors; the only condition being that they 'shall, if possible, be a member of the Ngatituwharetoa Tribe'. By now, the proposed board of trustees had expanded to include several additional members: the Minister of Lands (the chairman), the surveyor-general, the director of the Geological Survey Department, and 'such other persons as the Governor shall appoint'.<sup>336</sup>

According to Mr Joel, these pieces of evidence show that the government consulted with Tūreiti over the legislation. We agree, but with reservations. We note that such consultation as there was came only at Tūreiti's instigation, and we are not persuaded that the process was satisfactory or that the consultation itself was sufficient. Tūreiti had to request in 1893 that the government adjourn passing a law until he had an opportunity to confer with the Minister. Following that, he had to lobby various members of parliament for the inclusion of certain provisions because, as he later stated, 'there were no Maori rights at that time'.<sup>337</sup> Tūreiti was consistently on the back-foot in this process, trying his very best to uphold the integrity of the partnership agreement his father believed he had reached with the Crown in 1887. In doing so, he evidently achieved some tangible results along the way. The preamble to the Bill is, perhaps, one example. But does the evidence suggest that he approved unreservedly the legislative outcome of his interventions? We cannot fully accept that proposition.

Tūreiti Te Heuheu's constant position of defence in this process suggests that the Crown was not proactive in its communication about the content of the 1893 to 1894 Bill, and makes it possible that some aspects of the legislation may have passed without his knowledge or consent. Certainly, the 1893 Bill was translated into Māori, but there is no evidence that any subsequent versions of the Bill were ever translated into that language. As Mr Joel

conceded, it is unclear, therefore, whether Tūreiti was ever able to read a Māori version of the final Bill.<sup>338</sup> For someone whose first language was not English, this would have severely limited his ability to scrutinise the administrative and legal implications of the Bill in detail to ensure compliance with his father's, and the tribe's, wishes.

Then there is the matter of the deed. Given that Tūreiti had not been fully and properly consulted during the parliamentary process, we consider that he was entitled to assume that joint title of the peaks, which he believed was given effect to by the deed, would be reflected in the legislation. As he recalled in 1920, a copy of the agreement his father signed with the Crown was put before the Native Affairs Committee 'to have the Bill so framed that it would contain all the matters set out in the agreement'.<sup>339</sup> The 'blue form' he referred to was the deed his father signed on 23 September 1887.<sup>340</sup> Having been in the court at the time, Tūreiti recognised the 'blue form' as the agreement his father signed and which both men believed had established joint title to the peaks. No doubt Tūreiti believed that the Native Affairs Committee would follow his instructions and frame the 1894 Bill in line with that agreement. The problem was, of course, what Te Heuheu thought the 'blue form' conveyed was completely different from the reality.

An additional reason why we believe that Tūreiti resigned himself to accepting legislation that was less than ideal, from his point of view, relates to the passage of time. As we have emphasised, Horonuku and the majority of the tribe wanted the protection of Pākehā law to protect the tapu of te kāhui maunga and Ballance had promised him that legislation would be passed. However, Horonuku had passed away in 1888, Thomas Lewis in 1891, and Ballance in 1893. We think this is not without significance. There was unfinished business and it was now up to Tūreiti to ensure the safe passage of the Act. Inserting a preamble into the Bill to capture the spirit of the agreement, as well as securing the hereditary trusteeship for the Te Heuheu line provided, in our view, the reasons why Tūreiti did not object further during the parliamentary process. We have come to this view on the totality of the evidence,

especially his later statements in 1908 and 1920, which – taken together – suggest that he thought he had at least achieved his ‘bottom line’. However, the totality of the evidence also makes apparent that he did not understand the Bill in the same way as legislators did.

A comparison of the Crown’s success in purchasing remaining interests in the maunga blocks before and after the first reading of the Bill may assist our analysis. Before the first reading of the 1894 Bill, the Crown had had difficulty acquiring interests in Tongariro 1C and 2C and Ruapehu 1B and 2B. Between September 1887 and July 1894, it acquired the interests of only three individuals. Significantly, in our view, those three individuals (Petera Te Whatāiwi, Tairiri Papaka, and Tūreiti – all three of them being of Te Heuheu descent and closely related to Horonuku) are known to have been present in court when Horonuku invited the Queen into the title of the peaks. We assume, therefore, that those three believed that joint title in the peaks was in place via the deed and, thus, their rangatiratanga assured. In the circumstances, selling their interests in the adjacent land prior to the passage of legislation may have seemed less troublesome.

But the Crown had no success acquiring any other interests in these blocks in the following four years. Resistance to alienation appears to have diminished from August 1894, however, to the extent that between then and 1903, the Crown acquired all remaining interests in the maunga blocks.<sup>341</sup>

According to counsel for the claimants, the compulsory-taking provision of the legislation would have convinced these owners that they had no choice but to sell.<sup>342</sup> While it is certainly possible that compulsory taking would be viewed by owners as a real threat, if they knew about the existence of the clause, and thus influenced their decision-making, there is no evidence to suggest that the provision was actually used by purchase agents as leverage to obtain signatures.

Alternative explanations for why purchase agents enjoyed such success from August 1894 onwards deserve mentioning. First, we note that the government imposed Crown pre-emption over all Māori land in 1894.<sup>343</sup> That would no doubt have been well-known to Ngāti

Tūwharetoa and may have led to the crumbling of resistance to sales in favour of trying to get the best terms available, believing this land would eventually be lost to the Crown.

Second, it may be that the wider leadership believed that it was finally having its authority over the mountains guaranteed through the legislation. We recall that at the commencement of the second reading debate McKenzie indicated he would add a preamble to the Bill to satisfy Te Heuheu, whose assistance in ‘getting all opposition [to the Bill] from the Natives removed’ was acknowledged.<sup>344</sup> Securing a preamble linking the Bill directly to the agreement his father had reached with the Crown on 23 September 1887 was probably significant for the wider leadership. It provided official recognition of that previous agreement, which, from Tūreiti’s point of view, guaranteed te kāhui maunga would remain in the protective custody of kaitiaki. That may, therefore, explain why Pātēna Hokopakake and Keepa Puataata sold their interests just prior to the second reading debate. They may have been two of the chiefs whose opposition Tūreiti’s intervention assisted in removing. It may also explain why alienation within these blocks continued thereafter. Concerns about selling individual interests in this taonga may simply have diminished.

Whatever the explanation, the compulsory taking provision inserted into the law did not escape the notice of the Māori members of the House. In fact, one, at least, pointed out that it was not Treaty compliant. We agree. Comments made by Hone Heke during the parliamentary debate are, in our view, extremely apposite:

To provide for taking the land away from the Natives under the clauses set forth in the Bill was a monstrous piece of legislation . . . Legislation of this nature was entirely inconsistent with the Treaty of Waitangi.<sup>345</sup>

We return to this topic in our findings.

In sum, we welcome the Crown’s statement that, ‘in contrast to the significance of the gesture [Te Heuheu’s tuku], the legal mechanisms by which it was given effect seem perfunctory.’<sup>346</sup> The evidence also suggests, in our

Date	Block	Original owners	Successor	Amount (£ s d)
<i>Interests acquired prior to the tuku</i>				
16 July 1887	Ruapehu 2B	Tōkena Te Kehakeha	None	90 0 0
18 July 1887	Tongariro 2C	Kumeroa	None	100 0 0
18 July 1887	Tongariro 2C	Wīneti Paranihi	None	100 0 0*
18 July 1887	Ruapehu 3	Wīneti Paranihi	None	100 0 0*
<i>Interests acquired prior to the introduction of the Tongariro National Park Bill 1894</i>				
2 October 1889	Tongariro 1C	Tūreiti Te Heuheu	None	35 6 0
2 October 1889	Ruapehu 1B	Tūreiti Te Heuheu	None	29 12 0
2 October 1889	Tongariro 2C	Petera Te Whatāiwi	None	40 0 0
2 October 1889	Ruapehu 2B	Tairiri Papaka	None	30 0 0
<i>Interests acquired after the introduction of the Tongariro National Park Bill 1894</i>				
21 August 1894	Tongariro 1C	Pātena Hokopakake	None	114 19 8*
21 August 1894	Ruapehu 1B	Pātena Hokopakake	None	114 19 8*
21 August 1894	Tongariro 1C	Keepa Puataata	None	114 19 8*
21 August 1894	Ruapehu 1B	Keepa Puataata	None	114 19 8*
9 October 1894	Ruapehu 2B	Horonuku Te Heuheu	Tūreiti Te Heuheu	121 17 3*
9 October 1894	Tongariro 1C	Horonuku Te Heuheu	Tūreiti Te Heuheu	121 17 3*
11 December 1894	Tongariro 2C	Horonuku Te Heuheu	Te Kāhui Te Kerehi	70 17 6
18 February 1895	Ruapehu 2B	Eruini Paranihi	None	51 4 0
28 May 1895	Ruapehu 1B	Horonuku Te Heuheu	Takarea Te Heuheu	44 7 5
29 May 1895	Tongariro 1C	Ngāhiiti Rangimanawanui	Taupoki Pākau	10 1 9
29 May 1895	Tongariro 1C	Ngāhiiti Rangimanawanui	Peia Pākau	10 1 9
4 June 1895	Tongariro 1C	Ngāhiiti Rangimanawanui	Parekahu Pākau	10 1 9
8 June 1895	Tongariro 1C	Ngāhiiti Rangimanawanui	Hemopo Pākau	10 1 9
8 June 1895	Tongariro 1C	Ngāhiiti Rangimanawanui	Rangipākoha Pākau	10 1 9
7 September 1895	Tongariro 1C	Ngāhiiti Rangimanawanui	Pikihuia Pākau	10 1 9
22 October 1895	Ruapehu 2B	Tōpia Tūroa	None	51 4 0

\* Includes payment for another share

† Sold by further successor

Date	Block	Original owners	Successor	Amount (£ s d)
26 March 1896	Tongariro 1C	Ngāhiiti Rangimanawanui	Wī Tahana Pākau	10 1 9
27 November 1896	Tongariro 2C	Hataraka Te Whetu	Te Mare Matuahū	23 12 6
20 March 1897	Ruapehu 1B	Paurini Karamu	Taiaha Paurini	44 7 5
20 March 1897	Tongariro 1C	Paurini Karamu	Parati Paurini	70 12 3
10 March 1898	Tongariro 2C	Hataraka Te Whetu	Whakatihī Tutunui	2 12 6
12 March 1898	Tongariro 2C	Hataraka Te Whetu	Wharawhara Tutunui	2 12 6
10 October 1898	Tongariro 2C	Reupena Taiamai	None	70 17 6
4 March 1899	Ruapehu 3	Horonuku Te Heuheu	Te Mare Te Heuheu	5 0 0
10 March 1899	Tongariro 2C	Hataraka Te Whetu	Ngarimu Hāre Tauteka <sup>†</sup>	1 6 3
13 March 1899	Tongariro 1C	Matuaahu Te Wharerangi	Putiputi Perere	7 1 3
15 March 1899	Ruapehu 1B	Matuaahu Te Wharerangi	Parekarangi Kiekie	12 0 0*
15 March 1899	Ruapehu 1B	Matuaahu Te Wharerangi	Runga Kiekie	12 0 0*
15 March 1899	Ruapehu 1B	Matuaahu Te Wharerangi	Erueni Taupaki Kiekie	12 0 0*
15 March 1899	Tongariro 1C	Matuaahu Te Wharerangi	Parekarangi Kie Kie	12 0 0*
15 March 1899	Tongariro 1C	Matuaahu Te Wharerangi	Runga Kie Kie	12 0 0*
15 March 1899	Tongariro 1C	Matuaahu Te Wharerangi	Eruini Taupaki Kie Kie	12 0 0*
15 March 1899	Ruapehu 3	Matuaahu Te Wharerangi	Putiputi Perere	0 10 0
15 March 1899	Ruapehu 3	Matuaahu Te Wharerangi	Parekarangi Kiekie	12 0 0*
15 March 1899	Ruapehu 3	Matuaahu Te Wharerangi	Runga Kiekie	12 0 0*
15 March 1899	Ruapehu 3	Matuaahu Te Wharerangi	Erueni Taupaki Kiekie	12 0 0*
25 March 1899	Tongariro 1C	Matuaahu Te Wharerangi	Pani Parere	7 1 3
25 March 1899	Ruapehu 3	Matuaahu Te Wharerangi	Pani Perere	0 10 0
13 May 1899	Tongariro 2C	Hataraka Te Whetu	Ngarimu Hāre Tauteka <sup>†</sup>	1 6 3
13 May 1899	Ruapehu 1B	Matuaahu Te Wharerangi	Te Maari Matuaahu	22 3 9
13 May 1899	Ruapehu 3	Matuaahu Te Wharerangi	Te Maari Matuaahu	2 5 0
13 May 1899	Tongariro 1C	Matuaahu Te Wharerangi	Te Maari Matuaahu	35 6 2
16 May 1899	Ruapehu 1B	Ngāhiiti Rangimanawanui	Wī Tahana Pākau	6 6 9
16 May 1899	Ruapehu 1B	Ngāhiiti Rangimanawanui	Peia Pākau	6 6 9
16 May 1899	Ruapehu 1B	Ngāhiiti Rangimanawanui	Pikihiua Pākau	6 6 9

\* Includes payment for another share      † Sold by further successor

Date	Block	Original owners	Successor	Amount (£ s d)
16 May 1899	Ruapehu 1B	Ngāhiiti Rangimanawanui	Parekaha Pākau	6 6 9
16 May 1899	Ruapehu 1B	Ngāhiiti Rangimanawanui	Taupoki Pākau	6 6 9
16 May 1899	Ruapehu 1B	Ngāhiiti Rangimanawanui	Te Rangipāhoka Pākau	6 6 9
18 May 1899	Tongariro 2C	Hataraka Te Whetu	Miriama Hāre Tauteka	7 17 6
20 May 1899	Ruapehu 1B	Ngāhiiti Rangimanawanui	Te Hemopo Pākau	6 6 9
20 May 1899	Tongariro 2C	Hataraka Te Whetu	Ngarimu Hāre Tauteka <sup>†</sup>	1 6 3
24 May 1899	Tongariro 2C	Kīngi Te Herekiekie	None	70 17 6
26 May 1899	Ruapehu 2B	Rāwiri Pikirangi	Weretā Rāwiri	10 4 9
26 May 1899	Ruapehu 2B	Rāwiri Pikirangi	Pukapuka Rāwiri	10 4 9
19 June 1899	Ruapehu 2B	Rāwiri Pikirangi	Kōhatu Rāwiri	10 4 9
26 June 1899	Tongariro 2C	Hataraka Te Whetu	Kerei Te Hokowhetu	11 16 3
4 August 1899	Tongariro 2C	Hataraka Te Whetu	Ngarimu Hāre Tauteka <sup>†</sup>	1 6 3
5 August 1899	Tongariro 2C	Hataraka Te Whetu	Ngarimu Hāre Tauteka <sup>†</sup>	1 6 3
4 February 1900	Ruapehu 3	Matuaahu Te Wharerangi	Tarete Kumeroa	0 10 0
4 February 1900	Ruapehu 1B	Matuaahu Te Wharerangi	Tarete Kumeroa	4 8 9
4 February 1900	Tongariro 1C	Matuaahu Te Wharerangi	Tarete Kumeroa	7 1 3
13 March 1900	Ruapehu 1B	Matuaahu Te Wharerangi	Putiputi Perere	4 8 9
25 March 1900	Ruapehu 1B	Matuaahu Te Wharerangi	Pani Perere	4 8 9
29 August 1900	Ruapehu 1B	Matuaahu Te Wharerangi	Te Rāroa Perere	4 8 9
29 August 1900	Ruapehu 3	Matuaahu Te Wharerangi	Te Rāroa Perere	0 10 0
29 August 1900	Tongariro 1C	Matuaahu Te Wharerangi	Te Rāroa Perere	7 1 3
12 July 1900	Ruapehu 2B	Rāwiri Pikirangi	Mohoaoonui Rāwiri	10 4 9
15 July 1900	Tongariro 2C	Hataraka Te Whetu	Tutunui Rora	2 12 6
8 September 1900	Ruapehu 2B	Rāwiri Pikirangi	Parapaata Rāwiri	10 4 9
18 September 1900	Tongariro 2C	Hataraka Te Whetu	Ngarimu Hāre Tauteka <sup>†</sup>	1 6 3
15 August 1903	Ruapehu 2B	Te Huiatahi	Te Moana Pāpaku Huiatahi	51 4 0
2 November 1903	Tongariro 2C	Hataraka Te Whetu	Te Piwhara Wiremu	11 16 3

\* Includes payment for another share      † Sold by further successor

Table 7.7: Crown purchase of interests in the maunga, July 1887 – November 1903

view, that the Crown did not adequately consult with either Te Heuheu or Ngāti Tūwharetoa (still less with other tribes as we shall discuss later), nor obtain the informed consent of the tribe to the legislative enactment of the Tongariro National Park Act 1894. In doing so, we consider the Crown failed to fulfil one of the most important reciprocal obligations that developed from its agreement with Horonuku Te Heuheu. In chapter 11, we discuss whether the Crown upheld its Treaty obligations to Ngāti Tūwharetoa in respect of governance of the park (see section 11.5.2(6)).

### (2) *A monument to Mananui Te Heuheu*

The Crown acknowledged in closing submissions that it failed to facilitate the removal of Mananui's remains and pay for the expenses associated, as it had said it would. The Crown also said that a memorial to Mananui's memory was not raised until 1953, and said that both these failures were in breach of its duty to act in good faith under the Treaty.<sup>347</sup>

We acknowledge and welcome the Crown's concessions. We wish, however, to make a point with regard to the first concession above: our analysis of both the Māori and English versions of Te Heuheu's letter suggest that he was not asking for assistance, monetary or otherwise, in bringing his father's remains down from Tongariro maunga. That was a task for the tribe alone. Nevertheless, as demonstrated above, Lewis did commit the government to paying 'for the expense of removal' and, from the evidence before us, failed to do so.

The second concession concerned the Crown's failure to construct a memorial to Mananui. Again, we note that this was not actually what Horonuku had requested: he had asked for a tomb, because he and his people were not in a position to provide one. On this matter, Dr Anderson cited a passage in Sir John Te Herekieke Grace's book recalling that Mananui's remains were retrieved from Tongariro in 1910 and 'deposited in a vault specially built by the Government'.<sup>348</sup> Thus, it may be that the government did, in fact, meet Te Heuheu's request, although we have no other evidence on this point. That said, when responding to Horonuku's letter of 23 September 1887, under secretary

'WITH reference to the request which you make, first, that the remains of your father, Te Heuheu, which are now on Tongariro should be removed to some other place, I am to state that the Government will allow you that request, and pay for the expense of removal, and also erect a monument in memory of that distinguished chief.'

Thomas Lewis to Horonuku Te Heuheu<sup>1</sup>

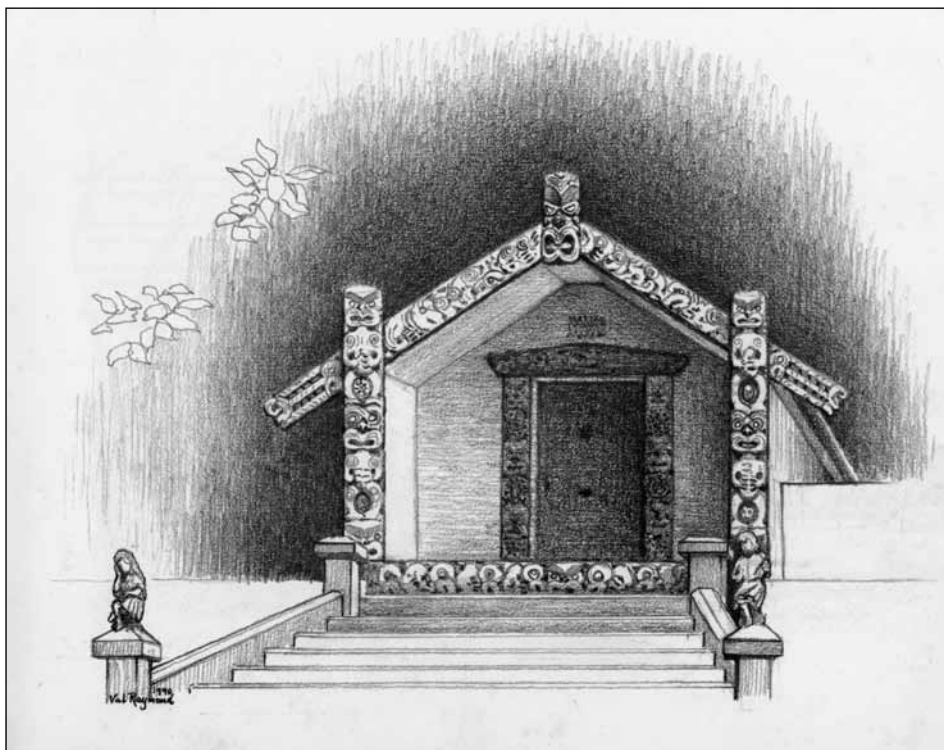
Lewis specifically committed the government to erecting a 'monument in memory of that distinguished chief', and we think his statement bound the Crown to honour the commitment made. As we have outlined, the Crown conceded that a memorial was not erected until 1953. We turn now to to assess whether, on the evidence, the memorial mentioned fulfilled the Crown's commitment to Horonuku.

A memorial tablet was first erected at the opening of the Chateau in 1929. This memorial was dedicated to the memory of Horonuku Te Heuheu himself, for his gift of the mountain peaks. The tablet was unveiled in front of a distinguished group of guests, including several descendants of Horonuku.<sup>349</sup> A record of the ceremony and speeches was recorded in the *Evening Post*:

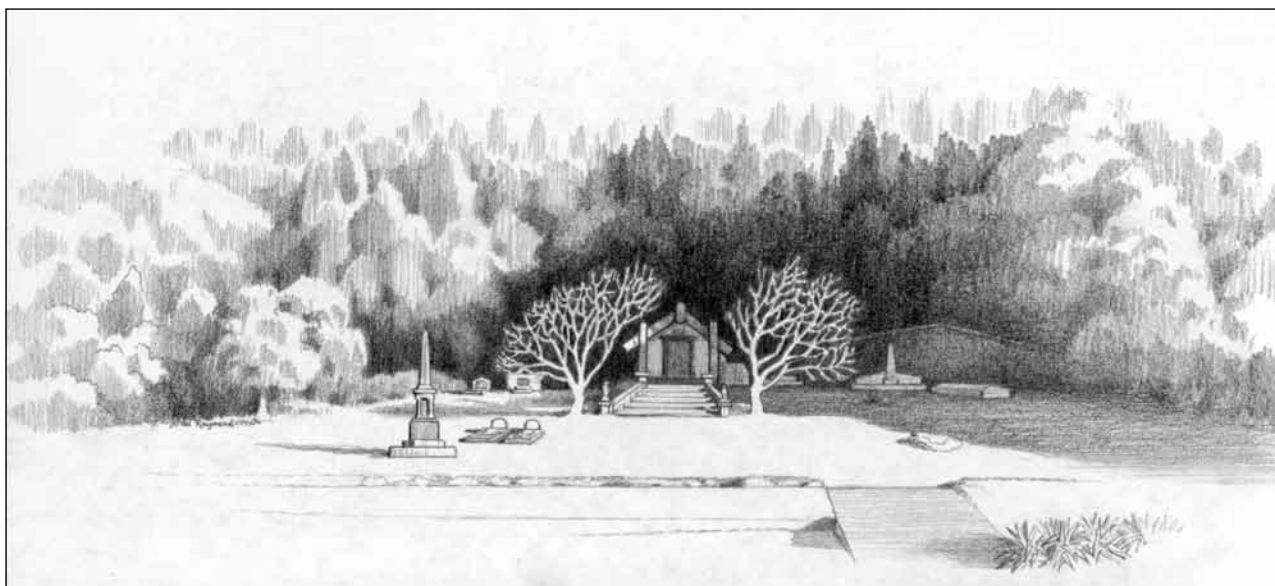
Prior to the official dinner an impressive ceremony took place in the entrance hall, where a tablet to the memory of Te Heu Heu Tukino, the donor of the greater portion of the park, was unveiled . . . The moment was one of deep significance for the Maori people present, many of whom showed it.<sup>350</sup>

This memorial, however, did not discharge the Crown from its commitment of 1887. Horonuku's request had been about honouring his father, and under secretary Lewis had promised to erect a monument specifically to Mananui.

Even if a monument was not what had been originally



- ◀ The burial vault of Mananui (Te Heuheu 11) at Waihi. Following Mananui's death in 1846 from a massive landslide at Te Rapa near Waihi, his remains were brought down from a burial cave on Mount Tongariro in 1910 and placed in this vault.
- ▼ Mananui's burial vault seen from a distance



### Memorial Tablet at the Chateau

The text of the memorial tablet at the Chateau reads as follows:

*Dedicated by the Tongariro National Park Board to the  
memory of Te Heuheu Tukino (Horonuku),  
Who presented to the Crown the mountain peaks Tongariro,  
Ngauruhoe, and part of Ruapehu,  
thus forming the nucleus of the National Park.  
Ko Tongariro Te Maunga;  
Ko Taupo Te Moana;  
Ko Te Heuheu Te Tangata.<sup>1</sup>*

intended, the undertaking had become a matter of some importance to Ngāti Tūwharetoa because, in 1938, they raised the issue directly before the park board. One of the tribe's representatives, [John] Atirau Asher, 'expressed the hope that in the near future an appropriate memorial would be erected'.<sup>351</sup> In the ensuing discussion, a memorial entrance at the junction of the Bruce Road and Tokaanu highway was suggested. Reluctant to take premature action, however, the board decided not to act.<sup>352</sup>

Meanwhile, the chair of the park board investigated the issues raised by Ngāti Tūwharetoa, and his inquiries confirmed that the memorial tablet within the Chateau did not fulfil the promise made to Te Heuheu on 13 October 1887.<sup>353</sup> He advised the Minister of Lands that responsibility for resolving the matter lay with the government:

My own personal view is that, the original stipulation in 1887 having been accepted by the Government, any question relating to the carrying of same into effect is a matter for consideration and decision by the Government and not the Park Board.<sup>354</sup>

Despite this advice to the Minister, no action was taken for almost a decade. Crown historian Cecilia Edwards

could find no explanation for this. She speculated that the government may have been reluctant to engage with Ngāti Tūwharetoa in light of Hoani Te Heuheu's legal battle with the Māori Land Board. She also considered it equally possible that it was a low priority given exigencies of war time administration.<sup>355</sup>

The passage of time did little to erase the confusion over whom the memorial was intended to commemorate. Again, Horonuku (the donor), not Mananui Te Heuheu (his father), was the focus of attention when the board deliberated over two options in 1948: a statue or a memorial entranceway.<sup>356</sup> Unable to reach agreement on the two options, the board consulted the Te Heuheu whānau, who expressed their support for a bronze bust of Horonuku Te Heuheu,<sup>357</sup> apparently being of the view that the monument was separate from that promised for Mananui (which had not been forgotten by them, as we shall see below).

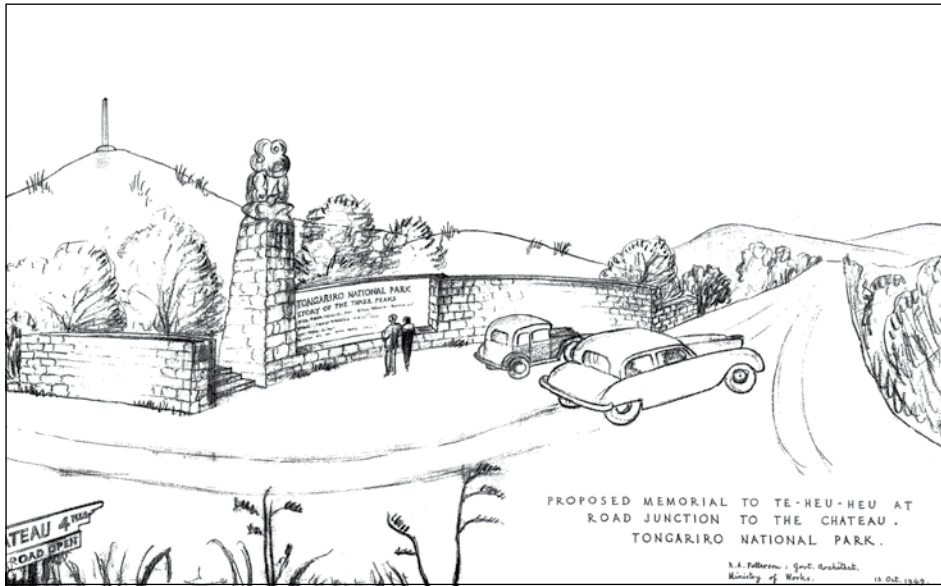
The Native Minister and Prime Minister, Peter Fraser, then consulted Ngāti Tūwharetoa again in 1949 to discuss the two options. Fraser expressed his support for both options, suggesting that a memorial entrance to the park could be made from local stone, and that sketches could be drafted and submitted to Hēpi Te Heuheu for consideration.<sup>358</sup> A change of government soon after, however, derailed momentum once more, and the natural caution of officials meant the whole issue was reopened with a new Minister.<sup>359</sup>

With no action a year later, Hēpi Te Heuheu wrote to the new Native Minister, Ernest Corbett, to ascertain progress. Hēpi referred to the previous government's decision to commission a bronze bust of Horonuku for placement in the Chateau, but also reminded them of the earlier promise. He advised a pragmatic way forward:

As the Government of the day (October 1887) agreed to erect a monument in memory of that distinguished chief [Mananui Te Heuheu] I presume that when arranging for the bust for the donor himself the Government will also consider a suitable memorial to his father.

The Board envisaged a Memorial Gate at the entrance to the grounds to the Chateau, in addition to the bronze bust; and it





Proposed memorial to Mananui Te Heuheu. This memorial was to be at the road junction and entrance to the Chateau in Tongariro National Park. Although a design competition for the memorial entrance was held, construction did not follow – a bronze bust of Horonuku Te Heuheu was instead cast.

occurs to me that some suitable inscription on the Memorial Gate – making reference to the fact that the remains of the father of the donor were for a period (1846 to 1910) laid to rest on the slopes of Mount Tongariro – would be appropriate and give effect to the promise made in 1887.<sup>360</sup>

Hepi Te Heuheu ended his letter with a plea for swift action. If the two memorials could be ready in time, Te Heuheu felt it would be a 'great honour' if His Majesty the King of England performed the unveiling during the planned royal tour.<sup>361</sup>

Soon after that, the elders of Ngāti Tūwharetoa supplied an inscription to place at the foot of the bust. This inscription was to replace the memorial tablet within the Chateau, as the tablet did not set out 'the correct position'. According to Te Heuheu's representative, John Grace, the main issue was that the inscription failed to acknowledge that 'other chiefs of the tribe were also associated with the gift'.<sup>362</sup> A suggested inscription for the memorial entrance was also drafted and submitted to officials at the Department of Lands and Survey.<sup>363</sup>

With the issue seemingly progressing towards a

successful resolution, the Minister advised Treasury of the two proposals. He requested £5,000 for the memorial entrance, £700 for the bust, and £100 as prize money for the person who designed the best memorial entranceway, as judged by the board and Ngāti Tūwharetoa. Corbett justified the expense on the ground that there was a 'moral obligation' to do something to commemorate the tuku.<sup>364</sup>

Treasury adopted a cautious approach in the unfavourable economic conditions of the early 1950s:

There does appear to be a moral obligation upon the Government to provide some form of memorial, but it is open to serious question whether the present is an appropriate time. Existing pressures on labour and materials hardly justify their use for non-essentials. If it is the desire of Government . . . to fulfil such a long outstanding condition this could perhaps be done by the provision of a bronze bust . . . Any development of a constructional monument should, however, be left to a more suitable occasion.<sup>365</sup>

The Minister agreed. His amended cabinet paper recommended dropping the memorial entrance proposal



Pei Te Hurinui Jones speaking at the unveiling of a bust of Horonuku Te Heuheu Tūkino IV at the Chateau, 1953. The creation of a memorial tablet and bronze bust of Horonuku was not a substitute for the Crown's commitment in 1887 to erect a monument to Horonuku's father, Mananui.

until economic conditions improved. Cabinet approved expenditure for the bust and the memorial entrance design competition on the basis that finalising a design would expedite actual construction of the entranceway when funds were available. Work began on the bust immediately and it was unveiled by Corbett at the Chateau in November 1953.<sup>366</sup> In short, the memorial that was unveiled in 1953 was not in honour of Mananui but of his son, Horonuku.

Dropping the memorial entrance, of course, meant the Crown would not fulfil its promise of October 1887. This lamentable fact was pointed out by one official at Lands and Survey in January 1957:

There is an obligation on the Government to erect a monument to the memory of Te Heuheu Manunui [*sic*] to fulfil a

promise made by the Government in 1887. This is a separate proposition from the memorial to Te Heuheu Horonuku which was fixed up in 1953.<sup>367</sup>

Despite this, the department took no further action. The memorial entranceway dedicated to Mananui appears to have simply dropped off the Crown's radar, and the matter has never been resolved.

The Crown, therefore, has failed to fulfil its original commitment to Horonuku Te Heuheu completely. Even though a memorial tablet and bronze bust were raised to his own memory, the commitment was for a monument to Mananui. At two moments in the twentieth century, in 1939 and 1951, the Crown was close to delivering on this commitment. There appeared to be valid reasons, in our view, why the memorial was not proceeded with in 1939.



The bronze bust of Horonuku Te Heuheu Tūkino IV at the Whakapapa Visitor Centre

The exigencies of war-time administration would have made this a low priority for the government. Similarly, a shortage of labour and materials in the early 1950s necessitated economy. But that does not excuse the Crown's lack of action both prior to 1938 and after 1957. It is clear to us that the Crown's enthusiasm for obtaining possession of the mountains in 1887 was not matched by an equal dedication to delivering on the commitments it made at the time. If the Crown had taken more seriously the need to honour its reciprocal obligations to Te Heuheu, it is likely that it would have honoured those commitments well before the turn of the century.

One hundred and twenty-four years after the tuku, the Crown has still not erected a memorial to Mananui Te Heuheu in the Tongariro National Park, nor did we have any indication during our inquiry that it intends to do so in the future.

## 7.7 KEY ISSUE 1 – TRIBUNAL FINDINGS

### 7.7.1 Crown concessions

The Crown conceded that it failed to honour the two express commitments made to Te Heuheu at the time of the gift. One of those commitments was that, on his death, his son, Tūreiti Te Heuheu, replace him as trustee for life. In 1914, the Crown abolished Tūreiti's trusteeship and did not re-establish it until 1922 after Tūreiti protested. The Crown's failure to consistently fulfil this condition was a breach of Treaty principles.

The second commitment was that Mananui's remains would be removed and a memorial erected to his memory. The Crown failed to facilitate the removal of Mananui's remains and the memorial that was erected (not until 1953) was to Horonuku rather than Mananui. The Crown's failure to adequately honour this commitment was also inconsistent with Treaty principles.

### 7.7.2 Our conclusions and findings

Having considered all the evidence before this Tribunal, we feel confident to say that the story of the 'Noble Gift' – as recounted in James Cowan's famous book *The Tongariro National Park* – is indeed a myth that can now finally be put to rest. At a fundamental level, minds simply did not meet on these important negotiations.

Ngāti Tūwharetoa's fundamental objective in these negotiations was to obtain the assistance of Pākehā law to protect ngā maunga tapu. To encourage cooperation in governance and enforcement of tribal sanctions, the tribe envisaged a tuku to the Crown. This tuku would bring the Crown into trusteeship of the mountains.

Notwithstanding Ngāti Tūwharetoa's objectives, the Crown imposed its own view of what the tribe wished to do and steadfastly followed a path that led to the Crown

obtaining title to the mountains and ultimately the establishment of the National Park in 1907.

The Native Minister met with Te Heuheu in January 1887 and agreed to two requests: to pass legislation for the protection of ngā maunga tapu and for the paramount chief to be a kaitiaki.

At this kanohi ki te kanohi meeting, Te Heuheu agreed to tuku the taonga into joint trusteeship to safeguard them for the tribe. This was an invitation by Te Heuheu to the Queen to share kaitiakitanga of the mountain blocks, thus guaranteeing the tribe's authority over te kāhui maunga forever. It was not, as the Minister believed, Te Heuheu's confirmation of an English-style gift of the entire mountains to the Crown.

Ballance failed to implement Te Heuheu's two requests in his parliamentary term as Native Minister. The implementation of those requests was also beset by misunderstandings on the part of Crown officials as to how to give effect to Te Heuheu's wishes. Ballance could have called a halt to the arrangement and waited for an opportunity to clarify understandings. Instead, the Minister determinedly pursued Te Heuheu to acquire what he believed had been offered, even in the face of opposition from within the tribe.

Just three days prior to the election of 26 September 1887, Te Heuheu advised the government that he and his people had 'spent many days talking with Mr Lewis' about the 'rāhui whenua ka whakatapua nei mō to Iwi ki Tongariro'. These discussions led to what Te Heuheu understood to be a refined agreement with the Crown's representative, Thomas Lewis, to share title to the peaks with the Crown.

A deed was drafted and Te Heuheu signed it on 23 September 1887. The English text and the Māori translation of the deed that Te Heuheu signed, though, were fundamentally incompatible. We are of the firm view that, in signing the deed, Te Heuheu did not understand the import of the English text. Instead, he relied on the oral agreement he believed he had reached with undersecretary Lewis, as well as the deed's 'Clear Statement in the Maori Language'. There was, therefore, no mutuality

of understanding in this transaction. Applying the *contra proferentem* rule, we rely on Te Heuheu's understanding of the effect of this deed, which was that he would share title to the peaks with the Queen. In doing so, Te Heuheu was giving effect to a Treaty relationship with the Crown in the future governance and protection of this taonga.

A spate of opposition from several titleholders after Te Heuheu signed the deed was met by a muted response from the government. That response demonstrated an unwillingness to do anything to compromise Crown ownership of the mountains or lands in Taupōnuiātia. The government had chosen to negotiate with Te Heuheu. Other chiefs, many of whom appeared in support of the original Taupōnuiātia application, were described by William Grace dismissively to the Minister as 'subordinate' to Te Heuheu or of 'little importance'. The evidence suggests that, apart from seeking Grace's advice on the matter, there was little investigation into these complaints on the part of the government. In our view, this falls short of the Crown's Treaty duties of good faith and active protection.

The government eventually legislated to establish the National Park in 1894, but there is no evidence that before doing so it carefully re-examined the agreement reached with Horonuku in 1887 to ensure that the steps it took were the right ones. Inadequate consultation during the legislative process exacerbated the problem, and resulted in an Act that we find did not meet the expectations of Horonuku Te Heuheu and Ngāti Tūwharetoa – expectations which had originated with the undertakings given by the Crown's Minister, John Ballance. The inclusion of a compulsory acquisition provision to acquire remaining lands in Māori ownership was also unsatisfactory from a Treaty perspective. We agree with claimants, therefore, that the Tongariro National Park Act 1894 as a whole was in breach of the duty of active protection and the article 2 guarantee of tino rangatiratanga. Failure to deliver law that met the legitimate expectations of Ngāti Tūwharetoa was, furthermore, a clear breach of the principle of reciprocity.

While welcoming the Crown's concession that it did not erect a memorial to Te Heuheu until 1953, we find that the Crown has in fact not fulfilled another express condition

at all. One hundred and twenty-four years after the tuku, there is still no memorial to Mananui Te Heuheu in the Tongariro National Park: those memorials that exist are, rather, to his son Horonuku. This is also a breach of the principle of reciprocity.

We now turn to the second key issue in this chapter.

## 7.8 KEY ISSUE 2 – INTRODUCTION

The establishment of the Tongariro National Park is a story that has focused overwhelmingly on Ngāti Tūwharetoa's generous gesture to the nation. The place of Whanganui Māori in that story has been marginal at best. Yet, the tribes of Whanganui have contributed substantially to our nation's natural and cultural heritage. Lands and taonga within the Whanganui takiwā were included in the National Park when it was legislated in 1894 and expanded over the twentieth century. In this part of the chapter, therefore, we focus on the following issue questions:

- ▶ Did the Crown negotiate with all Māori who exercised customary rights over lands included in its proposed boundaries?
- ▶ If not, why not, and how were any unconsulted Māori affected by the Crown's subsequent legal implementation of the park?

But, first, we summarise claimant and Crown submissions.

## 7.9 KEY ISSUE 2 – CLAIMANT SUBMISSIONS

The claimants argued that the Crown failed to take into account the fundamental rights of Whanganui Māori under the Treaty. Counsel for Ngāti Rangī argued that the Crown did not at any time before, during or immediately after entering into an agreement with Te Heuheu, consider, acknowledge, take into account, or even consult with Whanganui Māori over the inclusion of their whenua, maunga, and taonga in the Tongariro National Park. A reasonable Crown action would have been to discuss and obtain the consent of those iwi whose interests were affected.<sup>368</sup> Whanganui interests in te kāhui maunga,

however, were given no recognition by the Crown, nor was there any provision for Whanganui participation in the establishment of the park.<sup>369</sup> Consequently, counsel for Ngāti Rangī argued that the Crown did not act reasonably and in good faith towards its Treaty partner in the creation of the Tongariro National Park.<sup>370</sup>

Counsel for Ngāti Hāua argued that the Crown pursued its objective of establishing a national park with a single mindedness that breached its fiduciary obligations to Māori. By virtue of the Treaty, the Crown was bound by a duty of good faith to its Treaty partner. In legislating for the creation of the Tongariro National Park, however, Whanganui Māori were not consulted or engaged with over the provisions within the various Park Bills. In fact, it seems likely that Whanganui people were completely unaware of the final passing of the Tongariro National Park Act 1894. This overrode the rangatiratanga of Whanganui iwi and hapū with interests in the land included in the National Park.<sup>371</sup>

The claimants also submitted that the Crown acted in disregard of Whanganui interests in the region, despite an awareness of those interests. In particular, counsel argued that the historic record is littered with assertions of Whanganui connections to lands within the National Park. Previous land court hearings had produced substantial evidence as to the significance of te kāhui maunga to Whanganui Māori.<sup>372</sup> This makes it clear that the Crown was fully aware of the assertions of interests other than those of Ngāti Tūwharetoa at the same time as the Tongariro National Park Bills were making their way through parliament. The Crown chose, however, not to consult with Whanganui Māori in regard to the creation of the park.<sup>373</sup>

The claimants asserted that not only did the Crown disregard Whanganui Māori interests in the land included in the park, but also confiscated land from under the mana motuhake, rangatiratanga, and kaitiakitanga of Whanganui Māori. Counsel cited the Taranaki Tribunal's conclusion that, under article 2, the Treaty provided Māori with an 'unequivocal undertaking' that they could retain their land for as long as they wished. In



The sacred crater lake, Te Wai a Moe, on Mount Ruapehu

passing the Tongariro National Park Act 1894, however, the Crown gave itself the power to compulsorily acquire land, resources, and taonga. Under section 2 of the Act, native title over any land described in the schedule was deemed extinguished. When the proclamation of the park was made in 1907, the Crown did not own all the land within the proclamation area. Consequently, under section 2 native title was deemed extinguished over a block

of unsurveyed land that had not passed through the court, referred to as the Rangipō North 8 block.<sup>374</sup>

In proclaiming the land part of the national park, however, the Crown failed to consult with, notify, or compensate the customary owners. The block was effectively confiscated by the Crown in blatant disregard for customary land tenure, thereby removing Maori authority over significant wāhi tapu, including Te Waiamoe – the crater



lake on Mount Ruapehu – and Te Ara-ki-Paretaitonga – the main peak of Mount Ruapehu. Given the significance of this land, Ngāti Rangi require the return of this block so that it can be protected under Ngāti Rangi tikanga and kaitiakitanga.<sup>375</sup>

Counsel for Ngā uri o Tamakana argued, however, that native title to Rangipō North 8 was never extinguished, and that legal ownership of the block still remains in

a state of limbo. Counsel contended that in reading any piece of legislation, consideration should be given to 'all the words the legislature has chosen to employ'. No sentence should be taken out of context; rather, the Act must be read as a whole. Reading the Tongariro National Park Act 1894 in this way, said counsel, leads to an interpretation that section 2 had put in place a contract between the Māori owners and the Crown:

Land was to be transferred from the owners to the Crown and consideration in the way of financial compensation was to go from the Crown to the owners. Without that compensation being paid, and the consideration moving then the contract had not been completed; the Crown's title not perfected, and Native title not extinguished.<sup>376</sup>

The statute made it clear, in the opinion of counsel, that there was an obligation on the Crown to resolve matters.<sup>377</sup>

To support his argument, counsel cited Crown negotiations with private owners over the transfer of title to the neighbouring Waiakake block, which had been purchased by a timber company in 1901. Part of this block (1,770 acres) was covered by the proclamation of 1907, but the Crown entered into negotiations with the owners to first, purchase the land, and later, to exchange it for other Crown lands outside the boundary of the park. These negotiations were unsuccessful initially, as the owners did not agree. In 1916, nine years after the proclamation, however, the owners did finally agree to a transfer of the portion of Waiakake within the park boundary. Counsel asked why, if legal title had transferred to the Crown under the proclamation, the Crown then undertook nine years of negotiations with the owners to obtain their agreement to a legal transfer?<sup>378</sup>

Counsel went on to argue:

The question to be answered is did the proclamation extinguish Native title – and private title – in 1907. That has to be judged by the rules of law and equity that applied at that time. The fact that nobody involved – from Ministers and Crown officials, who investigated the ownership of Rangipō North 8 – to the owners of the Waiakaki [*sic*] block and the officials negotiating with them, thought the proclamation had extinguished native – or private title – is highly pertinent, and we suggest determinative.<sup>379</sup>

#### 7.10 KEY ISSUE 2 – CROWN SUBMISSIONS

The Crown acknowledged that te kāhui maunga are of immense significance not only to Ngāti Tūwharetoa but

also to other tribes surrounding the mountains. It further acknowledged that it had a Treaty duty to act honourably and in good faith in its dealings with all Māori who had customary interests and ancestral associations with the mountains, and not just towards Ngāti Tūwharetoa, when it moved to establish the Tongariro National Park.

The Crown conceded that 'there is no evidence of any consultation or discussions with for example, Whanganui Maori', in relation to the creation and establishment of the National Park. It also conceded that there is no evidence that the Crown actively turned its mind to those with interests in the blocks on the southern side of Ruapehu, despite the fact that the Crown had purchased land in these blocks from Whanganui Māori. Crown counsel acknowledged that the Crown knew, or ought to have known, that Whanganui iwi had an historic and strong customary association with the maunga, and especially Ruapehu, when it legislated to establish the Tongariro National Park in 1894. The failure to consider, and provide for, the interests of Whanganui iwi was inconsistent with the Crown's duties, was in breach of the Treaty of Waitangi and its principles, and has been the cause of suffering for Whanganui iwi.<sup>380</sup>

The Crown also conceded that:

it failed to purchase from, or identify, consult or compensate, the customary owners of the Rangipō North No 8 block before including the block in the proclamation establishing the Tongariro National Park in 1907.<sup>381</sup>

As the Crown noted, section 2 of the Tongariro National Park Act 1894 stipulated that in respect of any land remaining in native title within the park boundary, the native title would be deemed extinguished upon the proclamation. The proclamation of 29 August 1907 included the 5,180-acre block now known as Rangipō North 8. But it appears there was no awareness that the Crown had not previously acquired all the land, as no tenure review had been conducted prior to proclamation.<sup>382</sup>

Under section 2 of the Tongariro National Park Act 1894, the government was required to identify the owners of lands not already purchased by the Crown and initiate



proceedings for the payment of compensation to them. The government failed, however, to follow its own process for the owners of Rangipō North 8 at the time of proclamation. It also failed to initiate compensation proceedings at any time thereafter. Its failure to act prejudiced those with customary interests in the block and constitutes a breach of the Treaty of Waitangi and its principles.<sup>383</sup>

## 7.11 KEY ISSUE 2 – TRIBUNAL ANALYSIS

In sections 7.8 to 7.12, we focus on two key issue questions. We consider, first, the matter of Crown negotiations with Māori other than Ngāti Tūwharetoa. Secondly, we consider how the Crown's legal implementation of the park affected any Māori that had been left out of discussions and negotiations.

We now turn to the first of our issues.

### 7.11.1 Did the Crown negotiate with all Māori with customary rights over the lands?

As we have seen from the Crown's submissions, the Crown has already conceded that 'there is no evidence of any consultation or discussions with, for example, Whanganui Maori, in relation to the creation and establishment of the National Park.'<sup>384</sup> We welcome that concession and consider that it goes some way to addressing the hurt felt by Whanganui Māori from the Crown's neglect of their interests in establishing the Tongariro National Park. As we have discussed previously, Whanganui Māori held customary interests in a significant portion of land in the southern region of the National Park. This included the Waimarino, Urewera, Rangataua, Waiakake, Rangiwaea, and Rangipō North 8 blocks. In the majority of cases this land was alienated out of Māori ownership through straightforward purchase. Agents acquired the undivided interests of individual titleholders, piecemeal, through standard Crown purchase practices, and then partitioned out those interests to secure the land it wanted. The Crown then incorporated this land into the National Park without consulting Whanganui iwi and despite clear knowledge of their traditional interests in those lands.

Put simply, the park as we know it today would not

exist if it were not for the inclusion of Ruapehu and its surrounding lands. The Crown's concessions are a tangible recognition of the contribution that Whanganui Māori have made with respect to the nation's first national park. But why did the Crown fail to consult with, and consider the interests of, Whanganui Māori in the establishment of the park? We have established that the Crown knew of Whanganui Māori interests in the southern part of the park through its purchasing activities. We consider that the Crown could also have informed itself of those who had interests in surrounding blocks through the hearings and an appraisal of titles issued by the court. Titles to a number of these blocks were issued prior to Ballance's formulation of the park boundaries. Why then did the Crown fail to consider those interests when negotiating for the creation of the park? Furthermore, why were Whanganui Māori treated differently from Ngāti Tūwharetoa (as the Crown has conceded was the case)?

From the evidence before us, it seems that the Crown had adopted the habit of referring to the whole mountain area as 'Tongariro' – in which it was merely following the habit of early explorers who, as we noted earlier, had often done the same. Thus, the park became known as the Tongariro National Park, not the Ruapehu National Park or the Ngāuruhoe National Park, and the title of the 1894 Act followed suit. That maunga Tongariro itself was identified with Ngāti Tūwharetoa may perhaps go some way to explaining why the Crown lost sight of other iwi affected. It does not, however, excuse such a mindset.

The constant reference to Tongariro (only) also makes it likely that Whanganui Māori were not aware of the extent to which the government's plans and actions were going to affect them – a supposition that is supported by the lack of protest from them at the time. Such absence of protest may have reinforced the Crown's disregard of the need to seek proper negotiation with them.

Be that as it may, the Crown negotiated with Ngāti Tūwharetoa for over two years to obtain a gift of the mountains. Having obtained what it believed to be a gift from Te Heuheu, the Crown also believed that the tribe consented to the creation of a national park containing their taonga. As we have discussed above, the gift and

consent to the establishment of the park were inextricably linked together in the minds of the government and its officials. The gift represented the tribe's consent to the park. In exchange for this, the Crown provided Te Heuheu with a position on the statutory board of management governing the park. In effect, Te Heuheu's position on the board represented a modicum of ongoing Māori authority and control in the management of the park.

Having purchased significant tracts of land around the mountain blocks to the north, the government defined the boundary of the park to encompass lands it held in Crown ownership. This included the area immediately to the south of the Taupōnuiātia block, where, as we have seen, various Whanganui hapū and iwi had mana. We noted in chapter 2, for instance, that their interests were strong on the southern side of Ruapehu, and that they took responsibility as 'buffer peoples' for maintaining relationships between Whanganui hapū and groups around the mountain, such as Ngāti Waewae and Ngāti Hikairo. Mount Ruapehu, from the peak of Paretaitonga to the southern reaches of our inquiry district, was a taonga for these southern tribes, just as the mountain's more northern slopes were treasured by Ngāti Tūwharetoa and its associated hapū. The mountain was a place of intersecting interests, important to many hapū and iwi. Yet the entire mountain was included in the park, without reference at all to the southern tribes. There were no negotiations with all of the people exercising customary authority over the land. Furthermore, the Crown had not yet acquired all these lands. Maps produced for Ballance showing the boundaries of the proposed Park highlighted that land to the south of the Taupōnuiātia southern boundary was still Māori-owned and some had not even passed through the court (see maps 7.2 and 7.3). The Urewera and Rangiwaea blocks were two such examples. The Urewera block did not get to court until March 1887, and the Rangiwaea block was not heard until January 1893.<sup>385</sup> Furthermore, as we shall see later in this section, there was also a large block of contiguous land on the southern slopes of Mount Ruapehu, referred to as Rangipō North 8, which never even made it to the court.

Having defined the boundary in February 1887, purchase officers were then instructed to purchase interests in these outstanding lands. The Crown overlooked that it had, in fact, acquired title to the Rangataua block in 1881, but the surrounding blocks remained within Māori ownership in February 1887. This represents an interesting point of contrast to the Crown's negotiations in the northern section of the park. While the Crown was engaged in high-level negotiations with Te Heuheu and Ngāti Tūwharetoa for the acquisition of the maunga blocks, the southern portion of the national park evidently represented nothing more than an outstanding task for purchase agents. No negotiations with respect to the creation of the park were ever contemplated, despite purchase agents' awareness of the purpose for which the land was to be acquired. As we have shown in chapter 6, purchase agents acquired interests in the southern slopes of Ruapehu over a number of years and, in the case of a few blocks, after the Tongariro National Park Act 1894 had passed.

One of the reasons that the Crown failed to negotiate with Whanganui Māori for the creation of the National Park may have been because it failed to recognise the importance of the maunga to them (as suggested by the focus on 'Tongariro', discussed earlier). More likely it assumed that the relationship that they had with their taonga was severed once the Crown secured ownership to the land. But, as we have discussed throughout this report, the mountains are central to the lives and identity of all ngā iwi o te kāhui maunga. Che Wilson, for instance, described the relationship between Mount Ruapehu and his people, Ngāti Rangi, as 'interdependent': they are kaitiaki for the mountain and the mountain is a kaitiaki for them.<sup>386</sup>

Whatever the reason for the failure to consult, the Crown betrayed its fundamental Treaty obligation to ensure that the interests of tangata whenua were protected. This included their relationship with and kaitiakitanga of taonga, even where taonga were no longer in the legal ownership of the tribe. This was in breach of the Crown's duties of good faith and of active protection towards its Treaty partner.

### 7.11.2 How were unconsulted Māori affected by the Crown's legal implementation of the park?

We now turn to our second issue in this part. Our concern here is to determine how those Māori not consulted, and therefore not part of negotiations, were affected by the subsequent legal implementation of the Tongariro National Park.

Previously, we found that the Tongariro National Park Act 1894 was in breach of article 2 of the Treaty and the principle of active protection. We consider that it was also in breach of article 3, which guaranteed Māori the same rights as Europeans. As the Whanganui River Tribunal stated:

the Crown assumed the governance of New Zealand on the basis of a promise that Maori authority or rangatiratanga over their possessions would be guaranteed. It thus subscribed to a tenet of English law as old as the Magna Carta that private property interests are respected, and to a principle of colonial common law that dates at least from the 1600s that, upon British annexation of other lands, the same applies to the properties of the indigenous people. The principles are the same in the Treaty of Waitangi, but as it was expressed, Maori were guaranteed the 'rangatiratanga' over that which they possessed.<sup>387</sup>

We concluded that the decision to include powers to compulsorily acquire Māori lands for the park was not something that Te Heuheu and ngā iwi o te kāhui maunga ever consented to during the passage of the Bill. Indeed, we considered that the wider leadership may have been unaware of this provision in the Bill because the Crown failed to adequately consult during the legislative process.

However, even had the Crown consulted Ngāti Tūwharetoa about this provision, it would not be something that Te Heuheu and Ngāti Tūwharetoa could consent to on behalf of other tribes. One can agree to relinquish one's own rights; one cannot relinquish the rights of others. The Crown would have had to obtain the informed consent of all groups with customary interests beyond the Taupōnuiātia boundary before it could insert any

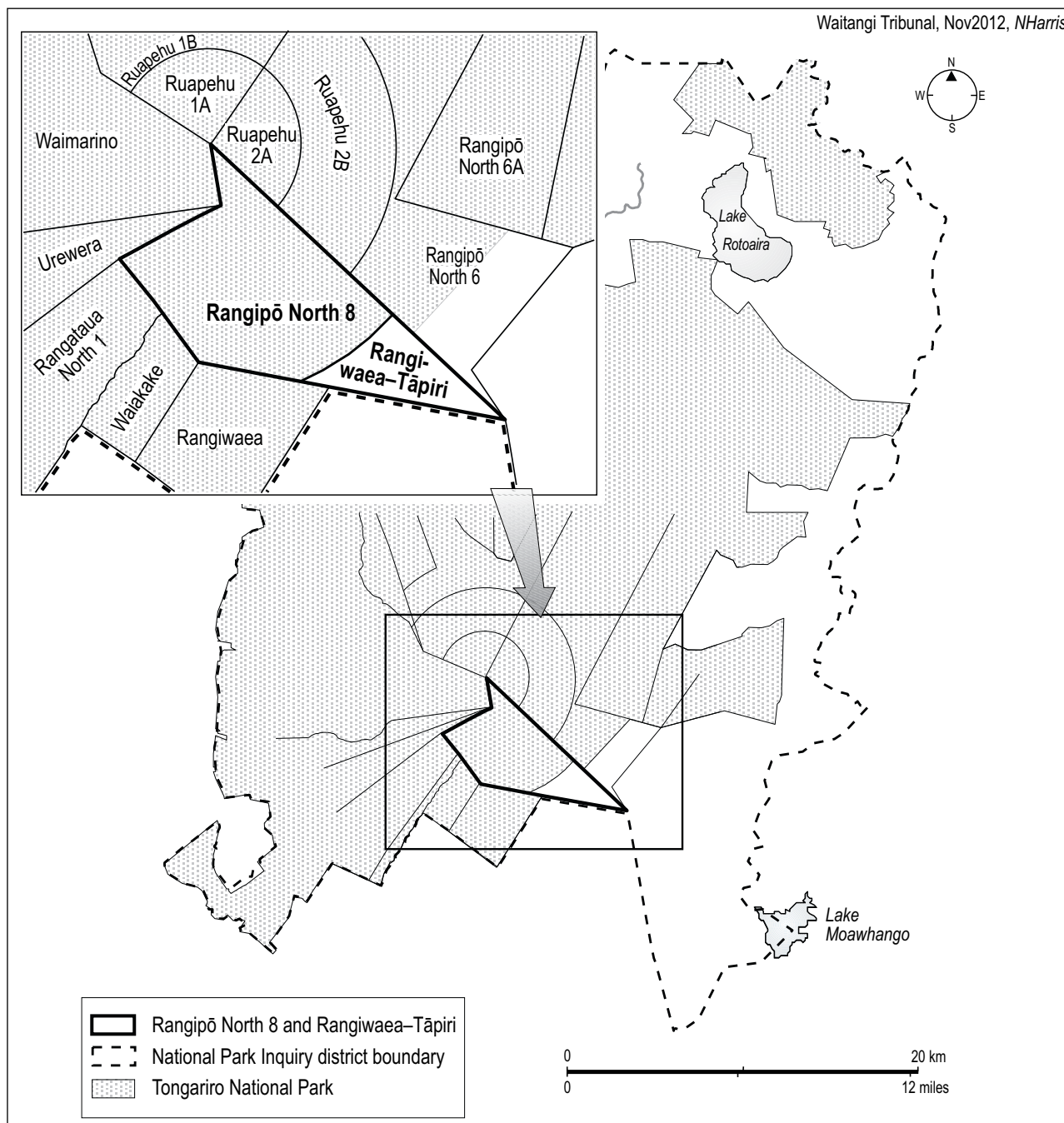
provision that impinged on their rangatiratanga. It failed to do so.

That said, there is no evidence to persuade us that section 2 of the Act was used to pressure individual titleholders to sell their interests in the southern region of the park. As we concluded previously, we think it unlikely that purchase agents ever mentioned to Māori the purpose for which land was being acquired. We showed in chapter 6 that land to the south of the park was acquired through standard Crown purchasing practices. That involved individual share purchase followed by subdivision of Crown interests in areas regarded most desirable. The portions of the Waimarino, Urewera, Rangataua, Waiakake, and Rangiwaia blocks included in the park in 1907 were all acquired through this familiar process.

The Crown did acknowledge, however, that the compulsory acquisition provision did have an effect on some parcels of Māori-owned land in the park. According to the evidence of Crown historian Cecilia Edwards, three parcels of land were included via the compulsory acquisition instrument, albeit unknowingly. The proclamation of 1907 effectively confiscated 5,180 acres of Māori customary land on the southern slopes of Mount Ruapehu, referred to as Rangipō North 8, without compensation. Also included were parts of Ōkahukura 1 and Ōkahukura 8M2, in the northern region of the park under the mana of Ngāti Tūwharetoa and its associated hapū. Title had been awarded to this land, but evidently purchase agents had failed to acquire it from the titleholders. All of these takings were due to the failure of the Crown to inform itself adequately of the tenure status of the lands to be proclaimed National Park. Officials never undertook a tenure review for that purpose and, consequently, they were unaware that there was unfinished business in the area.<sup>388</sup>

In closing submissions, the Crown acknowledged that it failed to purchase, consult, or compensate the owners of Rangipō North 8 when it proclaimed the establishment of the National Park. We acknowledge the Crown's concession on this matter. This has resulted in the effective confiscation of a significant parcel of land from the tribes concerned. Located on this land are wāhi tapu of Whanganui

Waitangi Tribunal, Nov2012, NHarris



Map 7.5: Rangipō North 8 and Rangiwaea-Tāpiri

Māori, including Paretaitonga and Te Waiamoe, two of the most sacred sites to Ngāti Rangi. The inclusion of this block of Māori customary land was due to poor processes in the court. In particular, the provision in the Native Land Court Act 1880 allowing a block to proceed to hearing without a properly certified survey plan being placed before the court was a factor that led to this area of customary land not being included in the Rangiwaea application for title. Consequently, the land was overlooked initially and then a substantial portion of it (5,180 acres) was mistakenly included in the National Park in 1907.

That left 1,397 acres of Māori customary land in Rangiwaea outside the park's boundaries. It was only in 1959 that the government discovered that title to this land remained uninvestigated, when pursuing the acquisition of surrounding blocks. The Māori Land Court promptly investigated title the following year and awarded the block to the three hapū of Ngāti Waewae, Ngāti Rongomai, and Ngāti Pouroto (all of them associated with Ngāti Tūwharetoa). Whanganui Māori contested the court's decision in 1966, but, by that time, the decision was final and the right of appeal had lapsed. This removed the case from the court's capacity to rehear. In 1992, however, Ngāti Rangi applied under section 452 of the Māori Affairs Act 1953 to revisit the decision, arguing that they did not have sufficient opportunity to present their case originally. The deputy chief judge agreed, and subsequently referred the case back to the court at Tokaanu. The court commenced a re-examination of title for the 1,397 acres of Māori customary land in 1997, finally awarding the block to Ngāti Rangi in 2001. Today this land is known as Rangiwaea-Tāpiri and is recorded in the names of the tupuna Rangituhia, Rangiteauria, and Uenuku.<sup>389</sup> However, ongoing disputes over the ownership of this block remained at the time of our hearings. We leave these disputes for the Māori Land Court to resolve.

We now turn to assess counsel's submission that the Crown's failure to initiate compensation proceedings, after the 1907 proclamation, invalidates its assertion of the extinguishment of native title. As evidence of the continuing existence of native title in Rangipō North 8, counsel pointed to documentary evidence showing that officials

of the day recognised that native title would not be extinguished until compensation was paid. A letter dated 15 November 1913 from the commissioner of Crown lands to the under-secretary for lands stated that the Crown:

does not appear to have completed the title . . . to the Native land coloured yellow.<sup>390</sup>

The 'Native land coloured yellow' was Rangipō North 8.

Sixteen years later, the question of title to these lands came up again. In response to a query from the under-secretary for lands, in October 1929, the commissioner of lands carried out checks and found himself having to inform the under secretary that 'Native Titles have not been extinguished in respect to Ketetahi Reserve, parts of Ōkahukura 1 and 8M2 and a block South of Ruapehu coloured yellow on tracing.'<sup>391</sup> He then added that:

In respect of . . . the block of presumably Customary land South of Ruapehu it would appear that the provisions of paragraph 2 of Section 2 of the Tongariro National Park Act 1894, will have to be used to perfect the Crown's Title.<sup>392</sup>

Again, the matter lay dormant for a long period and was not raised again until 1959, when the director-general of lands wrote to the commissioner of Crown lands requesting that he take steps to purchase a neighbouring block (Rangiwaea 4F19) for inclusion in the park. In his response, the commissioner stated that:

As no compensation appears to have been determined for this part of the park and as no Block name has been allocated to this land it would appear that the ownership has never been investigated by the Maori Land Court . . . It appears therefore that both the land adjoining Rangiwaea 4F19 to the north and the part within the 4 miles Radius is Customary Maori Land.<sup>393</sup>

According to counsel, for title to transfer to the Crown without compensation would have been inequitable, which does not accord with the Crown's duty to behave equitably. The fact that officials consistently did not

The southern slopes of Mount Ruapehu. The southern slopes, the Waihianoa River and its upper valley, and the land now known as Rangiwaea–Tāpiri were taken from Tufa. In 1997, following a re-examination of the title, 1,397 acres of Māori customary land were awarded to Ngāti Rangī.



consider native title to have been extinguished is, in counsel's submission, determinative.<sup>394</sup>

At this point, we turn to the case law. Native title, under the judgment of Justice Chapman in *R v Symonds*, 'cannot be extinguished (at least in times of peace) otherwise than by the free consent of the Native occupiers.'<sup>395</sup> This statement was modified by the Court of Appeal in *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General*, when then President Cooke stated:

It may be that the requirement of free consent has at times to yield to the necessity of the compulsory acquisition of land or other property for specific public purposes which is recognised in many societies; but there is an assumption that, on any extinguishment of the aboriginal title, proper compensation will be paid, as stated by Lord Denning, in delivering the judgment of a Judicial Committee of the Privy Council the other members of which were Earl Jowitt and Lord

Cohen, in *Adeyinka Oyekan v Musendiku Adele* [1957] 2 All ER 785, 788.<sup>396</sup>

The question of when the Crown can compulsorily extinguish native title was further elaborated on by the High Court in *Faulkner v Tauranga District Council*. There Justice Blanchard found, citing *Mabo v State of Queensland (No 2)*:

It is well settled that customary title can be extinguished by the Crown only by means of a deliberate Act authorised by law and unambiguously directed towards that end. Unless there is legislative authority or provisions such as were found in ss 85 and 86 of the Native Land Act 1909, the Executive cannot, for example, extinguish customary title by granting the land to someone other than the customary owners. If it does so the grantee's interest is taken subject to the customary title: *Nireaha Tamaki v Baker* (1901) NZPCC 371. Customary title

does not disappear by a side wind. Where action taken by the Crown which arguably might extinguish aboriginal title is not plainly so intended the Court will find that the aboriginal title has survived.<sup>397</sup>

This reasoning is consistent with the Court of Appeal in *Attorney-General v Ngāti Apa*, where it was held that ‘The onus of proof of extinguishment lay on the Crown and the purpose had to be clear and plain.’<sup>398</sup>

In order for native title to be extinguished under the Tongariro National Park Act 1894, then, the Crown’s intention to extinguish title must be ‘unambiguous’ (per *Faulkner v Tauranga District Council*) and ‘clear and plain’ (per *Attorney-General v Ngāti Apa*).

Counsel’s argument regarding a contract between the Crown and the owners of Rangipō North 8 implies that the second paragraph of section 2 of the 1894 Act prevents the first paragraph from being considered unambiguous.<sup>399</sup> In his reading, this second paragraph makes the extinguishment of native title conditional on the negotiated sale of the land or the payment of compensation.

The statement in the first paragraph of section 2 of the Tongariro National Park Act (that upon proclamation ‘the Native title over the aforesaid territory shall be deemed to be extinguished’) is, read by itself, undoubtedly both ‘clear and plain’ and unambiguous. The only potential ‘fish hook’ in the sentence is the word ‘deemed’, which can in some contexts indicate a rebuttable presumption.<sup>400</sup> But reading that first paragraph in conjunction with its surrounding provisions (as discussed below), there does not appear to be any context showing that the ‘deeming’ of native title over the National Park lands is rebuttable – its clear and natural meaning is that, once a proclamation establishing the park is made, native title shall be extinguished over the lands concerned. Under *Grey v Pearson*’s ‘golden rule’:

The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, . . . or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity or inconsistency, but not further.<sup>401</sup>

Is there, then, an inconsistency between the statement that ‘the Native title over the aforesaid territory shall be deemed to be extinguished’ and the rest of the Act, which makes the intention of parliament anything less than clear and plain?

Counsel implies that the second paragraph of section 2 introduces such an inconsistency. That paragraph states that if the Crown has not agreed compensation with the owners, then the Governor ‘may cause the amount of such compensation to be ascertained under any Act for the time being in force relating to the taking of Native lands for a public work, and the assessment of compensation for the same.’<sup>402</sup> In counsel’s submission, the extinguishment of native title by proclamation, in paragraph one, must be read as conditional upon this compensation being paid.<sup>403</sup>

To our mind, the natural interpretation of the provisions of section 2 is that the proclamation of the Governor-General would extinguish all native title over the area covered by the park, and where this title had not already been extinguished by gift or alienation, the Crown could be expected to compensate the owners, either by agreement or under the provisions of public works legislation. However, the second paragraph says only that, where compensation has not already been agreed, the Governor may cause compensation to be assessed under whatever public works legislation is in force at the time of the proclamation. It does not say that extinguishment of title is conditional upon compensation being paid. The words convey an expectation that compensation will be paid, certainly, but there is no conditionality. To read the two paragraphs as inconsistent appears to rely on a strained interpretation of the second paragraph not supported by its own words.

Nor is there anything in the Act as a whole that would make extinguishment of title conditional upon the payment of compensation. The only other part of the Act to mention land acquisition is the preamble, which was inserted when the Bill was in its second reading. A hint that the text was added to allay concerns about compulsory acquisition comes in a comment made by the bill’s author, John McKenzie, during the second reading debate. When the member for Northern Māori, Hone Heke,

objected to the Bill in the House (stating that '[t]o provide for taking the land away from the Natives under the clauses set forth in the Bill was a monstrous piece of legislation'), McKenzie referred him to the newly inserted preamble and claimed that it was one Heke 'would no doubt find satisfactory'.<sup>404</sup> This suggests that part of the inserted text's function was to emphasise that the Act was not primarily intended to take away land compulsorily. The preamble, in full, reads as follows:

Whereas, as set out in Parliamentary Paper G-4, Session II, 1887, the late Te Heuheu Tukino, Chief of the Ngatituwharetoa Tribe, by deed of gift dated the twenty-third day of September, one thousand eight hundred and eighty-seven, ceded to Her Majesty the Queen portions, aggregating six thousand five hundred and eight acres, more or less, of the lands described in the Schedule hereto, for the purposes of a National Park:

*And whereas the residue of the lands so described is of no use or benefit to the Native owners thereof, and is being acquired from time to time by Her said Majesty, through the purchase of the shares or interests of such Native owners therein, with the view of carrying out the intention of the original gift:*

Be it therefore enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: [Emphasis added].<sup>405</sup>

From a plain reading of the second paragraph of this preamble it relates to owners alienating, by sale, lands they no longer wish to retain. To suggest that it carries any notion of extinguishment of native title through compulsory acquisition, conditional upon payment of compensation, seems to us far too strained a reading.

There are several pieces of contextual evidence that can be drawn on to both support and contradict the above reading of the Act. However, in light of the number of contradictory views expressed by different Crown representatives, we are of the opinion that none of them can reliably be treated as determinative of the will of parliament.

Some contextual evidence from the time of the Act's passage, for instance, supports a reading of the Act as unilaterally extinguishing native title in the park area. In a letter sent to the Minister of Lands on 15 September 1894

by an unspecified Crown official, reproduced in historian Tony Walzl's report, it is stated that the Act

provides that the Governor may by proclamation in the Gazette declare the whole territory comprised within the Schedule to the Bill, containing 62,300 acres, a National Park, and from the date thereof the Native title shall become extinguished.<sup>406</sup>

The official then added:

The Bill goes on to provide that any interests which the natives may still hold in this area shall be adjudicated on by the Native Land Court, and the monetary value of them ascertained, whereupon compensation is to be made to the natives for such interests.<sup>407</sup>

That is, compensation would likely follow, but extinguishment of title came first: it was not dependent on compensation being paid.

Counsel also uses as contextual evidence the statements made by the commissioner of Crown lands in 1913, 1929, and 1959 noted above. The commissioner, on three separate occasions, identifies the land as remaining under native title, including in his statement in the 1929 letter 'that the provisions of paragraph 2 of Section 2 of the Tongariro National Park Act 1894, will have to be used to perfect the Crown's Title'.<sup>408</sup> The commissioner here treats the extinguishment of native title as conditional on the payment of compensation under section 2. But counsel is incorrect in saying that

nobody involved[,] from Ministers and Crown officials, who investigated the ownership of Rangipo North 8 . . . thought the proclamation had extinguished native [title].<sup>409</sup>

Both the under-secretary and the director-general for lands, in their letters of 1929 and 1959 respectively, viewed native title as extinguished.

Judge O'Malley echoed the latter view in the Māori Land Court in 1960. On 16 February 1960, the Crown filed an application with the court seeking an investigation of





**Rangiwaea-Tāpiri and Tūroa Skifield. The Māori-owned land block and the skifield are in close proximity.**

title to the area of land within the Rangipō North 8 block that fell outside of the Tongariro National Park. Judge O'Malley, after hearing the application later that year, decided that

The Court is satisfied that the whole of the land to be called Rangipo North No 8 Block containing 6577 acres *was* Maori customary land *prior to the taking* of 5180 acres by Proclamation under the Tongariro National Park Act 1894; and that the whole of the land was owned by three hapū of Ngati Waewae, namely Ngati Matangi, Ngati Rongomai and Ngati Pouroto. The Court will in the future make a freehold order in respect of the balance of Rangipo North No 8 containing 1397 acres, after proper lists of owners under the said hapus have been filed by Mr Asher and approved by the Court. [Emphasis added.]<sup>410</sup>

This demonstrates that there were conflicting contextual views on the effect of the legislation. In our view, the reading of the commissioner for Crown lands, which is

not backed up by any explicit reasoning in his letter, does not seem persuasive enough to colour the statutory language as ambiguous or unclear.

Counsel's use of the private sale of the Waiakake block in 1910 as contextual evidence to support his submission is also unpersuasive. This land was already held in European freehold prior to the proclamation of 1907, and, therefore, was not affected by any extinguishment of native title, hence its ability to be privately sold prior to its eventual acquisition by the Crown. Nevertheless, we do note that the matter of payment for purchase of the privately-owned part of the block was not allowed to languish unaddressed for years, as it was (and still is) in the case of compensation for the Maori-held part of the block.

In the Tribunal's view, the provisions of section 2 of the Act can be read in one simple and consistent way. The language of the Act is clear and plain – native title over the park lands is deemed to be extinguished upon proclamation by paragraph 1, and compensation is implied as due to all owners of this land by paragraph 2. Counsel's

submission that the first and second paragraphs of section 2 of the Act are inconsistent, and that a condition should therefore be read into the otherwise plain wording of the first paragraph – ‘on and after the date aforesaid the Native title over the aforesaid territory shall be deemed to be extinguished’ – does not seem to us to be properly founded. As is amply evident from the first half of paragraph 1, ‘the date aforesaid’ is the date of the proclamation, not the date when compensation is paid. As discussed above, the two paragraphs can be read together consistently, with compensation following on from extinguishment, and there is no scope to strain the natural meaning of the words to find an implied condition on the otherwise clear intention to extinguish native title.

Under the rulings in *Faulkner v Tauranga District Council* and *Attorney-General v Ngāti Apa*, requiring that the Crown’s intention to extinguish native title be clear, plain and unambiguous, it is clear that native title has been extinguished.

It is worth noting, however, that Lord Cooke’s ruling in *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General* was that when the Crown sought to extinguish native title it ‘may be that the requirement of free consent has at times to yield to the necessity of the compulsory acquisition of land or other property for specific public purposes which is recognised in many societies’ (emphasis added).<sup>411</sup> There is potentially an argument available to the owners that the ability of the Crown to unilaterally extinguish native title is not always justified by the public purpose for which the land is required. Any argument along these lines, however, would need to be heard in the High Court, not the Waitangi Tribunal.

Although we have concluded that the Crown’s failure to initiate compensation proceedings after the 1907 proclamation does not invalidate its assertion of the extinguishment of native title in Rangipō North 8, there are Treaty issues requiring our consideration. As the evidence above highlights, the Crown failed to initiate compensation proceedings despite an awareness of its failure to do so during the twentieth century. In effect, the Crown failed to follow the terms of its own law. Section 2 of the Tongariro National Park Act 1894 stated that a taking under the Act

would be deemed a taking for a public work under the Public Works Act 1882. In the case of customary land, section 261(a) of that Act provided for the Minister to apply to the court to have compensation assessed and beneficiaries identified. Therefore, as Ms Edwards identified, the initiative for completing the acquisition of lands affected by the proclamation lay with the Minister of Lands, not the customary owners.<sup>412</sup> The Crown has, however, never initiated compensation proceedings.

We, therefore, welcome the Crown’s acknowledgement that its failure to act was a breach of the Treaty and its principles. Failing to initiate compensation proceedings during the twentieth century, despite Crown officials realising on at least three separate occasions that compensation had not been paid, was a breach of the Crown’s duties of good faith to Māori and of active protection. In terms of a compulsory acquisition without compensation, the Tribunal found in its *Ngāti Rangiteaorere Claim Report* that such a taking ‘turned an acquisition into a confiscation.’ It also stated that,

Whatever the merits of compulsory acquisition, as a last resort, there can be no justification for the failure to pay compensation.<sup>413</sup>

The failure to pay compensation also breached article 3 of the Treaty, which allowed Māori the same rights and privileges of British subjects. In our view, these breaches require immediate remedy.

## 7.12 KEY ISSUE 2 – TRIBUNAL FINDINGS

### 7.12.1 Crown concessions

The Crown has conceded that there is no evidence of consultation with Whanganui Māori with respect to the creation and establishment of the Tongariro National Park and that this was in breach of Treaty principles.

The Crown has also conceded that it failed to consider and provide for the interests of Whanganui Māori when it moved to legislate for the Tongariro National Park in 1894.

After compulsorily acquiring land for the park, the Crown never initiated compensation proceedings and it

has conceded that its failure to act was a further breach of the Treaty and its principles.

### 7.12.2 Our conclusions and findings

We welcome the Crown's several concessions on matters relating to the establishment of the Tongariro National Park.

In relation to the first concession, we would observe that in failing to consult with Whanganui Māori, the Crown breached the Treaty in a number of respects including, in particular, its duty to act fairly as between Māori groups (generally known as the principle of equal treatment).

In relation to the Crown's second concession, we find that it failed to uphold its fundamental Treaty obligation to ensure that the interests of Whanganui Māori were protected. This included their relationship with and kaitiakitanga of taonga. The Crown's failure in this matter was in breach of its duties of good faith and active protection towards its Treaty partner.

In terms of whether native title was extinguished by the Tongariro National Park Act 1894, we find the intention of the Act 'unambiguous' and 'clear and plain', considering the specificity of the wording in section 2. Nevertheless, under the Public Works Act 1882, the initiative for assessing compensation for any lands compulsorily acquired for the park lay squarely with the Crown, and the owners were entitled to expect compensation. As the Crown has conceded, its failure in this regard constitutes a breach of the Treaty and its principles. We find that, in particular, it breached the duties of good faith and active protection. We also find that it breached article 3 of the plain text of the Treaty, which allowed Māori the same rights and privileges of British subjects.

We consider the Crown's ongoing failure to compensate ngā iwi o te kāhui maunga for the compulsory acquisition of Rangipō North 8, the location of a substantial part of Tūroa skifield, reflects poorly on the honour of the Crown. Under the principles of the Treaty the Crown should now take prompt action to address its Treaty breaches.

### Notes

1. See, for example, 'A Grand National Park: Native Liberty; Tongariro, Ruapehu, and Ngauruhoe to be given to the Colony', *Wanganui Herald*, 16 February 1887, p 2; 'A National Park', *Evening Post*, 15 April 1887, p 2
2. 'Papers Relative to Military Operations against the Rebel Natives', Fox to Ormond, 14 October 1869, AJHR, 1870, A-8, pp 24-25
3. Ibid; Donald McLean to JD Ormond, 27 October 1869, p 26
4. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, William Nosworthy, 13 November 1920, TO 1 52/54, Archives New Zealand, Wellington, p 3 (Andrew Joel, comp, 'Document Bank to "The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park"' (document bank, Wellington: Crown Law Office, 2005) (doc A56(a)), p 313)
5. James Cowan, *The Tongariro National Park, New Zealand: Its Topography, Geology, Alpine and Volcanic Features, History and Maori Folk-lore* (Wellington: Tongariro National Park Board, 1927), pp 5-6, 28-33 (Cecilia Edwards, comp, 'Document Bank to "Tongariro National Park: The Legislative Regime and Park Management, 1894-1952"', 6 vols (document bank, Wellington: Crown Law Office, 2005) (docs A53(a)-(f)) (doc A53(f)), vol 6, pp 2028-2029, 2046-2048)
6. Tongariro National Park Act 1894, s 4
7. Counsel for Ngāti Tūwharetoa, closing submissions, 7 June 2007 (paper 3.3.43), p 100
8. Ibid, pp 7-8
9. Ibid, p 8
10. Ibid, pp 7-8, 100
11. Ibid, pp 114-115; counsel for Ngāti Hikairo ki Tongariro, closing submissions, 28 May 2007 (paper 3.3.42), p 57
12. Paper 3.3.43, p 100
13. Ibid, p 108
14. Ibid, p 111
15. Ibid, pp 111, 114, 116
16. Ibid, pp 100-103, 108-111, 115-116
17. Counsel for Te Iwi o Uenuku, closing submissions, 22 May 2007 (paper 3.3.37), p 113
18. Counsel for the claimants, generic submissions relating to the 'Gift' of the peaks and establishment of Tongariro National Park, 15 May 2007 (paper 3.3.23), p 30
19. Ibid, p 59
20. Counsel for Ngāti Hikairo, closing submissions, 14 May 2007 (paper 3.3.29), p 41; counsel for Ngāti Waewae, closing submissions, 28 May 2007 (paper 3.3.41), p 66
21. Paper 3.3.23, p 72; paper 3.3.42, pp 60-64
22. Paper 3.3.41, p 67; paper 3.3.42, pp 60, 63; paper 3.3.23, p 72; counsel for Ngāti Hikairo, closing submissions, 15 May 2007 (paper 3.3.30), pp 18-19; paper 3.3.29, pp 47-48
23. Paper 3.3.43, pp 102, 118, 121
24. Ibid, pp 118, 175
25. Ibid, pp 118-119, 149, 156
26. Ibid, pp 120, 123, 149-151
27. Ibid, p 156

28. Paper 3.3.43, p 121
29. Ibid, pp 158–159
30. Ibid, pp 120, 123, 126–127
31. Ibid, pp 127–128
32. Ibid, pp 141–143, 159–160
33. Ibid, pp 132–134; paper 3.3.41, pp 61–64; Andrew Joel, ‘The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park’ (commissioned research report, Wellington: Crown Law Office, 2005) (doc A56), pp 68–69
34. Paper 3.3.43, p 156
35. Ibid, pp 118–119, 122–123, 136, 158–159
36. Ibid, pp 135–136, 142–143, 156–157
37. Ibid, pp 143–146
38. Ibid, pp 150–151
39. Ibid, p 151
40. Ibid, p 172
41. Ibid, pp 172–174
42. Paper 3.3.41, pp 83–86; paper 3.3.42, pp 68–69
43. Paper 3.3.23, pp 64–65
44. Paper 3.3.41, p 66
45. Paper 3.3.23, pp 73–74
46. Paper 3.3.43, p 174
47. Ibid, pp 180–181
48. Paper 3.3.29, p 54; paper 3.3.30, pp 65–66; paper 3.3.41, p 84
49. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 6, p 6
50. Ibid, pp 27–28, 30
51. Ibid, p 47
52. Ibid, p 32
53. Ibid, pp 4–5, 47
54. Ibid, pp 46–48
55. ‘Tongariro and Ruapehu National Park (correspondence relative to a gift of portion of)’; TW Lewis to Te Heuheu Tukino, 13 October 1887, AJHR, 1887, series II, G-4, p 2; Chris Winitana, brief of evidence on behalf of Ngāti Tūwharetoa, 23 September 2006 (doc G25), p 16
56. Paper 3.3.45, ch 1, p 17; paper 3.3.43, p 180
57. Paper 3.3.45, ch 6, p 48
58. Ibid, p 7
59. Ibid, pp 7–12
60. Ibid, p 14
61. Ibid, p 3
62. Ibid, p 18
63. Ibid, pp 3, 9–10, 16–17
64. Ibid, pp 34–35
65. Ibid, pp 23–24
66. Ibid, pp 24–25
67. Ibid, pp 5, 25
68. Ibid, pp 27–28
69. Ibid, p 37
70. Ibid, p 35
71. Ibid, p 36
72. Ibid, pp 35–36, 38
73. Ibid, pp 20–24
74. Ibid, p 18
75. Ibid, p 22
76. Ibid, pp 40–44
77. Ibid, pp 25–26
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80. Ibid, pp 42–44
81. Ibid, pp 51–52
82. Counsel for Ngāti Tūwharetoa, submissions in reply to Crown closing submissions, 11 July 2007 (paper 3.3.60), pp 12–13
83. Ibid, p 18
84. Ibid, p 13
85. Ibid, pp 13–14
86. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp 2–3; paper 3.3.60, pp 14–15
87. Paper 3.3.60, p 16
88. Ibid
89. Wai 575 Claims Cluster Steering Committee, ‘Te Taumarumarutanga o Ngati Tuwharetoa: In the Shadow of Ngati Tuwharetoa’ (confidential commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc G17), pp 371, 372
90. Document G25, p 4
91. Ibid, p 10
92. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, p 2 (doc A56(a), p 312)
93. Document G17, p 321
94. Compare, for instance, the letter of Te Heuheu Tukino to the Native Minister, 23 September 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington, pp 1–4 (doc A56(a), pp 153–156), with Lawrence Grace to Native Minister, 6 January 1886, ACGT LS 1 29085, Archives New Zealand, Wellington, pp 1–5 (doc A56(a), pp 2–6).
95. Document G25, pp 7–8
96. Ibid, p 8
97. Ibid
98. Ibid, pp 7–8
99. Ibid, pp 9–10
100. Robyn Anderson, ‘Tongariro National Park: An Overview Report on the Relationship Between Maori and the Crown in the Establishment of the Tongariro National Park’ (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2005) (doc A9), pp 12–14; Paul Meredith, ‘Upper Whanganui ki Tongariro: A Brief Paper Prepared for the Central Cluster Charitable Trust’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc A54(b)), pp 2–3
101. John Bidwill, *Rambles in New Zealand* (1841; repr Christchurch: Caxton Press, 1974), pp 57–58 (as quoted in doc A9, p 13)
102. Ibid, p 58 (p 13)
103. Ernst Dieffenbach, *Travels in New Zealand* (1843; repr Christchurch: Caxton Press, 1974), vol 1, pp 346–347 (as quoted in doc A9, p 13)

104. EJ Wakefield, *Adventure in New Zealand* (London: John Murray, 1845), vol 2, pp 112–113 (as quoted in doc A9, p 13)
105. *Te Wananga*, vol 5, no 1 (5 January 1878), p 8 (as quoted in doc G17, p 318)
106. Wai 575 Claims Cluster Steering Committee, 'Te Taumarumarutanga o Ngati Tuwharetoa, Translations' (doc G17(b)), pp 2–3
107. *Te Wananga*, vol 5, no 13 (30 March 1878), p 140 (as quoted in doc G17, p 318)
108. Document G17(b), pp 2–3
109. *Te Wananga*, vol 5, no 25, p 318 (as quoted in doc G17, p 318)
110. Document G17(b), pp 2–3
111. *Ibid*, p 2
112. *Ibid*, pp 4–5
113. Document G17, p 306; doc G17(b), pp 4–6
114. Document G17(b), p 4
115. Taupō Native Land Court minute book 4, 4 February 1886, pp 119–120
116. Keith Pickens, 'Operation of the Native Land Court in the National Park Inquiry District in the 19th century' (commissioned research report, Wellington: Crown Law Office, 2005) (doc A50), p 245
117. Taupō Native Land Court minute book 5, 19 March 1886, p 12
118. *Ibid*, 27 March 1886, p 85
119. 'A Grand National Park: Native Liberty', p 2
120. Cowan, *Tongariro National Park*, p 30 (doc A56(a), p 319)
121. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 333
122. George Asher, under cross-examination by Annette Sykes, Ōtūkou Marae, 18 October 2006 (transcript 4.1.11, p 92)
123. Document G17, p 319; Paranapa Ōtimi, whakapapa charts, 17 October 2006 (doc G57)
124. Paper 3.3.60, p 16
125. Paper 3.3.41, pp 40–43, 63–64
126. Document G17, pp 89–94
127. Cowan, *Tongariro National Park*, p 30 (doc A56(a), p 319)
128. Waitangi Tribunal, *Muriwhenua Land Report*, pp 73–74
129. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, pp 33–35, 38, 83, 178
130. *Ibid*, p 140
131. *Ibid*, pp 34–35, 178
132. Chris Winitana, under cross-examination by Mike Doogan, Ōtūkou Marae, 13 October 2006 (transcript 4.1.11, pp 19–20)
133. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, pp 1–2 (doc A56(a), pp 311–312)
134. Taupō Native Land Court minute book 23, 5 June 1908, p 31 (doc A9, p 78)
135. Document G25, pp 5–6
136. *Ibid*, pp 6, 13–14; Louis Chase, brief of evidence on behalf of Ngāti Tūwharetoa, 6 October 2006 (doc G51), p 4
137. Document G25, p 10
138. Angela Ballara, under questioning by Monty Soutar, Grand Chateau, National Park, 13 March 2006 (transcript 4.1.7, p 54)
139. Paper 3.3.45, ch 6, p 30
140. *Ibid*, p 27
141. Taupō Native Land Court minute book 9, 23 September 1887, fol 270
142. Paper 3.3.45, ch 6, pp 16, 19
143. LM Grace to Ballance, 6 January 1886, LS 1 29085, Archives New Zealand, Wellington, pp 1–2 (doc A56(a), pp 2–3)
144. Lewis to Grace, 27 January 1886, MA-MLP 1903/118 pt 1, Archives New Zealand, Wellington (doc A56(a), p 45); paper 3.3.45, ch 6, p 21
145. WH Grace to Lewis, 11 February 1886, MA-MLP 1 1905/54, Archives New Zealand, Wellington (doc A56(a), p 198)
146. Paper 3.3.45, ch 6, p 16
147. Cowan, *Tongariro National Park*, pp 30–31 (doc A56(a), p 319); paper 3.3.45, ch 6, p 16
148. Cowan, *Tongariro National Park*, p 6 (doc A56(a), p 317)
149. William Grace to Native Minister, 3 March 1886, MA-MLP 1 1887/211, Archives New Zealand, Wellington, p 4 (doc A56(a), p 35)
150. William Grace to Sheridan, 3 March 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington, pp 1–2 (doc A56(a), pp 61–62)
151. Public Domains Act 1860, ss 3, 5, 11
152. Public Domains Act Amendment Act 1865, s 2; Public Domains Act 1881, s 12
153. Joseph Chitty, *A Treatise on the Law of the Prerogatives of the Crown; and the Relative Duties and Rights of the Subject* (London: Joseph Butterworth and Son, 1820), pp 121–122, 208, 210–211, 242, 381
154. Paper 3.3.45, ch 6, p 37
155. Paper 3.3.23, pp 68–69
156. Public Trust Office Act 1872, s 15
157. Trustees' Powers Delegation Action 1869, preamble
158. Waitangi Tribunal, *Muriwhenua Land Report*, p 2; paper 3.3.60, pp 14–15)
159. Robyn Anderson, under cross-examination by Karen Feint, Grand Chateau, National Park, 14 March 2006 (transcript 4.1.7, p 108)
160. Document A56, p 55
161. Paranapa Ōtimi, evidence on behalf of Ngāti Tūwharetoa, 27 April 2005 (Wai 1200 RO1, doc E16), p 15
162. Paper 3.3.60, p 15
163. Craig Potton, *Tongariro: A Sacred Gift* (Nelson: Lansdowne Press, 1987), p 132
164. Sir Hepi Te Heuheu, 'Foreword', in Potton, *Tongariro: A Sacred Gift*, p 8 (doc G64)
165. 'Hepi Te Heuheu Speaking at Tongariro National Park, 1987', Sound Archives audio recording, T6590, in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/node/133158>, last modified 30 October 2012
166. Document G64
167. Paper 3.3.43, p 153
168. Document A56, p 65; *Bay of Plenty Times*, 29 January 1887, p 2, col 6

169. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (1959; repr Auckland: Reed, 2005), p 498 (doc A12, [p 256]); Cowan, *Tongariro National Park*, p 31 (doc A56(a), p 319)
170. William Grace to Sheridan, 3 March 1887 (doc A56(a), pp 61–62)
171. ‘A Grand National Park: Native Liberty’, p 2
172. Ballance to Lewis, 12 May 1887, MA-MLP 1 1903/118, pt 1, Archives New Zealand, Wellington (doc A56(a), p 71)
173. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, p 1 (doc A56(a), p 311)
174. *Ibid*, pp 1–2 (pp 311–312)
175. *Ibid*, p 2 (p 312)
176. Paper 3.3.43, pp 119–120
177. John Ballance, 20 May 1887, NZPD, 1887, vol 57, p 399; doc A56, p 90
178. William Grace to Sheridan, 3 March 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington, p 2 (doc A56(a), p 62)
179. Trustee Act 1883, Interpretation
180. See the example of the Tapapa block, Taupō Native Land Court minute book 4, 2 February 1886, fol 104
181. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, p 3 (doc A56(a), p 313); doc A56, p 81
182. Document A56, pp 80–81; Andrew Joel, under questioning by Karen Feint, Returned Services Association Working Men’s Club, Ōhakune, 28 November 2006 (transcript 4.1.12, p 100)
183. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, p 4 (doc A56(a), p 314); doc A56, p 81
184. Document A56, p 82
185. Taupō Native Land Court minute book 23, 5 June 1908, fol 31 (as quoted in doc A9, p 78)
186. Document A9, pp 33–34
187. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 332
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190. Chris Winitana, under questioning by Hirini Mead, Ōtūkou Marae, 13 October 2006 (transcript 4.1.11, p 42)
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203. William Grace to Sheridan, 17 February 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington (doc A56(a), p 53); William Grace to Sheridan, 4 March 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington (doc A56(a), p 64)
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215. W Grace to Sheridan, 3 March 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington (doc A56(a), p 62)
216. Governor Jervois, 26 April 1887, NZPD, 1887, vol 57, p 3
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227. Robert Stout, 1 June 1887, NZPD, 1887, vol 57, pp 578–579
228. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, p 1 (doc A56(a), p 311)
229. Lewis to Ballance, 1 June 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington, pp 1–2 (doc A56(a), pp 59–60)
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235. *R v Fitzherbert* (1872) 2 NZCA 143
236. *Ibid*, p 172
237. *Rex v Mayor, etc, of Blenheim* (1907) 28 NZLR 249
238. *Ibid*, p 256
239. *Civilian War Claimants Association Ltd v The King* [1932] AC 14 (HL) 27
240. *Tito v Waddell* [1977] Ch106; [1977] 2 WLR 496 (Ch), 211. The full quotation reads:

When it is alleged that the Crown is a trustee, an element which is of especial importance consists of the governmental powers and obligations of the Crown; for these readily provide an explanation which is an alternative to a trust. *If money or other property is vested in the Crown and is used for the benefit of others, one explanation can be that the Crown holds on a true trust for those others.* Another explanation can be that, without holding the property on a true trust, the Crown is nevertheless administering that property in the exercise of the Crown's governmental functions. This latter possible explanation, which does not exist in the case of an ordinary individual, makes it necessary to scrutinise with greater care the words and circumstances which are alleged to impose a trust. [Emphasis added.]

241. *Commonwealth v Mewett* (1997) 191 CLR 471; 71 ALJR 1102; 146 ALR 299 (HC), para 168. *Rex v Mayor, etc, of Blenheim*, p 249 was cited as the basis for this proposition, along with George Spence, *The Equitable Jurisdiction of the Court of Chancery*, 2 vols (London: Stevens and Norton, 1846–1849), vol 2, pp 32–33; *Attorney-General v Nissán* [1969] UKHL 3; [1970] AC 179, 223; *Registrar of the Accident Compensation Tribunal v Federal Commissioner of Taxation* [1993] HCA 1; (1993) 178 CLR 145, 162–164, 180.

242. *Civilian War Claimants Association v The King* (1969) UKHL 3
243. *Wakatu Inc v Attorney-General* (2012) NZHC 1461, para 214. The full quote reads:

*there is, as Lord Atkin acknowledged in 1932, nothing – at least as far as he was then aware – to prevent the Crown acting as agent or trustee if it deliberately chooses to do so.* What *Tito v Waddell* concludes is that without raising a burden of proof, as had been submitted, the existence of the alternative explanation that the Crown was acting in the exercise of its governmental functions when it is alleged to have created a private law trust means 'that the Courts will be ready to adopt it unless there is a sufficient indication that instead a true trust was intended.' [Emphasis added.]

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245. 'A National Park', p 2
246. Lewis to W Grace, 30 June 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington (doc A56(a), p 106)
247. W Grace to Lewis, 22 July 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington, pp 1–2 (doc A56(a), pp 115–116)
248. Lewis to W Grace, 29 July, 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington (doc A56(a), p 117); doc A9, p 85
249. Correspondence between W Grace, Sheridan, and Lewis, 28 July 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington (doc A56(a), pp 141–143)
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252. Lewis to W Grace, 21 July 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington (doc A56(a), p 113)
253. *Ibid*
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256. Document A9, p 78; doc A56, p 38
257. Paper 3.3.43, p 132
258. Taupō Native Land Court minute book 9, 21 September 1887, fols 265–266
259. *Ibid*, pp 265–268
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261. Lewis to Grace, 21 July 1887, MA-MLP 1 1903/118 pt 1, Archives New Zealand, Wellington (doc A56(a), p 113); doc A9, p 85
262. Paper 3.3.43, pp 126, 132; paper 3.3.42, p 61
263. Robyn Anderson, under cross-examination by Karen Feint, Grand Chateau, National Park, 14 March 2006 (transcript 4.1.7, p 112)

264. Robyn Anderson, under cross-examination by Jason Pou, Grand Chateau, National Park, 14 March 2006 (transcript 4.1.7, p 171)
265. Angela Ballara, under cross-examination by Mike Doogan, Grand Chateau, National Park, 13 March 2006 (transcript 4.1.7, p 10)
266. Document G17(b), p 7; Paranapa Ōtimi, under questioning by Monty Soutar and under cross-examination by Karen Feint, Ōtūkou Marae, 12 October 2006 (transcript 4.1.11(a), pp 93–94, 108–109)
267. Paranapa Ōtimi, under questioning by Monty Soutar, Ōtūkou Marae, 12 October 2006 (transcript 4.1.11(a), p 94)
268. Document G17, p 320
269. Document G17(b), p 7
270. Paranapa Ōtimi, under questioning by Monty Soutar, Ōtūkou Marae, 12 October 2006 (transcript 4.1.11(a), p 94)
271. Document A56, p 45
272. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, p 2 (doc A56(a), p 312)
273. Taupō Native Land Court minute book 9, 12 September 1889, fols 215–217
274. ‘Taupo This Day’, *Evening Post*, 30 July 1888, p 3
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286. Robyn Anderson, under questioning by Judge Isaac, Grand Chateau, National Park, 14 March 2006 (transcript 4.1.7, p 199)
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288. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 264
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#### Page 478: Timeline of Key Events

- Quotations 'his own property' and 'into the Title' from notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, William Nosworthy, 13 November 1920, TO 1 52/54, Archives New Zealand, Wellington, p 1 (doc A56(a), p 311).

**Page 490: The Final Version of the Deed is Dispatched**

**Source:** Andrew Joel, comp, 'The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park: Document Bank' (supporting papers, Wellington: Crown Law Office, 2005) (doc A56(a)), pp 102–105

**Page 491: The 'Promise' of a 100-Acre Reserve**

1. Paper 3.3.41, p 60; John Rewiti, second brief of evidence on behalf of Ngāti Tūwharetoa, 29 September 2009 (doc G32(a)), pp 5–6

**Page 504: A Clear Statement in the Māori Language**

1. William Grace, 'Clear Statement in the Maori Language', typescript, not dated (doc G56); Chris Winitana, brief of evidence, 23 September 2006 (doc G25), p 17

**Page 508: 'Your . . . request . . .'**

1. Thomas Lewis, under-secretary of lands, to Horonuku Te Heuheu, 13 October 1887 (doc G25, p 16)

**Page 518: 'With reference to the request . . .'**

1. Thomas Lewis, under-secretary of lands, to Te Heuheu Tukino, 13 October 1887 (doc G25, p 16)

**Page 520: Memorial Tablet at the Chateau**

1. Document A9, pp 195–196



CHAPTER 8

## TWENTIETH-CENTURY LAND ALIENATION ISSUES

### 8.1 INTRODUCTION

About half the land in the National Park inquiry district had already been alienated from Māori ownership by 1900. By 2000, less than 15 per cent remained. Land loss in the twentieth century thus continued to make significant inroads into overall Māori landholdings in the district. This chapter investigates the Crown's role in that further loss of land, much of which occurred in the first half of the century.

Our particular purpose is to address claims relating to the Crown's land alienation and administration policies in the twentieth century and how those policies impacted upon Māori land retention in the district. At this point, we especially note the importance of land covered in indigenous forest. Although some of this forested land was retained by Māori, it was also of great interest to the Crown in terms of the wider plans and purposes of successive governments. For that reason, we include discussion of indigenous forestry in the present chapter, rather than in the next, which will deal with the development of Māori-retained land in other ways, especially through farming and exotic forestry.

From the evidence, it becomes clear that land in the inquiry district was alienated to the Crown mainly through purchases, but there were also public works takings, survey awards, and exchanges. Much of the land acquired by the Crown eventually became part of the Tongariro National Park.

The Tribunal's report on the adjoining Taupō, Kaingaroa, and Rotorua inquiry districts (*He Maunga Rongo: Report on Central North Island Claims*) has already covered in considerable detail the issues that Māori faced in retaining and developing their remaining land in this region during the twentieth century. It remains for the National Park Tribunal, therefore, to examine Crown actions and omissions with respect to the specific claims of the various groups participating in the inquiry, and thus to test the application of the Tribunal's *He Maunga Rongo* report's generic findings to this inquiry district.

The issues in contention in this chapter are captured in a single key question:

*To what extent was the Crown directly implicated in Māori loss of ownership and control of their land in the National Park inquiry district in the twentieth century?*

### 8.2 CROWN PURCHASING

In this section, we investigate the extent to which land in the inquiry district passed out of Māori ownership during the twentieth century, noting the dominance of Crown

purchases in these alienations. We concentrate on the first half of the century, when most of the alienations occurred; the claimants raised few issues relating to the period from mid-century onwards. We will identify the patterns in Crown purchasing, indicating the periods when it was most evident and the purposes for which it was conducted. The latter included land settlement, utilisation, and conservation of the timber resource, tourism, and the extension of the Tongariro National Park. These objectives were often intertwined, and two case studies later in the chapter reveal how various issues arising from the Crown's role in land alienation were closely connected. The legislation and policies under which the Crown acquired land will also be examined, along with the practices followed by land purchase officers. Our overall aim is to assess whether the Crown's actions with regard to land purchase were consistent with its Treaty obligations.

### 8.2.1 Claimant submissions

Crown purchasing was presented by claimant counsel as a critical issue for this inquiry, since it accounted for the alienation of more than 100,000 acres of Māori land in the inquiry district between 1900 and 2000, compared to only 4203 acres purchased by private interests.<sup>1</sup>

Claimant submissions on this topic were particularly concerned with the first half of the century, and did not refer to policy and practice after the Second World War. The generic submissions drew extensively on the report by Dr Terry Hearn, and adopted its conclusions in full.<sup>2</sup> They focused on the major Crown purchasing programme that began in the area in 1918 and was, they said, characterised by the unfair imposition on many blocks of orders prohibiting alienation except to the Crown, and by the gradual acquisition of individual interests within those blocks.<sup>3</sup> The key arguments of the claimants were, first, that land sales were facilitated by this legislative and regulatory environment, especially the regime set up in 1909 and 1913 and maintained until the 1950s, and, secondly, that Crown policy and practice benefited the Crown at the expense of Māori.<sup>4</sup>

It was submitted that the Crown controlled the partitioning process, for its own benefit. Although the process

was technically the responsibility of the Native Land Court, government officers often arranged the partitions so that the best or most accessible land was awarded to the Crown. Because of the Crown's hope of obtaining as many undivided shares as possible, there could be delays of sometimes many years before the Crown's interests were partitioned out, leaving the remaining owners in a state of uncertainty and reducing their motivation to use the land. Non-sellers would be burdened with the survey costs of these partitions, which they had not wanted in the first place, thereby creating a further incentive to sell. At other times the Crown would instruct its agents either to ignore partitions or apply to have them cancelled in order to facilitate the purchase of land.<sup>5</sup>

In regard to the prices paid for land by the Crown, acknowledgement was made that the legislation of 1905 required the payment of at least the amount of the official valuation, and that this was an improvement on the previous situation. Claimants submitted, however, that although it is now difficult to determine whether prices paid in individual cases were fair, the whole system for the valuation of Māori land was structurally unfair to Māori because the Crown's purchase monopoly meant that Māori were unable to choose to sell their land at prices obtained on the open market.<sup>6</sup> Claimants also alleged that the prices paid tended not to reflect the true value of the land, as the value of timber on it was not included.<sup>7</sup>

Concerning survey charges, claimants pointed out that the nineteenth-century system was maintained after 1900 and continued to affect Māori landowners adversely. They identified land that was taken by the Crown in 1904 and 1912 in lieu of unpaid survey costs.<sup>8</sup>

The rating system was also raised as an issue. Ngāti Waewae submitted that the local body rating system was an unfair burden on the owners of any land that did not produce enough income to pay rates,<sup>9</sup> and the descendants of Winiata Te Kākahi pointed to the alienation of Urewera 2A2 in 1968 as an outcome of the owners' inability to pay rates arrears.<sup>10</sup>

The claimants said that the Crown failed to apply the legislative provisions for preventing landlessness. They alleged that in 1913 the Crown exempted itself, when

purchasing Māori land, from the statutory criteria it had established in 1909: the Native Land Amendment Act 1913 transferred the task of checking for landlessness from the Māori Land Boards to the Native Land Purchase Board. This raises the issue of conflict of interest. Also, there is no evidence that the Native Land Purchase Board made checks of this kind.<sup>11</sup>

It was submitted that the legislative regime in effect from 1913 severely restricted the extent to which Māori were able to exercise free choice when choosing whether or not to sell their land; the situation was one in which Māori were 'coerced' into selling.<sup>12</sup> Counsel pointed to the poor economic circumstances of Māori in this district in the earlier part of the century, and their inability, because of restrictions against private alienation (including leasing), to use or develop their land. This made them more likely to decide to sell.<sup>13</sup> In this situation of Crown advantage over Māori land holders, particular care should have been taken to fulfil the duty of active protection, by ensuring that a fair price was paid and landlessness was avoided, but the Crown failed in this respect.<sup>14</sup> The Crown's practice of purchasing individual interests, and then forcing partition in the court, also had the effect of isolating Māori from their tradition of collective decision making in land matters.<sup>15</sup>

### 8.2.2 Crown submissions

The Crown acknowledged that in the twentieth century most of the Māori land alienated in the inquiry district was purchased by the Crown.<sup>16</sup> Counsel suggested that the high level of Crown purchasing could be explained by its policy of acquiring land for the Tongariro National Park, and also by the lack of private demand for land in a region seen as remote and unproductive.<sup>17</sup>

According to counsel, it is not self-evident that in the early twentieth century the Crown should have taken more active steps to prevent Māori from selling their land: the ability to alienate land is a fundamental right of ownership, and the correct balance between respect for this right and protection of continued ownership varies according to the circumstances of the time and the differing desires of Māori owners.<sup>18</sup> In the Crown's view,

the existence of particular land laws in the early twentieth century does not, in itself, explain why land was sold at this time. Assessing motivation is very difficult. Some land would have been sold to meet an immediate need for income, or to promote economic development, but the evidence is limited.<sup>19</sup>

Although the Native Land Act 1909 was designed to facilitate the alienation of Māori land by owners who wished to follow that course, it still contained important safeguards, including a requirement for the vetting of most purchases by an independent institution to ensure that sellers were not left landless.<sup>20</sup>

In the Crown's view, the imposition of restrictions against alienation to private interests was not in itself a breach of the Treaty. There were legitimate reasons for the restrictions, although they were not given much attention in the evidence.<sup>21</sup> The Crown acknowledged, however, that such restrictions must always be imposed and administered fairly and reasonably, and that in the National Park inquiry district it failed to act consistently in this respect. It gave as an example the lands that eventually made up the Pihanga Scenic Reserve, and conceded that in such cases it had breached the principles of the Treaty by making unreasonable and unfair use of its monopoly purchasing power over Māori lands. The Crown accepted that owners lost economic opportunities, and may have experienced undue pressure to sell, when alienation restrictions were imposed. In particular, it acknowledged that although the owners of Ohuanga 2B2 made a number of attempts to have the restriction on their land lifted, advising that the prohibitions were causing undue hardship, on each occasion these requests were unsuccessful. The Crown accepted that it had a duty to act in good faith in the exercise of its monopoly powers over Māori lands. Where prohibitions were maintained for long periods, where the owners had shown no wish to enter purchase negotiations with the Crown, and where the owners lost opportunities as a result, it could not be said that the Crown had acted consistently with its duty to purchase reasonably and to regulate processes appropriately.<sup>22</sup> There were other cases, however, where caution is necessary before accusing the Crown of applying the provisions unjustly.<sup>23</sup>

Concerning price, the Crown submitted that it is not known whether Māori land sellers were disadvantaged by the prices paid for their land. It cannot be assumed that higher prices would have been obtained if private purchase had been allowed. There is no evidence that the official valuation procedure undervalued Māori land. Counsel submitted that in view of the limited evidence available on actual land values in the district in this period, even Dr Hearn's tentative conclusions should be treated with caution.<sup>24</sup> This applies also to the prices paid for forested land, where there is little evidence about valuations or about the market values prevailing at the time. Counsel argued that it cannot be assumed that Māori would have done better selling timber lands in the open market.<sup>25</sup> Private land purchases, too, were subject to the legislative requirements for valuation.<sup>26</sup> In the Crown's view, its responsibilities to Māori and also to the taxpayer meant that there was no obligation to pay more than the statutory valuation figure.<sup>27</sup>

The Crown did not accept that it manipulated the partitioning system. Counsel submitted that there is no evidence that the Crown instructed its purchase officers to ignore partitions, or to suggest that officials could ensure that Crown interests were partitioned out by the court in such a way as to provide the Crown with the best land.<sup>28</sup>

With respect to the rating of Māori land and whether it was compliant with the Treaty, the Crown submitted that no evidence about the legislative framework and history of rating had been presented, and only limited evidence about the application of the rating law in the National Park district. Although charging orders were mentioned in some claims, only one example of a possible alienation of Māori land because of rates arrears (Urewera 2A2) had been presented.<sup>29</sup>

### 8.2.3 Submissions in reply

In reference to the Crown's denial that it manipulated partitioning, Ngāti Waewae suggested that the key issue might well be the role of officials in the process, and pointed out that there was apparently no legislative requirement for the court to protect Māori during the partitioning process; the example of Rangipō–Waiū 1 was given.<sup>30</sup> In

regard to the rating of land, they clarified that their claim was not that the application of the rating system to Māori land necessarily caused hardship and was therefore in breach of the Treaty, but that the rating of unproductive land was an unfair burden, leading to economic hardship and the risk of alienation.<sup>31</sup>

### 8.2.4 Tribunal analysis

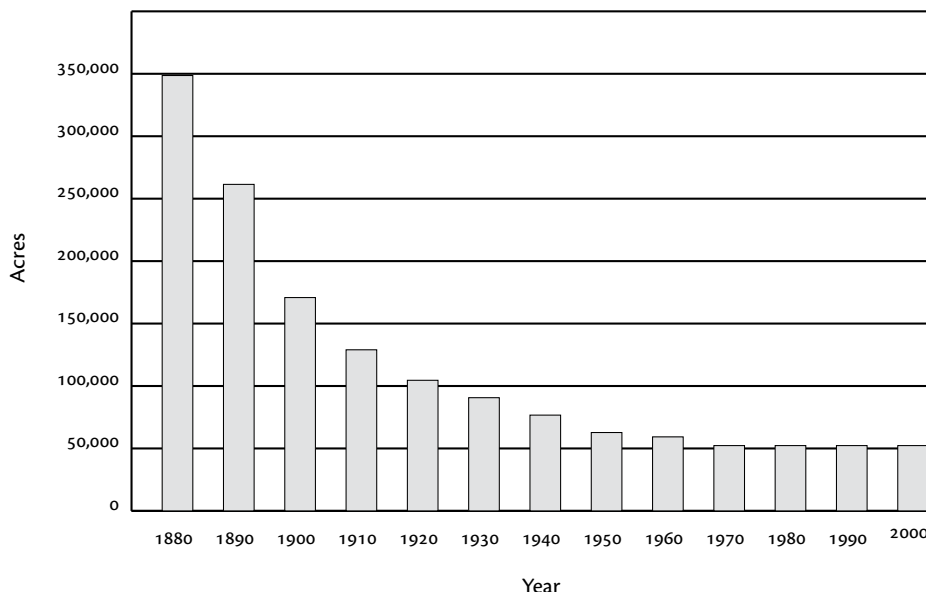
#### (1) *The extent and pattern of land alienation in the twentieth century*

(a) *The extent of alienation:* According to Jamie Mitchell's quantitative study of Māori land alienation in the National Park inquiry district, only 14.74 per cent of the total land area of the district was still in Māori ownership in 2000. The area of Māori land remaining at that time, out of the original 348,605 acres, was 51,374 acres.<sup>32</sup> Thus, more than 85 per cent of the land had passed out of the hands of Māori by the beginning of the new millennium.

As we explained in chapter 6, over half the land had already gone by 1900. Of the remaining land, a further 126,000 acres were lost during the twentieth century.<sup>33</sup> The graph opposite illustrates this decline in Māori land ownership over the years.

The rate of loss was slower after 1900 than before, but alienation continued to occur at significant levels until the middle of the twentieth century. During these 50 years, Māori lost, on average, 6 per cent of their original land area every decade – although the rate started at double that during the first decade, before dropping to 7 per cent in between 1910 and 1919, and then to 4 per cent in the 1920s, 1930s, and 1940s. By 1910, 37 per cent of the original area remained, and by 1950 this amount had been halved, to 18 per cent. The decline after that was not great, but it did continue. In the 1950s more than 4,000 acres were alienated, and in the 1970s nearly 1,600 acres. The last purchase was recorded in 1982, and the last public works taking in 1991.<sup>34</sup> This loss of land during the twentieth century is demonstrated, decade by decade, by the series of maps we have supplied (see map 8.1). Today, the remaining land is clustered mainly in the extreme north-west (Taurewa), in the north (around Lake Rotoaira), and in the east (in the vicinity of the Desert Road).





Māori land remaining in the inquiry district, 1880–2000

(b) *The pattern of Crown and private purchasing:* Table 8.1 shows the pattern of Māori land alienation in the twentieth century – that is, the form of alienation and the amount of land alienated in each decade.

As can be seen, land alienation in the period covered by this chapter was dominated, as it had been in the nineteenth century, by Crown purchasing. A total of more than 122,000 acres was acquired by the Crown in the twentieth century, the great bulk of it before 1950. In fact, during the twentieth century the vast majority of alienations (98 per cent) were to the Crown. Most of those alienations (81 per cent) took the form of Crown purchases, by which nearly 102,000 acres were transferred from Māori ownership. Other forms of alienation to the Crown, such as survey awards, exchanges, and takings for public works, together accounted for another 17 per cent: about 20,000 acres were alienated in this way. Only 2 per cent of alienations were to private purchasers, who acquired about 4,200 acres in all.<sup>35</sup> Not until the 1950s did Crown purchasing decline to a low level, with only one purchase recorded after 1970.<sup>36</sup> As table 8.1 shows, however, public works takings were still significant in the period after 1950.

Since Crown purchasing played such a large part in the alienation of Māori land in this inquiry district in the twentieth century, it will be given special attention in this chapter. Other forms of alienation to the Crown, and the Crown's role in private purchasing, will also be mentioned when relevant, although the loss of Māori land to public works takings will receive more detailed attention in chapter 10.

(c) *Leasing:* Before we proceed further in our discussion, we note that in some periods a considerable proportion of the remaining Māori-owned land was leased to non-Māori. The records are incomplete, since some leases were arranged informally or through the courts rather than through the Land Registry, but it is evident from Mr Mitchell's data that in the 1910s more than a fifth of Māori land in the district was under lease (to private interests). Private leasing had declined markedly by the 1950s, and accounted for only 1,553 acres in 2000. In the 1970s, however, the Crown became a major lessee as a result of concluding an agreement with landowners for exotic afforestation in the vicinity of Lake Rotoaira. In 2000, more than

Decade	Crown purchases	Other Crown acquisitions	Private purchases	Public works takings	Crown survey awards	Total
1900s	39,730	—	662	121	1,836	42,349
1910s	9,840	1,250	133	4,772	14	16,009
1920s	23,893	—	1,614	32	—	25,539
1930s	13,008	—	—	62	—	13,070
1940s	8,770	3,539	—	6,326	—	18,635
1950s	2,879	—	1,517	5	—	4,401
1960s	3,677	62	54	1,332	—	5,125
1970s	—	—	—	1,589	—	1,589
1980s	151	—	227	67	—	445
1990s	—	—	—	20	—	20
	101,948	4,851	4,207	14,326	1,850	127,182

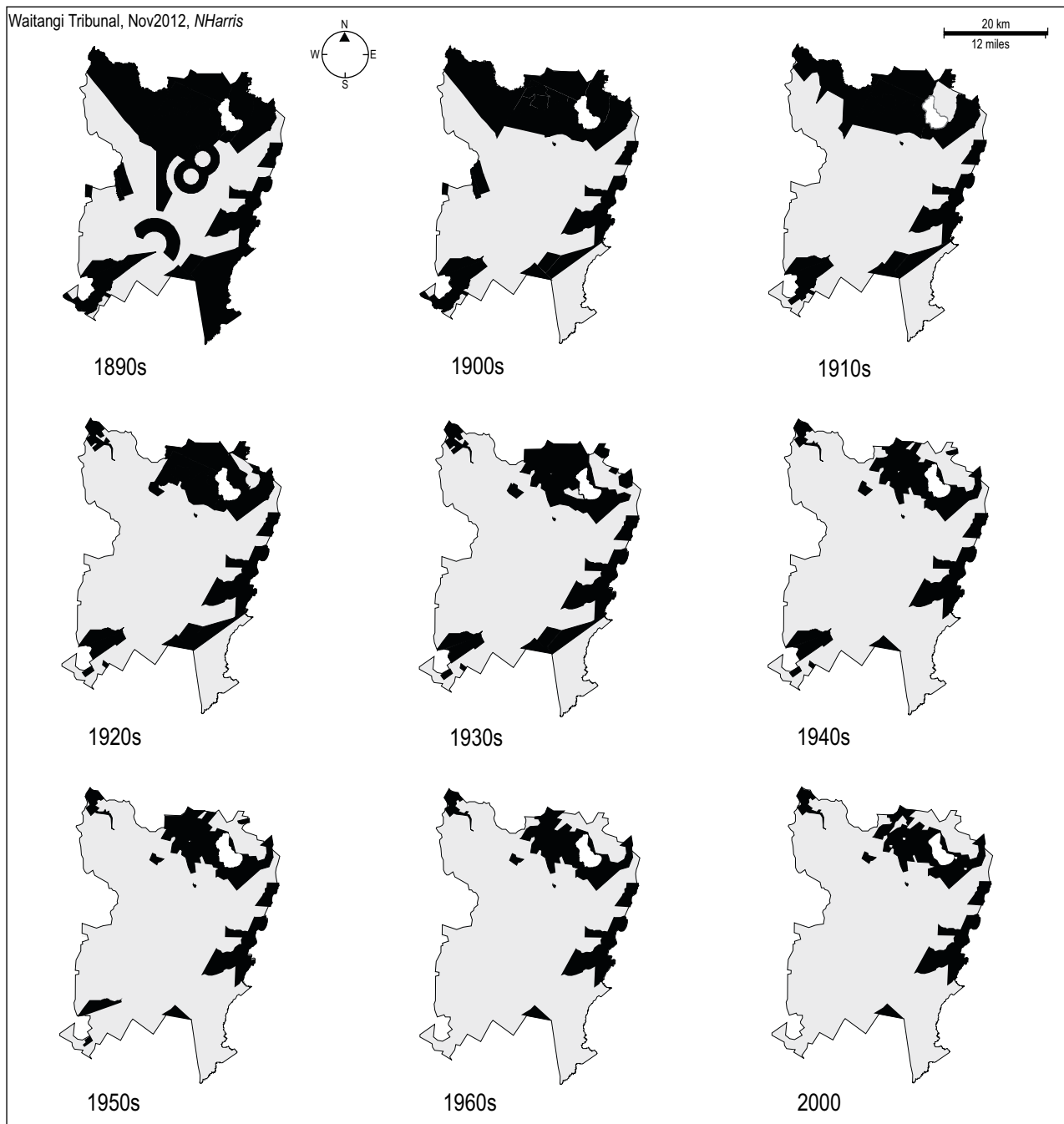
Table 8.1: Summary of twentieth-century land transactions in the inquiry district (in acres)

34,000 acres (68 per cent of the remaining Māori land) was under lease, mainly to the Crown.<sup>37</sup>

(d) *Crown objectives*: It is relevant at this point to consider briefly and in general terms what might have motivated the Crown's involvement in Māori land matters in the National Park inquiry district in the twentieth century. Several objectives may be identified:

- ▶ *Settlement*: The first decades of the twentieth century, a time of economic growth and Pākehā population increase in New Zealand, saw a strong drive to expand the frontiers of Pākehā settlement into undeveloped parts of the North Island, including the interior regions around Lake Taupō. Access was facilitated by the completion of the main trunk railway past the southern and western parts of the district in 1908. The advance of settlement into the central North Island from all directions in this early part of the century, as demonstrated by rural population increases in the region, is described by Dr Hearn in his report on Taupō–Kaingaroa.<sup>38</sup>

The Prime Minister, William Massey, visited the area in 1913, and assured Pākehā residents that 'the Taupo district was a land in the making'; he stated that 'it was the policy of the Government to settle every acre of land, where settlement was possible, and that would be done in Taupo as elsewhere'.<sup>39</sup> Although a government report had referred in 1911 to the undeveloped areas of the central North Island as largely unsuitable for farm-based settlement, considerable confidence was often expressed in the same period that the pumice lands of the region could be put to productive agricultural use.<sup>40</sup> Another area seen as promising for farm development was to the south-west of Ruapehu, in the vicinity of the new main trunk railway and the present towns of Ōhakune and Raetihi. In these decades, governments were under pressure to hasten the purchasing of Māori land to enable settlers to participate in the rapid expansion of the farming industry. The Crown's extensive land purchasing programme in the National Park inquiry district in this period was thus



Map 8.1: Land remaining in Māori ownership by decade, 1900–2000

in part a reflection of the politically strong demand for ‘opening up’ new territory for settlement.

- ▶ *The timber industry:* Hopes for development were focused not only on farming but also on exploiting the indigenous timber resource, which was plentiful on the western and southern shores of Lake Taupō and extended westwards across a large tract of country between the lake and Taumarunui. The forests here had remained almost untouched until timber millers began to operate in the area not long before 1900. Another heavily forested area was the lower slopes of Ruapehu on its southern and western sides. Issues arising from the important forestry industry that developed in the National Park district will be considered in detail in a later section.
- ▶ *Forestry conservation and extension:* Although the harvesting of native timber loomed large as a development objective at this time, there were, even before 1900, expressions of concern that New Zealand’s indigenous forest resources were dwindling. There were moves to promote the conservation and regulation of the remaining indigenous forests, and also reforestation, using exotic trees. Alongside these concerns about supply was an acknowledgement of the value of forestry cover for soil protection, water conservation, and rainfall control. Despite being in conflict with the enormous late nineteenth-century drive to clear bush land for farm development, and to harvest the valuable remaining timber resources, the necessity of forest conservation was increasingly recognised. The State Forest Service was established in 1919 to further these national forestry objectives.<sup>41</sup> The emergence by 1915 of a plan to plant exotic forests on the pumice lands conflicted with the recognition of those lands as having potential for farming.<sup>42</sup> Both concerns, however, affected Māori land matters, and we will give them further attention below.
- ▶ *Scenery and tourism:* Another objective that was relevant to the Crown’s purchasing activities was the establishment of scenic reserves and the Tongariro National Park. We have already referred to this aim as being a factor in late nineteenth-century Crown

purchasing (see chapter 6). The desire to encourage the development of domestic and foreign tourism gave this objective an important commercial dimension. Dr Geoff Park’s report explains that

Scenery preservation ensured that the natural, indigenous qualities so vital to the international tourism market were not lost to the land clearances simultaneously taking place as agricultural settlement consolidated its land base.<sup>43</sup>

The preservation of scenery and the provision of public access to wilderness areas was more than just an economic goal, however. It also represented an embryonic conservationism and a growing national pride in the uniqueness of New Zealand’s natural heritage.<sup>44</sup>

(e) *Overview of alienation:* With this background in mind, we briefly review the record of Crown acquisition (excluding public works takings) in the twentieth century, examining how the Crown came to obtain extensive areas of land in the various parts of the inquiry district. This overview will illustrate the different aspects of the Crown’s purchasing objectives. Later in our analysis we will give closer attention to the process by which these lands were alienated, and consider several particular alienations in detail.

The very large Crown purchase (21,532 acres) in the Rangipō–Waiū block, recorded right at the beginning of the new century, simply marked the completion of a process that had begun before 1900. The tussock grasslands characterising this area in the south east of our district initially seemed attractive as pastoral leasehold land, although (as it turned out) the hopes held for successful farming in this area were never realised.<sup>45</sup> The Crown had turned from leasing to buying, and in December 1900, interests already purchased in Rangipō–Waiū 1 (the only part of the Rangipō–Waiū block situated within the National Park inquiry district) were partitioned out, to be gazetted the following August as Rangipō–Waiū 1A.<sup>46</sup> The other smaller part of Rangipō–Waiū 1 remained in

Māori ownership for the time being. (In 1942, as we relate in chapter 10, it was taken under the Public Works Act for defence purposes, leaving none of Rangipō–Waiū 1 in Māori ownership.<sup>47</sup>)

The next alienations, the Ruapehu and Tongariro purchases of 1903 (Ruapehu 1B, 2B and 3, and Tongariro 1C and 2C, with a total area of nearly 17,300 acres), were again part of a process that had begun before 1900 – the acquisition of the outer mountain blocks surrounding the peaks ‘gifted’ by Te Heuheu. In 1904, too, the transfer to the Crown of Urewera 1A and 2A1 was also for the purpose of completing the acquisition of the original national park area. The Tongariro National Park could now be formally established, which happened by proclamation in 1907. The next stage in the development of the park was its substantial extension in the twentieth century, to which we give considerable attention later in this chapter.

A private purchase in 1908 (Urewera 1C6) was one of only a few alienations of Māori land in this inquiry district to buyers other than the Crown in the early decades of the twentieth century. Further such purchases followed from time to time (in 1913, 1916, 1919, 1920, 1922, and 1923), but most of them were small.

A few other pieces of Māori land were alienated to the Crown between 1911 and 1916, but in 1919 a renewed spate of Crown purchasing began, continuing into the 1940s. Some large individual alienations occurred, and a considerable total area of land was lost from Māori ownership in these decades. Purchases by the Crown and private buyers were much less extensive in the next period – the 1950s and afterwards – but they did continue until 1982.

We now turn to describing and evaluating how this loss took place; later we will assess its implications for the iwi and hapū of the district.

## **(2) Land acquisition – Crown policy and practice and consistency with Treaty obligations**

The land purchase system operating in the nineteenth century was described and discussed in chapter 6. A little over half of the total land area in the inquiry district was alienated from its Māori owners under that regime in just two decades: the 1880s and 1890s. What happened in the

twentieth century requires a description and assessment of its own. Important changes in land purchase legislation were made in the twentieth century, beginning with the Māori Land Administration Act 1900 and continuing with the system constructed by the legislation of 1905, 1909, and 1913. The Tribunal’s *He Maunga Rongo* report included a comprehensive discussion of whether the Crown’s land administration system in the twentieth century was Treaty compliant, and presented findings on this regime and its implementation up to the 1930s. We do not need to repeat that discussion in detail here. We do need, however, to briefly outline the legislative environment as a basis upon which to examine the Crown land purchase regime as it operated in the National Park inquiry district.

(a) *The legislation of 1900 and 1905*: The first few years of the twentieth century saw some experimentation in Māori land law. The role of the court was still important, but additional new institutions were established. Under the legislation of 1900, any Māori land made available by its owners for utilisation by outside interests was to be leased rather than sold. The Māori Land Councils set up under the Act of 1900 were given the responsibility of administering Māori land, including its alienation, on behalf of the owners. With elected Māori representatives included in their membership, the Councils opened the door to joint Crown–Māori land management. However, under the Māori Land Settlement Act 1905, this degree of Māori control over the disposal and management of their lands was reduced, with the Māori Land Councils replaced by Pākehā-controlled Māori Land Boards. Crown purchasing of Māori land also resumed at that time.<sup>48</sup>

The finding of the CNI Tribunal was that the system of land administration set up in 1900, which provided for strong regional Māori representation on land councils, was not given a fair trial, and was not adequately supported or resourced. The Tribunal also found that the Crown failed to secure Māori consent to the changes brought about in 1905, and that the removal of elected Māori representatives from the Councils was in breach of the Treaty. The reintroduction of Crown purchasing in 1905, despite clearly expressed Māori preferences for a halt

to land purchase, was also in breach of the Crown's Treaty obligations to act in good faith, fairly, and reasonably, and to actively protect Māori land.<sup>49</sup>

We were not provided with much evidence relating to the administration of Māori land matters by the two Māori land councils operating in this region, namely Aotea and Hikairo-Maniapoto-Tūwharetoa (later Maniapoto-Tūwharetoa), or by their successor Boards. A considerable quantity of land in other inquiry districts was vested in the Aotea Māori Land Council, and some in its Maniapoto-Tūwharetoa counterpart (which was abolished in 1910, its territory being divided between Waikato, Waiariki, and Aotea).<sup>50</sup> It is known, however, that owners in the Taupō and Kaingaroa inquiry districts placed very little land under the Māori Land Councils and Boards.<sup>51</sup> It appears, also, that only two blocks in the National Park inquiry district were vested in this way, and only for a short time.<sup>52</sup> As we explain later, Raetihi 4B was vested in the Aotea Board in 1907 and acquired by the Crown as a scenic reserve only a few years later. A portion of the large Ōkahukura 8M2 block (nearly 13,000 acres) was also vested in the Board, in 1911, but it was only 500 acres. No other information about this arrangement was available, except that it was cancelled in 1918 when Ōkahukura 8M2 was partitioned.<sup>53</sup>

(b) *The legislation of 1909 and 1913*: During the period when the Māori Land Administration Act was in force, there was much criticism among the settler population, especially in the Auckland province, of this legislation and its role in 'locking up' Māori land. There was continuing pressure for resumed purchasing, which the Act of 1905 did not fully satisfy. Further amendments to Māori land law in 1907 and 1908 indicated that the government was moving towards a significant change in policy.<sup>54</sup> An official inquiry was set up into the Māori land situation – the Stout–Ngata commission 1907 to 1908, which was instructed to identify North Island Māori lands that could be put to profitable use, either by their owners or by Pākehā settlers. The commissioners made recommendations about only one National Park block, namely Urewera.<sup>55</sup> They did, however, provide general guidelines

for future Māori land policy, emphasising the need for the Crown to consider its duty to Māori by ensuring that sufficient land was retained in Māori ownership and developed for profitable Māori use.<sup>56</sup>

The Native Land Act 1909 not only consolidated and simplified the existing Māori land law, but also introduced significant changes. It restored the ability of private purchasers to obtain Māori land, removed all existing alienation restrictions from Māori land titles, and introduced new processes for the regulation and implementation of sales. A new Native Land Purchase Board, consisting of the Native Minister and three officials, was set up to conduct purchases for the Crown. Oversight of Māori land matters was entrusted to the Māori Land Board of each district. In cases where there were more than 10 owners of a block, meetings of assembled owners were to be called to vote on decisions about vesting, leasing or selling the land. Five owners present or represented (no matter how many owners in the block) were deemed to constitute a quorum. Any resolutions they made were deemed to be carried if the owners voting in favour owned a larger aggregate share of the land affected than the owners voting against, and all resolutions were then to be confirmed or disallowed by the Board.<sup>57</sup>

The Act contained certain safeguards purporting to protect owners from selling too much land. No alienation of land owned by more than 10 persons could be confirmed unless the Māori Land Board was satisfied that certain specified conditions (eight in all) were fulfilled. Among these was the stipulation that no seller could be made 'landless within the meaning of the Act' by the alienation – landlessness being defined simply as possessing total interests (no matter where situated) insufficient for the adequate maintenance of the person concerned (the 1905 Act had provided a quantitative definition). Where land was owned by 10 or fewer persons, however, the Crown could purchase interests without obtaining land board confirmation: in such cases the responsibility for ensuring that owners were not rendered landless was entrusted to the government's own Native Land Purchase Board, which was given the task of making 'due inquiry' in that regard.<sup>58</sup>

Provision was made for prohibiting private purchases or leases of designated blocks of land. Such prohibition orders were to be issued if a Crown purchase was in progress or being contemplated, but they were limited to a period of one year. (The length of time for prohibitions and their extension was changed later, and not specified at all after 1931.)<sup>59</sup> The 1909 Act ended the general pre-emption rights that had been returned to the Crown by the Native Land Court Act 1894. However, the Act's provision for proclamations prohibiting alienation except to the Crown in effect maintained pre-emption. Proclamations of this sort were not new, having been provided for since 1877 or even before, although general pre-emption since 1894 had made them unnecessary. In the period after 1909 they were used extensively in the National Park district.

After the Reform Party succeeded the Liberals in office, a Native Land Amendment Act was passed, in 1913. Under this legislation the composition of the Māori Land Boards was changed: each board would consist of a Native Land Court judge and registrar only (the Māori appointee was dropped). This was effectively a merger of the boards and the court, and moved control of land transactions further away from the owners into the hands of what was now practically a State agency. Section 109 of the new Act permitted the Crown to purchase individual interests in any land, including blocks with more than 10 owners. Such purchases could be made even after the assembled owners had declined to sell, and the proposed transaction did not have to be taken to a further meeting of owners. It was no longer necessary to obtain Land Board confirmation of Crown purchases of land with more than 10 owners; and the Native Land Purchase Board's duty to monitor for potential landlessness was now extended to cover this land, too. Furthermore, under section 91, impending landlessness was no longer to be a bar to alienation if the would-be seller of interests was 'qualified to pursue some avocation, trade, or profession' or were 'otherwise sufficiently provided with a means of livelihood'.

This is the system that operated during the main period of Māori land alienation in the National Park inquiry district in the twentieth century. Clearly it opened the way for a return to Crown and private purchasing on a large

scale – an intention that was signalled by the Liberal government in 1909 and the Reform government in 1913.<sup>60</sup> According to Dr Hearn, the Act of 1909 was 'intended to encourage, facilitate and hasten the alienation of Māori land'.<sup>61</sup> The 1913 Act reflected electoral pressures even more clearly.

(c) *The Crown's new purchasing programme in National Park:* A description of the purchase programme undertaken by the Crown in the National Park inquiry district after 1909 enables us to understand the difficulties that Māori faced in endeavouring to retain and develop their remaining lands in the twentieth century. In our consideration of this topic we have placed considerable reliance on the report prepared by the historian Dr Terry Hearn for this inquiry. The Hearn report, which was commissioned by the Crown Forestry Rental Trust, concentrates on the period between 1919 and 1950, when the bulk of Māori land alienation in the twentieth century occurred.

In his earlier report on Taupō-Kaingaroa for the CNI inquiry, Dr Hearn argued that the Crown's land acquisition activities in the region created a 'coercive market environment'. In his report for our inquiry he summarised his thesis that the legislation applying at the time (the Acts of 1909 and 1913) 'significantly restricted the ability of Māori owners to exercise their full rights of ownership' in a number of ways – notably their ability 'to dispose of their lands as they saw fit, to utilise as they saw fit the resources which the lands offered, and to develop as they saw fit the lands which remained in their possession'. His Taupō-Kaingaroa research, he said, had led him to conclude that

the erosion of Māori freehold property rights, through especially the power to impose orders prohibiting private alienation, imposed significant and cumulative opportunity costs on Māori land owners.<sup>62</sup>

Dr Hearn was of the view that the same outcome is evident in the National Park district.<sup>63</sup> He argued that 'in pursuit of its objectives the Crown devised and effectively employed a carefully considered purchasing strategy

intended to facilitate and expedite acquisition and to minimise the associated costs, and that the central element of this purchasing strategy was ‘the protracted suspension of the key rights of private property ownership.’<sup>64</sup>

Once the legislation of 1913 was in place it was only a few years before Crown purchasing was stepped up in the National Park district. The new buying programme was set in motion towards the end of the First World War, when the Native Department inquired into the Māori land situation in the area to the south of Lake Taupō. WH Bowler, a native land purchase officer, was instructed in 1918 to investigate the Tokaanu, Waipapa, Ohuanga, and Hautu blocks (the first three of which lie partly within the National Park inquiry district). He was asked to report on whether acquisition of these blocks by the Crown was desirable, whether the partitions already made or under consideration were likely to assist or hinder the Crown’s purchase activities, whether the owners were likely to be able to work the land themselves, and – if they could not utilise the land themselves – whether they could they dispose of it to better advantage to outsiders.<sup>65</sup> Bowler favoured purchase by the Crown rather than by private investors and speculators. He considered that effective utilisation of the land by its owners was unlikely, and recommended the cancellation of existing partitions.<sup>66</sup>

The Native Land Purchase Board decided, in June 1918, to take steps to acquire several blocks of land in the southern Taupō area.<sup>67</sup> Nearly 294,000 acres were selected for purchase, the stated criterion being suitability for small-farm settlement. Of this area, more than 80,000 acres lay in the northern and eastern part of the National Park district. The designated blocks that were situated wholly or partly within our inquiry district were Tokaanu B, Waipapa 1 and 2, Ohuanga, Waimanu 1 and 2, Ngāpuna, Rangipō North 1C, 2C, 2D, 3C, 4C, 5C, 6C, and Ōkahukura 1 to 6 and 8M2.<sup>68</sup>

Also in 1918 and 1919, orders prohibiting private alienation were imposed (under the 1909 Act) on the selected blocks. Some of the orders were issued even before Bowler had made his report in April 1918.<sup>69</sup> After a report on the large Taurewa 4 block was received, the head of the Native Department noted that ‘apparently there are several

alienations [in the block] pending.’<sup>70</sup> (There had been none in Taurewa 4 up to that point, apart from a few acres for the Tongariro Timber Company’s proposed railway). All the Taurewa 4 blocks – a total area of more than 28,000 acres – were put under prohibition on 23 April 1918.<sup>71</sup> The prohibitions as a whole were explained by the Native Department as being necessary ‘to prevent speculators from interfering with the Crown operations and reaping advantages from Crown purchases in adjoining lands.’<sup>72</sup> As the years passed, restrictions of this kind were extended or terminated, depending on Crown needs, on the various northern and eastern blocks and their subdivisions. In 1932, there was still an area of at least 45,000 acres in the National Park district under prohibition orders.<sup>73</sup>

Another aspect of Crown activity in the northern area in 1918 was efforts to obtain the cancellation of partitions that had already been agreed upon. As Dr Hearn explains, although partitioning was ‘consistent with the Crown’s avowed wish to see lands owned by Māori “individualised”’ and was also ‘desired by the owners of blocks in the National Park and Taupō Inquiry Districts as the basis of their development plans’, it nevertheless rendered Crown purchasing more costly and difficult:

Partition meant that valuations had to be secured of each subdivision; meetings of assembled owners had to be called for each block the owners of which numbered more than ten; and, in the event of owners collectively declining to sell, the securing of the signatures of individual owners was a protracted and expensive process, especially where minors and/or absentee owners were involved. The purchase of a single ‘parent’ block through a meeting of assembled owners was a much more straightforward, efficient, and inexpensive procedure.<sup>74</sup>

Dr Hearn describes how the Native Department, clearly motivated by its desire to purchase land in the blocks, sought cancellations in respect of Tokaanu B and Waipapa, where partitions had recently been arranged after hard-won agreement among the owners in an effort to promote dairying. The applications were made without any consultation with the owners, who unsuccessfully opposed



them in the court.<sup>75</sup> The partitions in these blocks were very soon reinstated, however, when officials came to the view that this reversal might encourage the owners to sell interests in other blocks instead.<sup>76</sup>

Another step taken at this time was to secure special valuations, on the grounds that the existing valuations of 1914 were too old. New valuations of the southern Taupō blocks, including many in the National Park district, were conducted by government valuers early in 1919.<sup>77</sup> A land purchase official commented that the new valuations were ‘on a very conservative basis in most cases’, and the owners certainly demanded higher prices than those indicated by the revaluing process.<sup>78</sup>

The various elements of the system set up by the legislation of 1909 and 1913 were drawn together in guidelines compiled by the Native Land Purchase Board in 1919. They amounted to a purchasing strategy centred on the provisions for meetings of assembled owners and the acquisition of individual interests. The board expressed a preference for working through meetings rather than the more time-consuming process for acquiring individual interests, but was ready to follow the latter course if the first failed.<sup>79</sup> ‘In the expectation that it would have to purchase individual interests in at least some blocks’, writes Dr Hearn, the Native Department

set about securing succession orders and inviting successors (often non-residents) to sell their interests; and it offered immediate payment, always an incentive to people in a region where their means of subsistence were few and somewhat precarious.<sup>80</sup>

Officials were confident that approaches from land purchase agents would meet with a ready response. Resistance to purchasing, however, quickly became evident in many of the owners’ meetings called in the National Park blocks in 1919, and in 1920 the Crown found itself often having to resort to its less preferred option of acquiring individual interests.<sup>81</sup>

(d) *Māori lands purchased by the Crown*: The Crown purchasing programme begun in 1918 resulted in the

alienation of much Māori land in the next few decades. Some idea of how it affected ngā iwi o te kāhui maunga is gained by surveying the outcome in each part of the inquiry district, commencing from the north-west. It will be seen that the programme impinged upon some parts of the district more than others.

In the large Taurewa 4 block (the only part of Taurewa remaining in Māori ownership in 1900), several approaches to the government were made early in the century by owners willing to sell.<sup>82</sup> No land was alienated at this time, however, apart from 200 acres taken for the Whakapapa Scenic Reserve in 1911 and a small area purchased privately for the Tongariro Timber Company railway in 1913. Then in April 1918 the new Crown purchasing programme was heralded by the issuing of alienation prohibitions over all remaining parts of the block. Extensive Crown purchasing followed from 1919 to 1928, and continued into the 1940s. Between 1919 and 1944 this resulted in the Crown’s acquisition of 25,911 acres, most of it purchased before 1928.<sup>83</sup>

In the northern part of the district, the Waimanu block was another of those designated for Crown purchase and subjected to prohibition orders in 1918. The Crown acquired individual interests in it over the ensuing years and had completed purchases of large parts of it by 1948.<sup>84</sup> In addition, much of Tokaanu B, Waipapa, and Ohuanga – including the parts of those blocks that lay within the National Park inquiry district – was also made subject to prohibition orders. Considerable Crown purchasing in Waipapa and Ohuanga was completed from 1921, although not to any extent in Tokaanu B until the 1940s.<sup>85</sup> No purchases were made in the small Ngāpuna block, and the order imposed there against alienation was finally lifted in 1955.<sup>86</sup> The Pihanga case study later in the chapter will throw further light on Crown purchasing in this northern area, and also on land exchanges, which saw a good deal of land transferred to the Crown in the 1940s.

There had been considerable Crown purchasing in the large Ōkahukura block, in the north central part of the district, in the 1880s and 1890s. Between 1923 and 1961 a further 13,880 acres there were acquired.<sup>87</sup>

The eastern side of the district presents a different picture. Nearly 22,000 acres in the Rangipō North blocks had

remained in Māori hands after extensive nineteenth century Crown purchasing. This was targeted for acquisition in 1918, but although alienation restrictions were maintained over the blocks until 1955, no further land there was purchased by the Crown.<sup>88</sup>

In the southern part of the inquiry district, namely the Rangipō–Waiū, Rangiwaia, Waiakake, Rangataua North, Raetihi, and Urewera blocks – all of which straddle the boundary between the National Park and other inquiry districts – the situation is different again. As we noted above, only one subdivision of Rangipō–Waiū 1 was still in Māori ownership at the end of 1900. This was transferred to the Crown in 1942, but as a public works taking rather than by purchase. As for the sections of Rangiwaia and Waiakake lying within the inquiry district, they had been alienated before 1900. The small part of Rangataua North remaining in Māori ownership in 1900 was not bought by the Crown until 1956, well after the main round of purchasing in the district had ceased.<sup>89</sup> On the other hand, the remaining subdivisions in the Raetihi block were largely alienated to the Crown in 1911 and 1916, before the main purchase campaign began; further small alienations occurred there in the 1950s and 1960s. In the Urewera block, most of which lies within the inquiry district, alienation similarly commenced early in the century with the Crown's acquisition of two of the subdivisions in 1904; there was some private purchasing (by sawmillers, in 1908, 1920, and 1923), and further Crown and private purchases were made in 1955 and 1968.<sup>90</sup>

In the south-west, all of the National Park part of the Waimarino block had been alienated before 1900, except for a small section that was then taken for defence purposes in 1911. Those subdivisions of Mahuia and Tāwhai that still remained under Māori ownership in 1900 were similarly lost to public works, in 1913. The acquisition of the mountain blocks Ruapehu and Tongariro was completed, as we have seen, in 1903.

It will thus be seen that the blocks most affected by the concentrated purchasing drive initiated in 1918 and continuing into the 1940s, and by the accompanying regime of prohibition orders, were situated in the north-western, northern, and north central parts of the inquiry district.

In other areas, Crown purchasing was conducted mainly under the legislative regime existing before 1909, or in the period after 1950 when a new context had developed and new issues had arisen. The blocks affected most by the land purchasing regime analysed by Dr Hearn and operative mainly in the 1920s, 1930s, and 1940s were Taurewa, Waimanu, Tokaanu, Waipapa, Ohuanga, and Ōkahukura.

We proceed now to a closer examination of the land purchase methods used by the Crown, and the consequences for Māori landowners, particularly in the blocks named above.

(e) *Alienation restrictions*: First we consider the orders that could be made under the Native Land Act 1909 to prohibit private alienation. Our discussion of this topic is located here because prohibition orders were an aspect of the land purchase regime, but as we will explain, they also greatly affected the ways in which Māori owners could use the lands they did not sell. Figures compiled by Dr Hearn show that while prohibition orders were imposed in each of the years between 1918 and 1933, the amount of land they affected varied considerably from year to year. A peak was reached in the 1920s, when in each of four years there were orders imposed over areas greater in total than 40,000 acres. Orders continued to be made into the 1940s, although there were very few after 1932, by which time a legislative change had made it unnecessary to renew the restrictions periodically.<sup>91</sup> Some orders were maintained for very long periods. The enabling legislation had laid down the conditions under which prohibition orders could be imposed, but Dr Hearn's study of how they were applied reveals that the rationale for maintaining them for long periods, even when Crown acquisition by purchase was not being actively sought, was often vague.<sup>92</sup>

By the 1950s there was some acknowledgement in the Māori Affairs Department that these restrictions were unjust. When the Lands Department suggested in 1951 that Rangataua North 2B2B could be put under a prohibition order so as to assure its acquisition for the national park, the under-secretary of Māori Affairs replied that it had 'not been the policy of this Department for some years now' to make use of this provision unless the

circumstances were ‘most exceptional’. He continued: ‘The use of prohibitions some years ago has led to many complaints by Maoris of unfair dealings on the part of the Crown, and some of these have been difficult to refute.’<sup>93</sup>

On Rangipō North 6C the restrictions were still in force in 1954, when a move to open tourist facilities on the land led to some discussion of the issues. The under-secretary of Māori Affairs reported at that time that some of the owners believed that the Crown had, ‘by the continuance of the restriction, without active negotiations to purchase, deprived them of their freedom to deal with their lands, without proper cause.’<sup>94</sup>

The owners of land placed under prohibition orders were prevented from selling or leasing their holdings, or using them as security for loans. This raises the question of whether such orders, especially those maintained for many years, infringed the right of owners to turn their lands to productive account. We note that the Crown was prepared, under certain circumstances, to revoke prohibition orders, temporarily or partially, for instance when Pākehā operators wanted to cut timber or flax. In other cases, however, the orders were likely to constitute a major obstacle to the utilisation and development of Māori land. Dr Hearn provides the example of Ohuanga South 2B2, where a prohibition order, imposed in 1921 and not lifted until 1941, frustrated the efforts of the owners to put their land to economic use.<sup>95</sup> (We will examine this case more fully in the Pihanga case study.) In Taurewa 4 West E2B3B in 1926, one of the owners asked for the prohibition on the block to be lifted so that it could be leased to one of their own group. It took three years, however, for the Crown to grant the request, after first partitioning out the interests it had acquired in the block and deciding there was no likelihood of acquiring any more.<sup>96</sup> In Dr Hearn’s view, ‘revocation was difficult to secure’ because the Crown’s concern was ‘to conserve and forward its own interests.’<sup>97</sup>

The prohibition of alienation did not go undisputed by Māori. In June 1918, Ngāti Tūwharetoa protested to the Native Minister about the recent proclamations made in respect of the Tokaanu, Waipapa, Taurewa, and other blocks. The Minister (William Herries) replied that he could not revoke the prohibitions at present, explaining

that the Crown was ‘desirous of purchasing the interests of those owners who are desirous of selling but wants to prevent other Pakehas from buying interests.’<sup>98</sup> A more conciliatory answer was given in 1923 at a meeting in Tokaanu held on the day that a memorial was unveiled to Tūreiti Te Heuheu Tūkino. In his response to a request for the removal of proclamations over various blocks in the district, the Native Minister (now Gordon Coates) was reported to have replied that the government could not remove them all, and that in any case the Treaty of Waitangi gave the Crown pre-emptive rights. Nevertheless,

so far as it was possible the Government would meet the request in cases where it was satisfied that the handling of native land other than by Crown purchase was in the interests of the Native owners.

He went on to add that ‘[i]n at least two cases affecting people of the district, the proclamation would be lifted immediately’ because it was thought to be in those owners’ best interests.<sup>99</sup>

On the whole, however, the prohibition system continued to be an obstacle to the utilisation or private alienation of Māori land in the district. Dr Hearn observes that the only comparable suspension of non-Māori ownership rights was the legislation passed in the 1890s to enable the Crown to expropriate large freehold estates for closer settlement. Unlike the owners of non-Māori land affected by the special legislation of the 1890s, Māori owners of land subjected to orders prohibiting private alienation did retain the right to possess their land, and to pass interests on to their successors. But their rights to use their holdings, or manage their use by others, or alienate them, or to seek the best price on the open market, were drastically curtailed by these orders.<sup>100</sup>

The Crown asked us to bear in mind that there were legitimate reasons for the alienation prohibitions; these reasons had not been given much attention in the evidence, but included a wish to minimise the risk of aggressive or speculative private purchasing. We agree that only limited evidence was provided concerning the Crown’s

intentions when imposing orders against alienation, and we do not entirely discount a protective element in the purchase monopoly. We also agree, however, with the Crown's statement that such restrictions must always be administered fairly and reasonably, and we note the Crown's acknowledgement that in the National Park inquiry district it did not act consistently in this way. The Crown gave as an example the lands that eventually made up the Pihanga Scenic Reserve, and especially Ohuanga South 2B2: it was conceded that in such cases (but not in all cases of prohibition) the Crown breached the principles of the Treaty by making unreasonable and unfair use of its monopoly purchasing power over Māori lands.<sup>101</sup>

(f) *Purchasing individual interests and partitioning the land:* Following the amendment of the law in 1913, the Crown was freed from the requirement to work with owners' meetings when purchasing interests in land with more than 10 owners. Although the meeting option still remained, it could now be circumvented, which removed the degree of protection it had offered the owners. As we noted earlier, meetings of owners did have some advantages for the Crown in that, when owners were in favour of sale, calling a single meeting offered a quicker and less troublesome method than the purchase of individual interests. As also noted, however, resistance to sales often led the Crown to approach owners individually instead. In such cases the process was usually lengthy, often taking many years. It had disruptive effects on those owners choosing not to sell, since when partition occurred the Crown usually imposed or maintained an order prohibiting private alienation over the non-sellers' sections. 'Owners could endeavour to resolve the uncertainty which the presence of undivided Crown shares created by applying to have their shares partitioned out', explains Dr Hearn,

but the Crown's practice of re-imposing orders prohibiting private alienation on the non-sellers' portion sustained the uncertainty. . . . on having its interests in any particular blocks partitioned out, the Crown promptly re-imposed orders prohibiting private alienation on the non-sellers' blocks and

again sought – or waited – to acquire interests, if necessary repeating the process.<sup>102</sup>

In other cases, the Crown delayed partitioning until no further purchases of individual interests were likely, or Crown objectives had been secured by other means. Dr Hearn gives the example of Waimanu 1 and 2, where, after imposing a prohibition order in 1918, the Crown pursued the purchase of individual interests over a period of 22 years. By 1940 it had acquired 191 acres in the 331-acre Waimanu 1 and 5,502 acres in the 6,271-acre Waimanu 2G. The deputy chief surveyor then announced that it was 'not proposed to purchase any more Native shares and the land is now ready for partition.' As Dr Hearn points out, the impact on the owners was that, for 22 years, they had been 'uncertain of the actual location of their interests, and otherwise unable to deal with their land owing to the continued imposition of an order prohibiting private alienation.'<sup>103</sup> According to Dr Hearn, when partitioning finally took place, the Crown would usually try to

ensure that it acquired the most desirable and/or most accessible portions of the blocks in question. The non-sellers would be burdened with their share of the survey costs: where they were unable to meet them, interest-bearing liens were imposed or the Crown took out the value of the costs in additional land. Further, should the Crown object to a particular partition, it was not reluctant to apply for a re-hearing, imposing further costs on the non-sellers.<sup>104</sup>

Individual purchases and partitions are documented in the land history alienation database, and some are mentioned in the Hearn report, as in the case of Waimanu 1 and 2 above. We note two further representative cases from the Taurewa blocks.

First, with regard to Taurewa 4 West E (10,183 acres), which like all the Taurewa 4 blocks was subject to a prohibition of alienation except to the Crown, an owners' meeting was called in January 1919. Only 9 people attended, out of the 137 owners recorded eight years earlier. The meeting was re-called twice more, and 11 owners agreed in May to sell, leading to the partitioning of the land

between the Crown (Taurewa 4 West E1, 3,497 acres) and the non-sellers (Taurewa 4 West E2, 6,688 acres). But then Crown agents began acquiring individual interests in the non-sellers' block, succeeding in obtaining further land. The interests thus acquired were partitioned out in 1920 as Taurewa 4 West E2A (4,249 acres), followed in 1921 by Taurewa 4 West E2B2 (270 acres). Purchasing of individual interests continued as opportunity offered, being completed in 1927 for Taurewa 4 West E2B3D (639 acres), in 1928 for Taurewa 4 West E2B3B1 (430 acres), in 1929 for Taurewa 4 West E2B3C2 (189 acres, awarded to the Crown in 1941), and finally in 1931 for Taurewa 4 West E2B3A2 (303 acres, awarded to the Crown in 1942). Throughout the purchasing period the prohibition orders were in force. In the Taurewa 4 West E blocks, only four were still in Māori ownership by 1942, totalling about 600 acres.<sup>105</sup>

In our second example, Taurewa 4 East A (996 acres), most of the owners who were called together in May 1919 agreed to sell, at a price higher than the government valuation. The block was partitioned in 1920, but as well as being awarded the larger portion (Taurewa 4 East A2), government officers then began to purchase interests in the non-sellers' block (Taurewa 4 East A1). Although the Native Minister was warned that the latter were controlled by a 'confirmed' non-seller, a file note recorded with a degree of hopeful anticipation that the owner concerned 'may need money for his dairying operations before long'. His interests were indeed acquired and by 1926 there were only two non-sellers remaining. Officials continued to monitor the situation and in 1944 the last remaining Māori interests were exchanged for Crown land elsewhere (outside our inquiry district). The Crown thus became the sole owner of this block and indeed the whole of Taurewa 4 East A.<sup>106</sup>

In its submissions the Crown did not accept that it 'manipulated' the partitioning system, as the claimants alleged. In our view, while it is true that the owners themselves had a role to play in the partitioning process, and that dealing with applications for partitions was the responsibility of the court rather than the government, the close involvement of government officers in Māori land matters did leave room for them to influence the

arranging of partition proposals. In this way it is conceivable that the Crown, if it wished to do so, might be able to obtain the best or most accessible parts of land that was being partitioned. An example put forward by Ngāti Waewae is Rangipō–Waiū 1, which was partitioned in 1900 after Crown purchasing in the block.<sup>107</sup> The larger area went to the Crown, and the subdivision retained by the owners as 1B (4,474 acres) was described by one official in 1924 as 'very poor country' and 'largely infested with rabbits'.<sup>108</sup> In 1943, another official assessed it as having no commercial value.<sup>109</sup> We do not, however, have sufficiently comprehensive evidence about the comparative quality of partitions to come to an overall view on this matter.

Another allegation made by the claimants was that on occasions the Crown would instruct its agents either to ignore existing partitions or apply to have them cancelled in order to facilitate the purchase of land.<sup>110</sup> We have already mentioned the steps taken by the Crown in 1918 to secure the cancellation of partitions that had been created in Tokaanu B and Waipapa. This action, pursued in an effort to facilitate the Crown's purchase of land in the two blocks, but opposed by the owners who had agreed on the partitioning, cannot, in our view, be condoned. It occurred in just two blocks in a single year, however, and although the claimants implied that instructing officials to apply for the cancellation of partitions was commonly practised by the Crown, we saw no evidence of that. Nor does it seem to us that the Crown's policy was to instruct its land purchase officers in the National Park district to ignore existing partitions.

(g) *Purchase prices*: Dr Hearn was unable to comment conclusively on whether Māori owners received fair payment for lands they sold to the Crown. Under section 25 of the Māori Land Settlement Act 1905, and then section 372 of the Native Land Act 1909, the minimum price payable by the Crown was the capital value as assessed under the government valuation regulations. As we pointed out in chapter 6, this provision was obviously an improvement upon the previous unregulated system for determining Crown payments. In the case of lands placed under prohibition orders, however, the question arises whether owners could

have obtained higher prices if they been able to sell on the open market rather than being obliged to deal only with the Crown. ‘The evidence as to that possibility is sparse’, writes Dr Hearn, but what little there is does suggest that outside the Crown monopoly, it is likely that sellers would indeed have secured more for their lands than the Crown paid.<sup>111</sup> There is also the associated question of whether, in endeavouring to secure individual interests over a long period, the Crown ever revised its original offer to keep up with movements in valuations, but according to Dr Hearn it is difficult to answer this.<sup>112</sup>

Amongst our scant evidence on comparative pricing in the wider region is the report of the Stout–Ngata commission in 1907 to 1908. Referring to the large areas of land purchased by the Crown since the 1880s in two districts adjacent to ours – the upper Whanganui and the Rohe Pōtae – the commissioners wrote that the Māori vendors knew they had no alternative but to sell to the Crown at the latter’s (low) price.<sup>113</sup> Although this was of benefit to the finances of the State, ‘it rated too low the rights of the Māori owners and its [the Crown’s] responsibility in safeguarding their interests.’<sup>114</sup> Stout and Ngata acknowledged that the situation had changed once purchasing had been made subject to statutory valuation in 1905, but they still regarded Crown pre-emption as a factor in the Māori acceptance of low prices for their land:

Theoretically the Crown does not buy unless the owners are willing to sell. But the experience of half a century shows that . . . in the absence of competition produced by restrictive legislation, and in the face of encumbrances due to litigation and survey costs, circumstances are created which practically compel the Māori people to sell at any price<sup>115</sup>

It is unfortunately true, as the claimants acknowledged, that we lack comprehensive evidence concerning land values and purchase prices in the National Park district itself, in the period we are considering. Note should be taken, however, of the observations of the Stout–Ngata commission, cited above, and of the various instances we have given of the unwillingness of Māori owners to sell at the price (based on the official valuation) offered by the

Crown. On the other hand, we have also seen that on occasion the Crown paid more than the valuation figure. We thus cannot simply assume that the absence of private competition led to the Crown’s purchase of Māori land at bare valuation prices. We regard it as self-evident, however, that a Crown monopoly would very often lead to this result. The owners’ inability to secure more than the valuation price, unless the Crown agreed to pay more than the minimum, points to a built-in imbalance between buyer and seller and hence a structural unfairness.

The amount of land in the National Park inquiry district that was under forest cover draws attention to an important additional aspect of this issue. A number of claimants alleged that when the Crown was purchasing land with forest on it, the price paid did not reflect the true value of the land because the value of the timber was not included. At various points in this chapter we have noted occasions when landowners protested against Crown valuations and purchase offers that they regarded, on the basis of the value of the timber on the land, as being too low. Tūreiti Te Heuheu brought this matter to the attention of parliament’s Native Affairs Committee in 1905. He stated that the government had earlier bought land in the Taurewa and Waimarino blocks for 2s 6d an acre, although the timber there was worth millions of pounds. On the Taurewa lands, he said, ‘the bush is full of rimu, totara, matai etc, and you would not part with it for £20 an acre now’. On a portion of the Taurewa block that was retained by the owners, they were now ‘getting £10 an acre for the timber rights alone’. In his view the law was wrong not to distinguish between the land and the timber growing on it, the latter being a chattel that could be sold at a good price.<sup>116</sup> Later, in 1938, Hoani Te Heuheu and others pointed out to the Prime Minister that the Crown had purchased 33,500 acres of Ngāti Tūwharetoa’s lands, which because of the timber cover had a value of £1,299,979, for £76,256.<sup>117</sup> Not long before he died in 1944, Te Heuheu again referred to this undervaluing of the ‘Taupō Timber Lands’. Ascribing the sales to the great economic need of the owners, he explained that the sellers had felt unable to decline the Crown’s low offers even though ‘that price was fixed by the Crown itself, without an open market’, and

‘the real stumpage value’ was not used as the basis of the purchases.<sup>118</sup>

We would like to have assessed the adequacy of Crown processes for establishing valuations of land that contained timber resources, and to have discussed the market value of the timber resource at various dates within the period we are concerned with. We agree with the Crown, however, that there is little evidence about valuations or about the market values prevailing at various times. The Crown reminded us that Dr Hearn’s conclusions about land purchase prices were very tentative, and argued that it cannot simply be assumed that Māori would have done better by selling timber lands in the open market. Of course valuations are disputable in any situation, as Dr Hearn pointed out under cross-examination. He admitted that in his study of Crown purchasing in this district he had not systematically investigated how valuations were made.<sup>119</sup>

Nevertheless, we make some observations on this matter. In regard to the possible undervaluing of forest lands, Dr Hearn explained that the value of timber stands was not left out of consideration altogether when the price of land was determined, but may have been set at too low a level within the overall valuations.<sup>120</sup> It is sometimes asserted that the reason for the Crown’s undervaluing of forested land is that land and timber were not given separate valuations. Comprehensive evidence on whether land and timber were separately valued is not available, but examples of separate valuations do exist. In the Taurewa area in 1918, for instance, the government valuer provided separate valuations for the land and the timber in four of the Taurewa 4 East B blocks. A Crown lands official also inspected the timber and valued it at a much higher level, after which an increase – but only a slight one – was approved by the Native Land Purchase Board. The Crown’s offer was still described by the owners of one of the blocks as too low, but the purchase did go ahead in respect of all four blocks.<sup>121</sup> In Taurewa 4 West E in 1919, the valuation of £22,241 included £17,000 for the timber.<sup>122</sup> In another part of the district, in 1915, the government valued Raetihi 5B3 at £304 for the land and £405 for the timber.<sup>123</sup> A further example comes from the same area but at a much later

date, 1952, when the value of Raetihi 5B1A was assessed as being £25 for the land and £4,470 for the timber. On this occasion the owners requested a new valuation that would take account of rising timber prices. While the conservator of forests acknowledged that ‘the bush would realise almost double value if allowed to be cut and submitted to the highest tender’, his suggestion that the offer for the timber be increased to £6,000 was not acceptable to the government.<sup>124</sup>

When buying Māori land, at least after 1905, the Crown was not obliged by law to pay more than the statutory valuation figure. In the Crown’s submission, paying this amount met the government’s responsibilities to Māori sellers (and also indicated a responsible attitude to the use of taxpayer funds). But as the CNI Tribunal noted, the point is that the Crown’s privileged position ‘left Māori with little negotiating power over prices.’ The Tribunal went on to state its view that since land was the only asset of many Māori ‘it was the Crown’s obligation to protect their interests, and, in accordance with the Treaty and its principles, to agree on prices with the owners.’<sup>125</sup>

(h) *Survey charges*: We have already (in chapter 6) closely examined the grievances of the claimants concerning survey costs in the nineteenth century, the taking of land to cover these costs, and the liens imposed on Māori land that carried unpaid survey debt. Before 1900 a large quantity of land had been awarded to the Crown in lieu of survey costs, and in the twentieth century a few more such instances occurred. In addition, the owners of many land blocks in the National Park district continued to be burdened by survey liens, which were a charge over the land until all survey debt (and accumulated interest) was repaid.

Although survey awards were not in themselves purchases, but rather arose from the purchasing activities of the Crown, they were nevertheless alienations and contributed a small but significant amount to the total area of Māori land alienated to the Crown in National Park in the early years of the twentieth century. The bulk of the land lost in this way was in the Urewera block, which had been partitioned into two subdivisions in 1889.

Urewera 1, which was charged with two-thirds of the survey cost, was further partitioned in 1904 in order to satisfy the debt, with 1A (921 acres) being awarded to the Crown in lieu of survey costs.<sup>126</sup> The other section created in 1889, Urewera 2, was charged with the remaining third of the survey costs. After partitioning in 1903, the larger subdivision (Urewera 2A, 3,823 acres) was further divided in 1904, when 914 acres were awarded to the Crown as Urewera 2A1. This alienation is identified in the land history alienation database as ‘purchase of interests.’<sup>127</sup> The original documents, however, indicate that the alienation of Urewera 1A and Urewera 2A1 were awards in lieu of survey costs. The two transactions arose from the approach made in 1903 to the Native Land Purchase Department by Waata Wiremu Hipango, for the owners, proposing that the government take land in order to release Urewera 1 from the survey lien. Officials took the opportunity to select for the Crown the parts of the Urewera block that lay within the notified Tongariro National Park boundaries, in satisfaction of the liens. This accounts for the taking of Urewera 1A in 1904. In regard to Urewera 2A, which also passed to the Crown in 1904, the court was told that it had been arranged with Hipango that the survey charges on the Urewera blocks should be met by transferring to the Crown the portions situated within the area set aside for the park. Judge Butler had reported in 1903 that when he spoke to ‘representative owners’ of 2A they had agreed to the taking of some of the block in lieu of survey costs.<sup>128</sup> It appears, then, that Urewera 2A1 was also a survey award.

The new Native Land Act 1909 maintained the survey award system, and one other such award was subsequently made in the inquiry district, in 1912. This arose from the lien notified for Rangataua North 2B2 (234 acres) in 1900. The debt had not been paid by 1912, and the Crown’s application for an order in satisfaction of the charge was granted. The block was partitioned into two, with 2B2A (a 14-acre strip on its southern edge, adjacent to the Crown-owned Rangataua North 2A) being awarded to the Crown in lieu of the survey charges owing.<sup>129</sup>

Where land was not taken to satisfy the charges, survey liens remained. This burden often had to be carried for many years, with the debt increasing as interest charges

were added. Liens continued to be registered in the twentieth century, affecting a large number of blocks in the early decades and even after the middle of the century. The record shows, for example, that liens were registered against Rangipō North 2C2 and 2C3 in 1931, 2C2 in 1948, and 2C3A in 1949; 2C3A1 and 2C3A2 were not released from their liens until 1970.<sup>130</sup> We note that the release of some of the Urewera blocks from their liens followed the leasing of the land and thus the gaining of an income: this is true of 1C2, 1C4 and 1C5 (leased in 1907), and 1C3 (leased in 1910); but 1C6 was sold in 1908 before the lien was released.<sup>131</sup> In the case of Rangipō–Waiū 1B, which was partitioned out in 1900, the non-sellers who retained the block were subject to a survey lien registered in 1903.<sup>132</sup> In 1944, when the court considered the question of compensation for the owners after the taking of the land for military purposes, it recommended that the survey charges be remitted, and this was done – apparently in lieu of any actual compensation payment. Indeed, the court had been informed of the Native Department’s opinion that the amount due (£95 16s 8d, including nearly £20 in interest since 1903) was ‘out of all proportion to the value of the land as valued by the Valuation Department and not at all fair to the Native Owners’, and that the land was ‘apparently worthless and not even worth the cost of survey.’<sup>133</sup>

It was those who kept the land, not the sellers, who were left with liens. The charges were a heavy burden on these owners, especially if the land was not productive because of its poor quality, or could not be utilised because of alienation restrictions. Dr Robyn Anderson gives details of some of the larger survey debts burdening the lands in the Ohuanga, Tokaanu, and Waipapa blocks, and suggests that they were a factor in the sale of land in this area for scenic purposes.<sup>134</sup> It is clear that in all parts of the district the imposition of survey liens, the mounting interest charges on unpaid survey costs, and the danger that land would anyway be lost as Crown survey awards, constituted an additional and unfair pressure on the owners to alienate their holdings.

(i) *Rating issues*: Another pressure on Māori landholding in the National Park inquiry district, according to claimants,



was the rates levied by local bodies. They alleged that inability to pay rates could result in the imposition of charging orders (under the Rating Act 1925) and in some cases led ultimately to the alienation of the land. It is true that since 1893 the sale of Māori freehold land to meet rates arrears had been permitted in the rating legislation.<sup>135</sup> Many examples of charging orders for rates may be found in the evidence relating to National Park.<sup>136</sup>

We received little evidence about the rates burden and its effect on Māori landowners in the inquiry district, including its role, if any, in the alienation of land. Nor are we in a position to assess the Treaty compliance of rating legislation, as no evidence was placed before us on this issue. In the case of Urewera 2A2, however, the matter of unpaid rates is certainly what initiated the process of alienation to the Crown. Acquisition of this block in 1968 was for the purpose of adding it to the Tongariro National Park, and we will outline the part played by rating arrears, along with other issues specific to Urewera 2A2, in the section dealing with the extension of the park. Other Tribunals have addressed rating issues in greater detail.<sup>137</sup>

(j) *Prevention of landlessness*: Finally, in view of the large amount of land alienated in this period, we need to ascertain whether the Crown was sufficiently active in protecting Māori landowners in our district from losing too much land. We have seen that in the 1909 Act, a mechanism was provided for submitting sale proposals to the Māori land boards. The board would then confirm or disallow them with reference to landlessness criteria. This provision applied to all Crown and private purchases where there were more than 10 owners. In cases where there were 10 or fewer, a land board check was required only for private purchases (of which there were not many). Just four years later, the amending Act of 1913 changed the landlessness provisions and brought all Māori-owned land, irrespective of the number of owners, under the same landlessness regime. From that year, the Crown's purchasing was restricted not by any checks made by Māori land boards but only by the duty of the Native Land Purchase Board to ensure that sellers either still had some land or could support themselves through employment.

Since the purchase board consisted of the Minister and three officials and was also charged with conducting the Crown's purchases, a clear conflict of interest existed. As for the checks required, Dr Hearn could find no evidence, although he examined hundreds of files, to show that the Native Land Purchase Board ever made any in our inquiry district.<sup>138</sup> The provisions of the legislation of 1909 and 1913 were continued in the Native Land Act 1931. In 1932, the Native Land Purchase Board was replaced by the Native Land Settlement Board, which took over the responsibility for monitoring Crown purchases. The duty of the Māori land boards in respect of private purchases, however, was transferred to the court, which, according to Dr Hearn, was much more careful than the Māori land boards had been in investigating the circumstances of sellers before confirming an alienation.<sup>139</sup> This may seem surprising, as the boards included a judge of the Native Land Court and a registrar.

Beyond the specifics of the legislation, claimants made the general allegation that the Crown failed to guard against landlessness in the district, with adverse effects on the economic and social welfare of the Māori inhabitants. We will discuss this wider issue further in a later section.

### (3) *Conclusion and Findings*

The alienation in the twentieth century of more than 126,000 acres of Māori land in the National Park inquiry district, the great bulk of it to the Crown, greatly changed the situation of Māori in this area. It is not always easy to identify the Crown's motive for purchasing particular blocks of land. Crown counsel submitted that the reason why purchasing by the Crown was so extensive in this period was that the policy was to extend the national park. Some Crown purchasing was indeed done in pursuit of this objective (as we will see in the next section), and to achieve the related aim of preserving pieces of land as scenic reserves and environmental protection areas. Other purchases, however, were concluded as part of a general policy of acquiring land for settlement and development. Another motive (which again we will discuss further in a later section) was to ensure the conservation of forest areas as an economic resource for the future. Establishing and

extending the national park does not by any means fully account for Crown purchasing in this inquiry district.

The Crown was of course entitled to seek to acquire land from Māori. Likewise, Māori owners had the right to sell if they so wished: selling is a fundamental right of ownership, as the Crown pointed out. Later we will consider the extent to which the Crown fulfilled its obligation to ensure that Māori were left with sufficient land, although we have already shown that as far as legislation is concerned, the requirement in 1909 for Crown purchases to be monitored by the Māori Land Boards with reference to landlessness criteria was incomplete and was very soon eroded further. Otherwise, we largely endorse Dr Hearn's comment that 'the central issue is not whether Māori sold land but whether the mechanisms employed to encourage them to sell were fair, whether all owners were consulted, [and] whether they were able to sell to their best advantage'.<sup>140</sup> In short, as he said, it is not the right of the Crown to purchase that is in question, but the manner of purchasing: 'The central issue was the creation of what might be termed a "coercive market environment" which pivoted on a serious imbalance between vendor and purchaser'.<sup>141</sup> In addition, we agree with the claimants that the purchasing regime (allowing for the buying of individual interests and the partitioning of blocks) had the effect of further separating Māori from their traditionally collective way of making decisions concerning land. It is reasonable to suppose, too, that the decision to sell land was made all the more likely by a lack of other income opportunities. Although it is not possible to state with certainty in every case, or even in most cases, why owners sold, economic need is a factor we have seen to have played a part in the National Park inquiry district.

The CNI Tribunal closely examined and evaluated the regime set up in 1909 and 1913, and found that it breached the Treaty in a number of ways. The finding of the Tribunal was that the Crown failed in its responsibility to heed the advice of the Stout–Ngata commission about its fiduciary duty to Māori and about the importance of preserving a tribal estate for future generations. In its finding about the provision of the Native Land Act 1909 for meetings of owners, the Tribunal stated that the

potential of this provision for collective decision-making was undermined by the small quorum required. Further, the Crown breached the Treaty principles of autonomy and active protection through its policies for the purchase of undivided interests, and by permitting itself to bypass the provisions for collective owner decision-making about alienation. A breach of the Crown's duty of active protection resulted from the failure in the 1909 and 1913 Acts to provide adequate safeguards to ensure the retention of a land base for present and future generations.<sup>142</sup> We endorse these findings.

The finding of the CNI Tribunal that the duty of active protection was breached by the Crown in its legislation extended also to its purchase practices. These included the imposition of prohibition orders against private alienation without consultation or consent, and the regular extension of these orders. The Crown's circumvention of meetings of owners and its purchase of individual interests, in circumstances where Māori were unable to achieve a market price for land and resources, was also 'in breach of the duty of active protection, and of its duty to act fairly and honourably in its dealings with Māori. In such circumstances Māori were prejudiced by Crown purchase tactics'.<sup>143</sup>

After reviewing the evidence for the National Park district, our view is that the legislative regime existing from 1909 and the practices followed by the Crown did indeed facilitate land sales in this district, and that official policy and practice benefited the Crown at the expense of Māori. Owners were not altogether free to make choices about whether to alienate their land or not, and this puts into question the Crown's record in fulfilling its obligation to protect Māori in this regard. The ability to prohibit alienation except to the Crown was not always used fairly and reasonably, and we record the Crown's concession that in some cases it breached the Treaty in this way. Furthermore, we consider it a strong possibility that the Crown's purchase monopoly reduced the ability of Māori when selling land (especially land with timber on it) to secure full market value. The process of purchasing individual interests and partitioning them out was usually lengthy, with disruptive effects on the non-sellers. Not only were the

provisions for preventing landlessness inadequate, but the Crown also failed to apply them consistently and in all cases. Survey charges were an unfair burden on the owners of unproductive land, sometimes leading to its alienation, and the findings we have already made in chapter 6 about survey costs in the nineteenth century apply also to the period after 1900. All in all, in respect of the National Park inquiry district, we see no reason not to endorse the findings of the CNI Tribunal that the Crown's purchase practices in this period did not provide active protection to Māori.<sup>144</sup>

### 8.3 THE EXTENSION OF THE NATIONAL PARK

Publicly owned conservation land is a dominant feature of the National Park inquiry district. Over the years, a large proportion of the land in the district – nearly 56 per cent – was brought within the boundaries of the Tongariro National Park, which now covers 78,618 hectares (194,269 acres). If the separate Tongariro conservation area (21,470 hectares, or 53,054 acres) – a large part of which is situated in the inquiry district – is taken into consideration also, an even greater proportion of the district is now conservation land. (The geographical extent of the national park and conservation area is shown in map 8.2.) Here, we are concerned mainly with the national park. We have already, in the previous chapter, discussed its initial establishment in the 1880s and 1890s, and in this section we examine the circumstances in which it was extended in the twentieth century, partly by means of acquiring Māori land. We will discuss the legislative background to this expansion, and the Crown's objectives as they related to the national park. We will seek to determine whether it was a specific policy of the Crown to extend the park's boundaries and, if it was, what that policy was in relation to Māori land and how it evolved over time. We will also inquire whether the impact of acquisition on Māori land-owners was considered.

#### 8.3.1 Claimant submissions

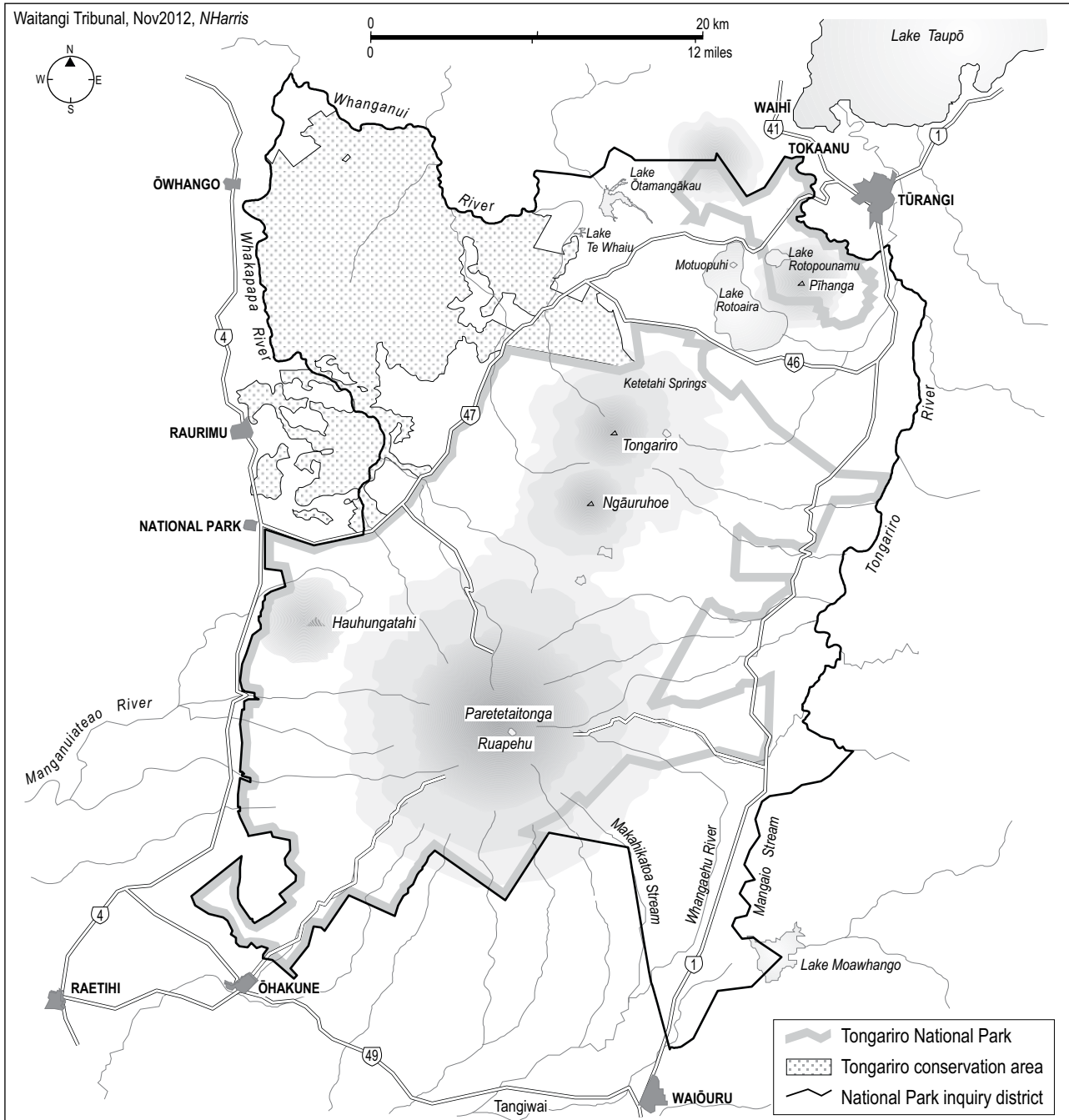
Claimants submitted that the national park area proclaimed in 1907 included some areas that had not been

acquired by the Crown but were Māori freehold land or under customary title. Rangipō North 8 was one such area.<sup>145</sup> Ngāti Hikairo claimed that part of Ōkahukura 8M2 was another case, and Ngāti Waewae specified part of Ōkahukura 1 and part of Ōkahukura 8M2: the claimants say that apparently the owners were never identified and compensation never paid.<sup>146</sup>

It was submitted that most of the present national park was acquired cheaply by the Crown, employing its usual 'oppressive' purchasing methods, and, at the time the land was acquired, it was not necessarily for park purposes.<sup>147</sup>

This applies also to the lands later forming the Pihanga Scenic Reserve and now included in the national park.<sup>148</sup> Claimants say that a large quantity of land in this northern area could not be used by its owners for development because it was purchased by the Crown. This was done as part of the wider purchasing programme commenced in this part of the district in 1918, which aimed to obtain land for various purposes including scenery preservation, and much of it later became the Pihanga Scenic Reserve. The land was acquired in disregard of the owners' development ambitions.<sup>149</sup> Although the peak of Pihanga maunga was a taonga of Ngāti Tūwharetoa, it was gifted to the Crown in 1921, on the understanding that on its acceptance the alienation restrictions on other Ohuanga blocks would be lifted. It was not handed over willingly, but under duress. In an act of bad faith the Crown did not respond to the 'sacrifice' of the peak by lifting the restrictions, and the mountain should now be returned to its owners.<sup>150</sup>

Claims were similarly made with regard to land acquired for the Rongokaupō Scenic Reserve, which was also later added to the national park. In the first decade of the century the owners of Raetihi 4B were persuaded to vest their land in the Aotea Māori Land Board, in the hope of economic benefit. This benefit did not eventuate, because the anticipated forestry and farming development was made impossible by the Crown's desire to retain the forest as a scenic reserve. The Māori Land Board soon disposed of the land, making it available to the Crown for scenic purposes in 1911. Ostensibly, this was done with the owners' agreement, but in fact they had little choice. The land they were given in exchange had less potential



Map 8.2: Tongariro National Park today

for farming. In taking these actions the Māori Land Board placed the interests of the Crown above those of the Māori owners whose land the board held in trust, and the Crown failed to protect the owners' interests.<sup>151</sup>

Claimants say that in the acquisition of Māori land for the park in the twentieth century, throughout the district the Crown was indifferent to the owners' wishes, and acquired land by relying on the scenery preservation legislation, restrictions against alienation, and the incapacity of owners to develop their land. Furthermore, on occasions the Crown was willing to permit State agencies or private enterprises to utilise national park land for purposes that were incompatible with the park concept, but restricted Māori from developing their own land.<sup>152</sup> In regard to Rangataua North 2B2B, claimants submitted that the owners were financially disadvantaged by the Crown's reactions to an agreement made with a logging company in 1947: because the land was desired for addition to the national park the Crown prevented the owners from finalising the agreement, and thus benefiting from their land, until 1957.<sup>153</sup>

The descendants of Winiata Te Kākahi alleged that the Crown's acquisition in 1968 of Urewera 2A2, the last part of the Urewera block to remain in Māori ownership, is an example of the Crown's failure to fulfil its obligations concerning Māori land. They said that the owners of the block had resisted its loss for many years, but that the Crown had long desired it for addition to the national park and was eventually successful in acquiring it for this purpose.<sup>154</sup> The claimants said that the owners' attempts at this time to retain the block were frustrated by the Crown's failure to assist them in their efforts or even to give sufficient notification of the processes being followed. They alleged that, instead, the sale process was designed to ensure that the Crown was the successful purchaser.<sup>155</sup> Their submission was that the wishes of the Crown were allowed to prevail over the interests of the owners, and that the Crown did not support the owners in their desire to develop or even retain the land.<sup>156</sup>

Ngāti Hikairo claimants submitted that their economic life was greatly affected by the loss of land in their core rohe to the national park.<sup>157</sup>

### 8.3.2 Crown submissions

The Crown submitted that almost all government purchasing in the district was directed towards preserving the mountains and surrounding lands as an inalienable public reserve, the Tongariro National Park. This context is important, because the establishment of the national park is a defining feature particular to this inquiry district: Crown purchasing took a different course here from elsewhere. Furthermore, permanent occupation or cultivation in the area was not significant.<sup>158</sup>

The Crown acknowledged that it failed to purchase Rangipō North 8 from its owners, or identify or compensate them, before including the block in the national park in 1907. Furthermore, it consistently failed to address the situation in ensuing years. The Crown conceded that these actions prejudiced those who had interests in the block and constituted a breach of the Treaty and its principles.<sup>159</sup> With regard to Ōkahukura 8M2, however, counsel submitted that further research is required before the claim can be substantiated.<sup>160</sup>

The Crown rejected the claim that when it was acquiring lands in the Ohuanga block in 1921 (lands that were later added to the national park), the Pihanga peak was not handed over willingly but under duress. Counsel submitted that Dr Hearn did not, as alleged by the claimants, state this in his report. Dr Hearn's evidence was that the gifting of the peak was an effort by the owners to secure the reinstatement of partition orders and the revocation of the order prohibiting private alienation, and that while the Crown did agree to the reinstatement of the partition orders it did not revoke the order prohibiting private alienation. Revocation of the order was not a condition of the gift, however, and there is no evidence that an arrangement of this kind was agreed to by the Crown.<sup>161</sup>

Concerning the acquisition of Urewera 2A2 for the national park, the Crown acknowledged that an owner tried to purchase the land when the Māori Trustee offered it for sale. Counsel did not accept, however, that his efforts were undermined by delay or indifference on the part of officials. The limited evidence suggests rather that genuine assistance was offered. Counsel submitted that the evidence about precisely what happened during the sale

process is unclear, but does not demonstrate any lack of good faith on the part of the Crown.<sup>162</sup>

### 8.3.3 Submissions in reply

The descendants of Winiata Te Kākahi made the point that in its submissions about the acquisition of Urewera 2A2, the Crown relied too much on the records of the Māori Trustee and did not do justice to claimant evidence. They reviewed the available evidence and rejected the Crown's interpretation of it.<sup>163</sup> The Tamakana Council of Hapū rejected the Crown's denial that there had been collusion and unfairness in the tendering process for the land.<sup>164</sup>

### 8.3.4 Tribunal analysis

#### (1) *The acquisition of Māori land for the park, 1900–2000*

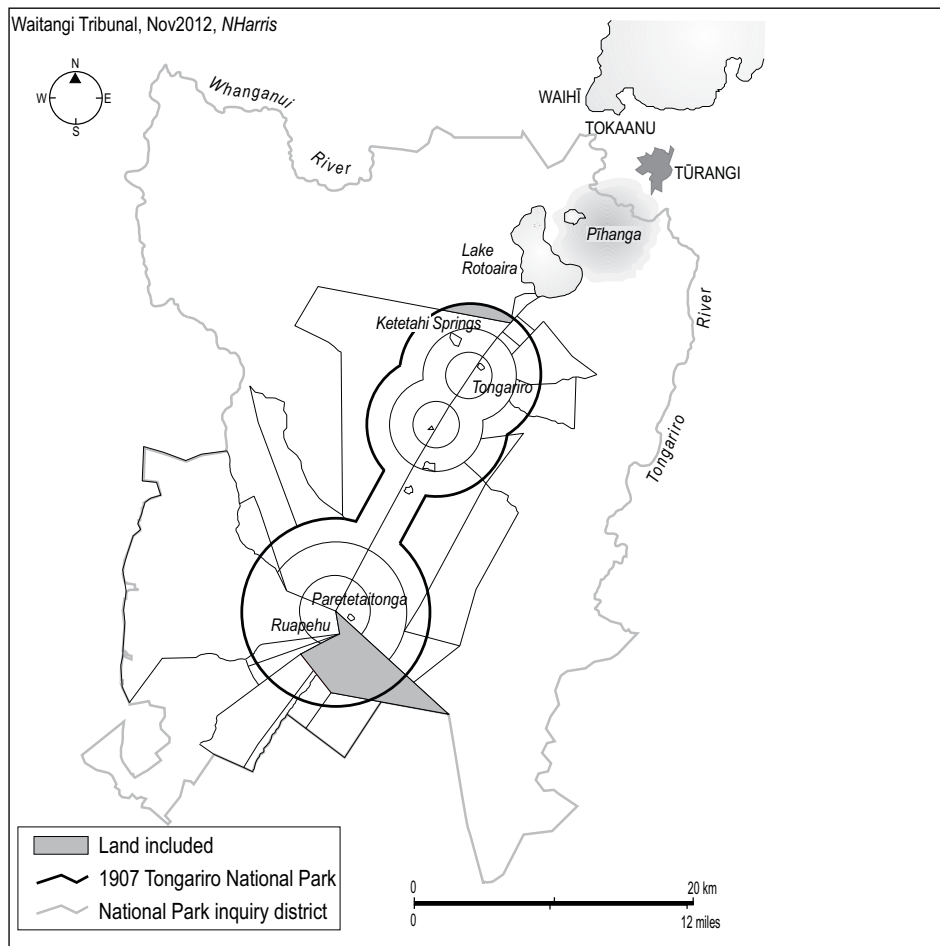
The acquisition of Māori land for addition to the national park must be viewed in the wider context of the park's history, since most of the twentieth-century expansion consisted of land that had been alienated to the Crown before 1900. After a brief look back at events preceding the proclamation of the park in 1907, our examination of this topic is divided into three phases: 1907 to 1921, 1922 to 1952, and 1953 to 2000.

(a) *Events leading up to the proclamation of the national park in 1907:* As we saw in chapter 7, it was not until 1894 that the Tongariro National Park was formally established by an Act of parliament, to which was attached a schedule setting out the park's boundaries. In addition to the three peaks, the boundary took in the outer parts of the original Tongariro and Ruapehu blocks. Also included were lands that were part of the Ōkahukura, Rangipō North, Rangiwaia, Waiakake, Rangataua North, Urewera, Waimarino, and Mahuia blocks. This was in keeping with the understanding of the Crown in 1887 that the national park would include the land 'around [the mountain peaks] as far as the level country'. The schedule specifically excluded the small area surrounding the Ketetahi thermal springs – a piece of land that was at that time still in Māori ownership and in fact has never been alienated or included in the national park.

Under the legislation of 1894, the creation of the park

was not final until it had been legally proclaimed. This did not happen until after the turn of the century, in 1907. By that time it appeared that the land designated for inclusion had all been acquired. In 1903, the acquisition of interests from scores of owners in the outer parts of the mountain blocks (Ruapehu and Tongariro) was completed. By that time, too, the majority of the land in the outermost parts of the area described in the schedule (in the blocks named above, or most of them) had also been purchased by the Crown, using the methods discussed in chapter 6. Still not acquired in 1903 were the mountain parts of the Urewera block, but these, in the form of Urewera 1A and 2A1, came into Crown ownership the following year as survey awards, as we saw earlier in the present chapter. The section of the Urewera block situated within the park zone had been described as 'for any other purposes absolutely valueless.'<sup>165</sup> With the apparent completion of the acquisition process, the scheduled lands were finally proclaimed on 23 August 1907 as the Tongariro National Park (see map 8.3).<sup>166</sup>

One of the issues arising from this first phase of the national park's history is the inclusion of three unpurchased parcels of Māori land within the national park in 1907. This was done unknowingly, since Crown officials had not undertaken a proper review of the tenure situation of all the blocks concerned before the proclamation was made, and overlooked the three areas we mention here.<sup>167</sup> One of the parcels of land – the area now known as Rangipō North 8 – has already been the subject of comment in the previous chapter. The other two pieces of land were portions of Ōkahukura 1 and Ōkahukura 8M2. Two maps show that by the following year, officials were aware that this part of the national park had not been properly acquired by the Crown. The map prepared by Phillips Turner in 1908 and published in connection with the Cockayne report (see map 8.4) cut a small slice from the northern curved edge given to the national park by the boundaries proclaimed in 1907, thus excluding a section of the Ōkahukura lands. The map did not identify the affected blocks by name, but another map tabled in parliament later that year indicates that they were part of Ōkahukura 8M2 and part of Ōkahukura 1.<sup>168</sup> The matter



was lost sight of, however, and subsequent maps showed this Ōkahukura land to be part of the park.<sup>169</sup> The issue did not resurface until 1929, when a careful search by officials revealed the true situation.<sup>170</sup> Even then, nothing was done to compensate the owners of the land.<sup>171</sup> In 1949, Ōkahukura 1 was partitioned, and the Crown obtained 1A (in exchange for Crown land elsewhere). This section included the area already within in the national park, and the whole of 1A was formally added to the park in 1976.<sup>172</sup> It appears, however, that the question of the Ōkahukura 8M2 land was never addressed. The research presented to

us by Cecilia Edwards, on behalf of the Crown, extended only to 1952, and we did not receive any evidence about whether or not compensation was paid between then and 1976 when the boundary moved further north with the addition of new land from various Ōkahukura blocks.<sup>173</sup> Both Ngāti Hikairo and the Crown suggested that further research is necessary if it is to be confirmed that compensation was never paid for the Ōkahukura 8M2 land incorporated into the park in 1907.<sup>174</sup> We agree.

In this chapter, we focus on events subsequent to the proclamation of 1907, when the acquisition of the lands

originally designated for the park was completed. The area of the park in 1907 was 62,300 acres. A new twentieth century phase then commenced, in which the addition of lands to the proclaimed Tongariro National Park continued so that, by 2000, the park had more than tripled in size. It is clear from the evidence that most of this expansion consisted of lands previously acquired by the Crown for other purposes. Some had been alienated from Māori ownership as part of general court and purchasing processes, or taken into Crown ownership by other means, at an earlier time. Others, accounting for nearly 20 per cent of the land added after 1907, had originally been designated as scenic reserves. A further 5 per cent was purchased specifically for national park purposes from private non-Māori owners. Less than 4 per cent was purchased from Māori owners specifically for the park, and this occurred only in the 1950s and 1960s.

(b) *Proposals for expanding the national park*: Even before the formal establishment of the Tongariro National Park in 1907, there had been pressure, from both within the government and outside it, for extension beyond the boundaries set by the proclamation. In 1898, for instance, the commissioner of Crown lands for the Wellington region wrote, in a report on forest conservation:

The National Park on Tongariro, Ngauruhoe, and Ruapehu being inadequate in area, it is proposed to extend the limits of the same . . . I have come to the conclusion that the National Park should ultimately include the whole of the country from Lake Taupo southward to the Murimotu Plains, being bounded, roughly speaking, on the western and eastern sides by the two great railway and road routes from Waiouru to Taumarunui on the one side and to Tokaanu on the other.

He went on to suggest that,

Though a large portion of the country thus indicated is still in the hands of the aboriginal owners, it would be well to take a broad view of such an important subject. It may be necessary, by means of special legislation, to give effect to proposals which would adequately meet the requirements of the colony.

Should this view be accepted, attention should be given to the enlargement of the National Park, as already indicated, by the acquisition of the bush lands owned by the Natives in the district about Rotoaira and on the great Ruapehu–Tongariro Range.<sup>175</sup>

The government did not take action of this comprehensive and deliberate kind, then or later, but Crown officials appear to have retained a general intention to try to expand the national park to the new boundaries suggested by the commissioner, and to do so, if required, by acquiring the desired land from its Māori owners. The extension proposed in 1898 was recommended again in July 1902, by the acting chief surveyor, when he advised that the area of the national park should be ‘largely increased’; he emphasised that the area proposed for addition was of poor quality and of ‘little value for settlement purposes, while most important for forest conservation.’<sup>176</sup>

As this statement indicates, interest in national parks was related to wider conservation concerns. These intersected with a desire to protect scenic landscapes and promote tourism. In 1902, for example, the Department of Lands identified a number of reasons why certain tracts of land should be set aside as reserves, including the maintenance of water supplies and soil quality, the protection of flora and fauna, and the preservation of places of natural beauty.<sup>177</sup> By this time there were already many scenic reserves created under the Land Act 1892, but the Scenery Preservation Act 1903, which included provisions for the compulsory taking of land for these purposes, marked a significant new advance. Published official statements after 1900 demonstrate the evolution of ideas about national parks beyond the simple concept of ‘beauty spots’ to include also these wider aims of protecting flora and fauna and conserving forest resources.<sup>178</sup> Lobbying by private recreation and tourism interests, too, became increasingly hard to ignore in the early decades of the century.

During these years, the desirability of expanding the Tongariro National Park for the purposes of conservation and tourism had to compete, however, with the perceived economic value of the lands near the original



boundaries. This limitation was recognised by the Scenery Preservation Board, which undertook to

endeavour to maintain a just equilibrium between the universal desire to preserve intact as much as possible of the picturesque country frequented by tourists and other visitors and inhabitants of the colony, and the continuous and pressing need of land for settlement purposes.<sup>179</sup>

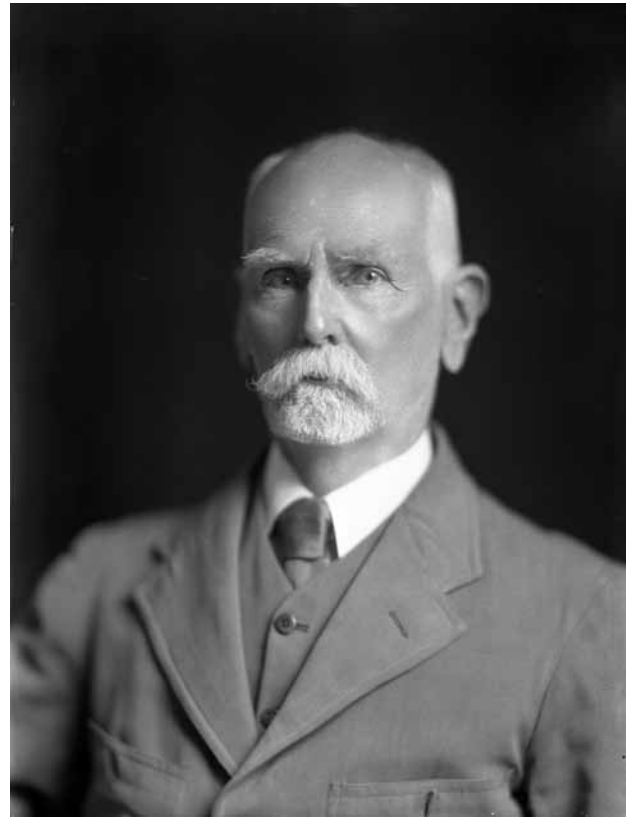
The Department of Tourist and Health Resorts stated in 1907 that

the needs of settlement are imperative, and it is only when they have been amply met and provided for that comparatively small portions of land specially attractive in scenic appearance, and usually somewhat poor in quality, or rugged in character, are set aside as an endeavour to preserve the native fauna and flora in that locality.<sup>180</sup>

A few years later, in 1913, the royal commission on forestry emphasised that only small areas should be retained for such purposes. 'No forest land', it stated as a general principle, 'except it be required for the special purposes of a climatic or a scenic reserve and which is suitable for farm land, should be permitted to remain under forest if it can be occupied and resided upon.'<sup>181</sup>

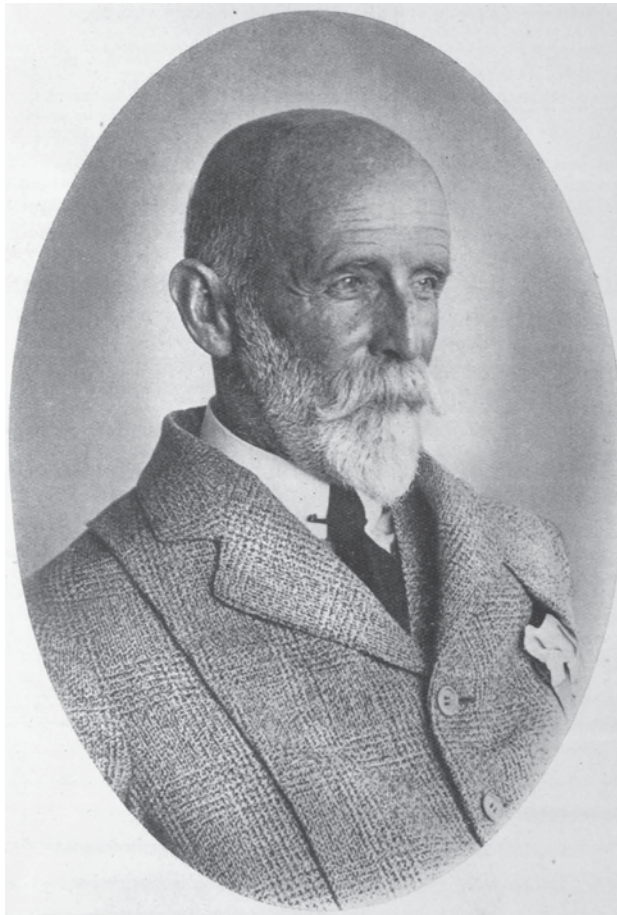
It appears, then, that pressure to expand the national park for conservation and tourism purposes was tempered by a continuing desire to open up land for settlement, and acquiring Māori land in this region for general development purposes was thus a continuing aim in both the nineteenth and early twentieth centuries. Nevertheless, as we will see, land obtained for possible economic use was often incorporated into the national park later, in a rather piecemeal fashion, when ideas about land utilisation had changed.

When a Tongariro National Park Board was created in 1907, one of its first actions was to commission a survey of the park region, looking at its scientific and tourist value and the 'desirability of enlarging its boundaries'. The resultant report by the botanist Dr Leonard Cockayne and the inspector of scenic reserves, Edward Phillips Turner, was



Botanist Dr Leonard Cockayne. In 1907 and 1908, Cockayne surveyed the lands surrounding the mountains in order to make recommendations to the government about the national park's expansion. His report led to the inclusion of several thousand acres of indigenous flora in the 1920s.

completed by the following April and tabled in parliament in August 1908. As originally designated, the park was relatively small and consisted only of high altitude land above the bush line, enclosed within boundaries that had been drawn as circles and lines with no reference to topography or vegetation. The report recommended extensions that would more than double the size of the park, increasing it to 137,900 acres.<sup>182</sup> This would bring in areas of forest and other distinctive vegetation. Emphasising the great botanical and scenic importance of the region, the authors



Edward Phillips-Turner. As inspector of scenic reserves, together with Dr Leonard Cockayne, he advised the government on the scientific and tourist aspects of the Tongariro National Park. A renowned conservationist, Phillips-Turner was a significant influence in the New Zealand forestry business.

of the report were nevertheless conscious of economic needs, and suggested that no land of value for settlement or milling should be included. They also saw economic value in the preservation of forest cover in order to prevent flooding in the farmlands being developed along the railway line.<sup>183</sup> Most of the desired land was already held by the Crown, but Cockayne, in an accompanying report

on the botanical aspects, noted that some of the proposed extensions were in Māori or other private ownership and urged that they be acquired. The map attached to this report (reproduced as map 8.4) included proposed new boundaries extending the park some distance in every direction except the north.<sup>184</sup> Dr Anderson observes that the report and the extensions it recommended became 'a blueprint for future development'.<sup>185</sup>

(c) *Barriers to expansion, 1907–21*: Enlargement of the park beyond the 1907 boundaries did not immediately occur, however. This is not because officials and others were allowed to forget the extension proposal or its desirability. It was clear that the growth of logging activity in the district increasingly threatened the forests lying within the desired extension area. In 1913, several witnesses told the royal commission on forestry about the need for expanding the park, and the map prepared for the commission's report showed a proposed additional area of 93,820 acres to the east, south, and west.<sup>186</sup> Later, in 1913, the commissioner of Crown lands for the Wellington district recommended that the extensions discussed since 1908 should be implemented as soon as possible in order to forestall price rises on Māori-owned land suitable for milling.<sup>187</sup> The Department of Lands brought the need to the attention of its Minister, and he and other ministers were also approached on the subject by interest groups and members of the public.<sup>188</sup> A deputation in 1914 informed the Minister of Lands that milling was proceeding on Māori land adjacent to the Park, and told him emphatically that 'the restriction and early extinction of these milling rights' was 'vitally important to the preservation of the park'.<sup>189</sup> An element in the drive to protect the forest, at least in the southern and western areas, was the completion of the railway in 1908 and the desire to preserve the scenic bush vistas alongside the line.<sup>190</sup>

Despite all these approaches and recommendations, for some years the national park hardly grew at all. Apart from several pieces of Crown land added in 1916 (a total of 831 acres near Ōhakune, separated from the park proper, which we will discuss shortly), there was no expansion until 1922.<sup>191</sup>

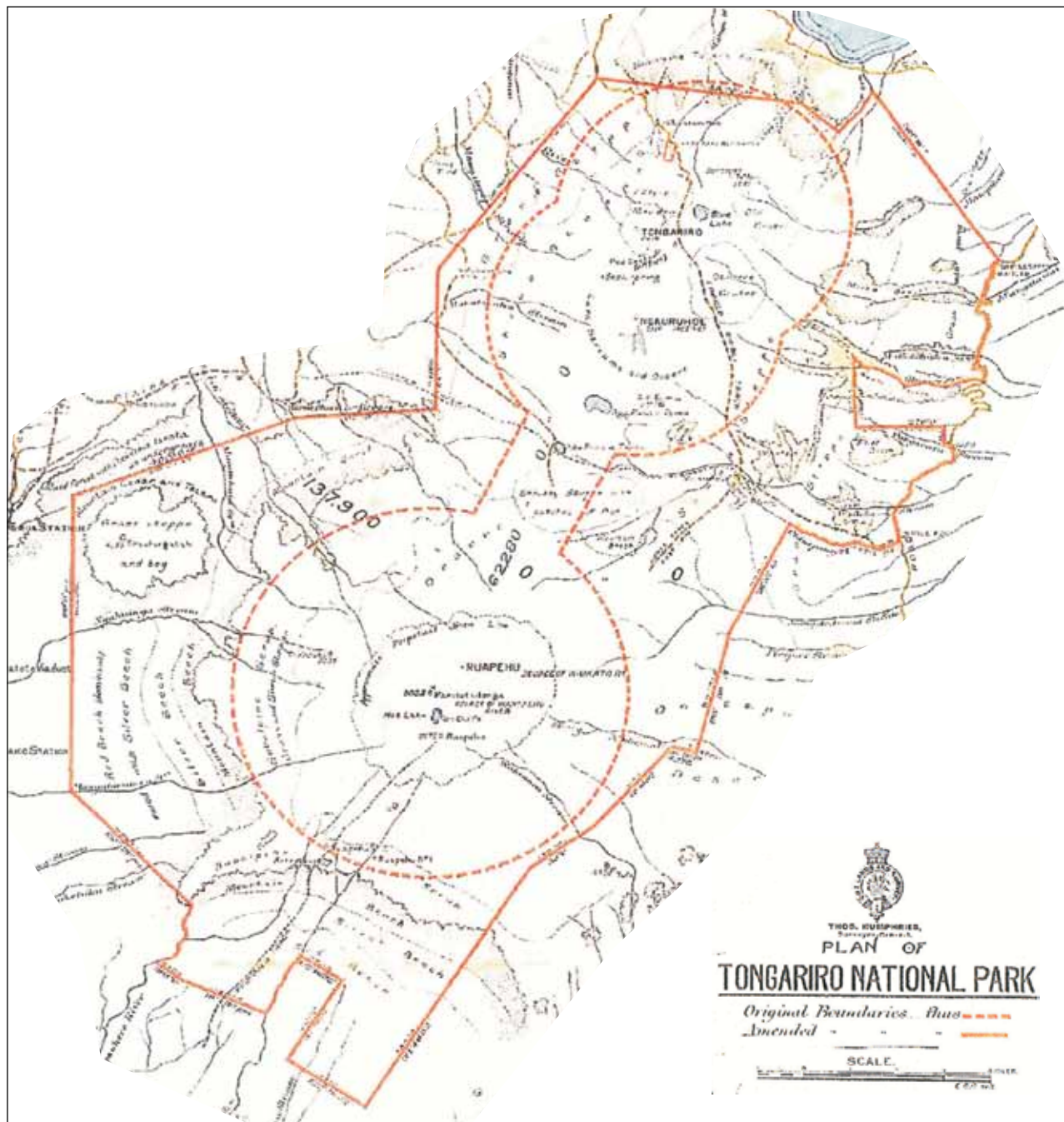


Daisies and tussock, Tongariro National Park, 1908

In part, the lack of progress stemmed from the First World War, but other factors were at work, too. To clarify this, we go back to 1907. The existing legislation (including the Tongariro National Park Act 1894) did not make provision for extending the park boundaries, either by adding land already owned by the Crown, or by acquiring new land. Furthermore, if Māori-owned land was to be obtained for the park, there were no funds designated for

this purpose and officials were conscious that the expense might be considerable.<sup>192</sup> Beyond that, there were possibilities for compulsory acquisition in the national interest, under the Public Works Act, but as we now explain, action of this kind was not straightforward either.

In 1908, a Tongariro National Park Bill was drafted by the Lands Department to enable the Crown to include in the park any lands it already owned, and also to take



Map 8.4: Proposed additions to the Tongariro National Park, 1908

private and Māori land for the park. Neither this Bill nor a similar one in 1909 was enacted. The records do not indicate why the draft legislation did not proceed through the parliamentary process, but Ms Edwards suggests that a need for caution in such issues may have been felt by the government at this time because of legal uncertainty about the taking of Māori land for scenery preservation.<sup>193</sup> Powers of compulsory acquisition did exist under the general scenery preservation legislation. The Scenery Preservation Act 1903 provided for land, including Māori land, to be taken for scenic reserves under the Public Works Act 1894. Between 1906 and 1910, Māori land was in effect excluded from this provision, but an amending Act restored the Crown's previous powers, and land in many parts of the country was subsequently acquired from Māori owners for scenic reserves.<sup>194</sup> There was an instance of this in our inquiry district: the block of land taken from Taurewa 4 in 1911. This bordered the railway line and became the Whakapapa Scenic Reserve, but it was some distance from the mountains and was never included in the Tongariro National Park. Another scenic reserve created in 1911 was Rongokaupō, but the Māori land obtained for this (Raetihi 4B) had been vested in the Aotea Māori Land Board and was acquired by the Crown by exchange rather than by taking. Many years later, it was incorporated in the national park. (We discuss the Raetihi land in more detail later in section 8.5.1, in the Rongokaupō case study.)

Officials were aware that proposals for taking Māori land under the Public Works Act could cause problems. In 1909, the under-secretary of lands told his Minister that, despite the desirability of acquiring the Ketetahi block for the national park, taking the land compulsorily would be inadvisable, because the owners would 'offer the strongest objection to this being done.'<sup>195</sup> Another example also comes from 1909: when the government's plan to purchase a strip of about 900 acres adjoining the Waihothonu track to Ruapehu (part of Rangipō North 6C) did not proceed, for reasons that are not known, thought was given to taking the land compulsorily. The idea was dropped, however, when the solicitor-general advised that legal difficulties would be encountered if the plan proceeded.<sup>196</sup>

In Dr Anderson's words, in those years the government 'contemplated legislation for the taking of further Māori land directly for the park, but backed away from the idea.'<sup>197</sup> Referring to official discussions taking place in 1916, Ms Edwards points out in her report that while steps could have been taken to purchase a Māori-owned block (Rangataua North 2B2B) that was wanted for addition to the park, this would have been a lengthy process; she notes also that there was the alternative of compulsory acquisition but that this apparently 'remained the Government's least preferred method of dealing with Māori-owned lands' that were desired for scenic purposes.<sup>198</sup>

Despite the push for extension, then, no Māori land was acquired specifically for the national park in this first period after the proclamation of 1907. In one instance – Waiakake, which was purchased by the Crown in 1916 – private land owned by non-Māori was bought for addition to the park.<sup>199</sup> But the other additions made in the first period of expansion after 1907 were pieces of land already owned by the Crown.

Even in the case of Crown land, it was some time before any of it was added to the park. Much land in this category was identified as suitable in the 1908 report, as we have seen. An earlier report, too, put out by the Scenery Preservation Board in 1907, had commented on the 'vast expanse of Crown lands' east of the railway line near the Mangaturuturu stream. 'Except for a gap here and there,' said the report, these lands 'are all forest-clad, and as the soil is not over well adapted for agriculture or pastoral purposes the land would form an admirable addition to the present Tongariro National Park.'<sup>200</sup> However, with the failure to enact the 1908 and 1909 Bills, it was not until 1914 that any provision was made for extending the Tongariro National Park beyond its existing boundaries. In that year, a section of the Reserves and Other Lands Disposal and Public Bodies Empowering Act enabled the Governor to declare that any Crown land in the vicinity of the park now formed part of it. There was still no provision, however, for adding Māori land, or other privately owned land.

Action under the 1914 legislation was first taken in 1916, when 831 acres of Crown land on the east bank of

the Mangawhero River were added to the park. The land across the river to the west was Urewera 1C6, which had been sold to sawmillers in 1908. The track up Ruapehu from Ōhakune passed through the land proposed for addition to the park, and pressure from sawmillers in this area was adding urgency to the need to preserve scenic bush areas – or at least areas visible from tourist routes. The addition of this strip bordering the track consisted of six pieces of Crown-owned land in the former Rangataua North 2A and 2B1 and Rangataua South blocks, in two non-contiguous parcels. The new land was at this stage physically separated from the rest of the national park by a large area of Crown land that could not yet be released, and by the Māori-owned Rangataua North 2B2B block.<sup>201</sup> Because it was disconnected in this way, the new park land came to be known as the ‘Ōhakune enclave’.

The small Ōhakune enclave was the only Crown land added to the park under the provisions of the 1914 Act before it was superseded by the legislation of 1922. But pressure for the expansion of the boundaries continued, and preparations were made by the various departments to add a large quantity of Crown land, as allowed for in the legislation of 1914.<sup>202</sup> A schedule prepared by officials in 1918 to identify the lands desired for addition to the park included State forest, military reserve, and other Crown land, and also some Māori land, with a total area of 117,664 acres. The Māori land identified in the schedule formed about an eighth of the whole, amounting to around 15,000 acres, of which more than 5,000 acres was Rangiwaea land situated outside our inquiry district. The desired Māori blocks in our district, besides Rangataua North 2B2B, were subdivisions of Rangipō North, Rangipō–Waiū, and Urewera.<sup>203</sup> Of these, the Crown placed only Rangipō North 5c and 6c under alienation restrictions, which, says Ms Edwards, is ‘further support for the argument that the Government did not pursue with great energy the acquisition of Māori-owned lands for addition to the park in this period’.<sup>204</sup> (Of the rest, the Rangipō–Waiū land was taken for defence purposes in 1942 and was later transferred to the national park, and the Rangataua North and Urewera land was purchased for the park in the 1950s and 1960s. The Rangipō North land was never acquired.)

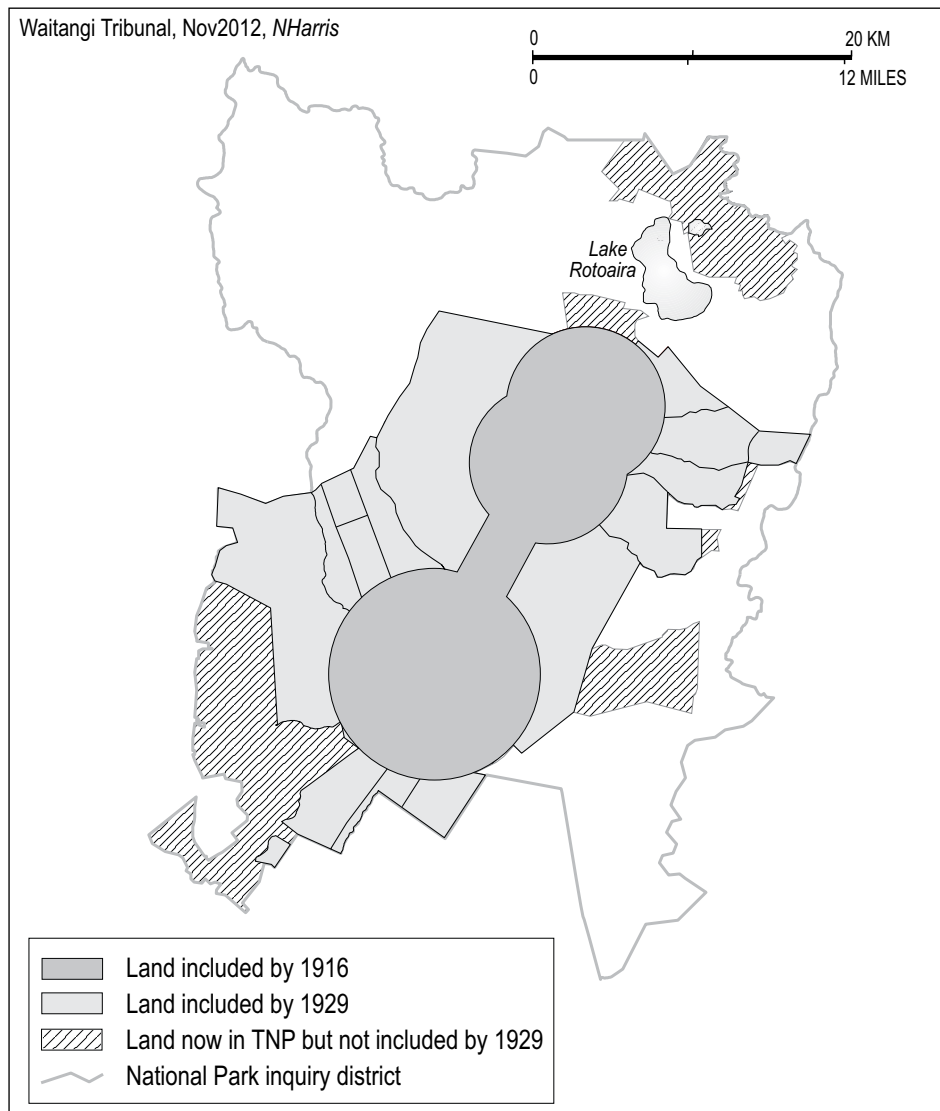
(d) *Expansion of the national park, 1922–52*: After the First World War, public discussion of the expansion and development of the Tongariro National Park increased, and officials and ministers were kept busy with letters from lobbyists. The Minister of Tourist and Health Resorts was already sympathetic to the idea of expanding the park and proposals put forward by him were largely enacted in the Tongariro National Park Act 1922.<sup>205</sup> In addition to its provisions for park management, the Act authorised ‘the setting-apart of certain lands . . . as a national park’, and provided for further alteration of the boundaries by proclamation at any time. A schedule set out the new boundaries, which were extended on almost every part of the park’s circumference (see map 8.5) and now took in an estimated area of 145,000 acres. This more than doubled the area proclaimed in 1907.

The additions gazetted in 1922 did not include any land obtained from Māori specifically for the park, however. Some land still in Māori ownership was regarded as desirable for addition to the park, as the 1918 list showed, but none of it was acquired at this stage. According to Dr Anderson this was due to ‘lack of funds and unwillingness to deal with the complications of multiple owners and timber leases’.<sup>206</sup> As William W Harris puts it in his thesis on national parks, the Crown

shied away from the expensive business of acquiring Māori lands and territories on which timber companies were firmly entrenched (which in any case came under Massey’s definition of ‘economically valuable country’).<sup>207</sup>

Most of the pieces of land wanted for the national park and now added to it were already Crown-owned. Of course these new areas consisted of land acquired by the Crown from Māori in past years. (Only in one case, Waiakake, had the land passed through private hands first.) The bulk of the additional area had been purchased from Māori before 1900, with settlement, forestry or tourism in mind. Most of these lands had been designated as forestry reserves.

Also included was land from a large area that had been set aside as the Waimarino Defence Reserve. Most of that



Map 8.5: The expansion of the Tongariro National Park by 1929

reserve had been established on land already owned by the Crown, but it also included three pieces of Māori land (4,463 acres in total) situated within our inquiry district and taken for military purposes under the Public Works Act. This compulsorily acquired land consisted of part of Waimarino 4B2 (taken in 1911) and the whole of Mahuia B

and Tāwhai North (both taken in 1913).<sup>208</sup> The Waimarino land and some of the Mahuia and Tāwhai land was transferred to the national park in 1922. This land, compulsorily acquired for army training, was now retained for other purposes, although until 1940 the army kept the right to use it.<sup>209</sup>

Again, it seems that perceptions of economic value played a part in the process of incorporating land into the national park. The lands thought to be unsuitable for economic development or utilisation were brought in without much trouble, mostly in 1922, but it took longer to add areas containing millable timber. Before the Forests Act 1921–22 was passed, the commissioner of State forests had agreed that lands under his control could be added to the park, with the proviso that, with the exception of stretches of bush alongside the railway, he would retain the right to use them for forestry purposes, including milling.<sup>210</sup> Dr Anderson comments that

private forestry operations in lands wanted for the park were . . . allowed to run their course. This attitude contrasted, however, with that taken towards Māori, whose on-going use of lands under park management was rarely contemplated.<sup>211</sup>

Except when strips of forest were preserved alongside roads or the railway for scenic purposes, the importance given to the value of the timber resource meant that very often blocks were incorporated into the park only after they had been milled, or after government and public attitudes to forest use had changed.<sup>212</sup> Until well into the twentieth century, support for the national park idea did not mean that the economic value of lands and forests could be ignored.

In 1935, for instance, Māori land on the northern fringe of the park was discussed as a desirable addition, but it was being milled under a leasing agreement. The acquisition of the land (Ōkahukura 8M2B3B and 8M2C2C) was actively contemplated in 1937, but the milling activity was a complication. The owners valued the timber income and wanted more for the land than the government was prepared to pay, and officials were wary of the reaction that would be provoked by a compulsory taking. A decision was made to wait, and in 1949 it became possible to acquire part of one of the blocks by purchase and parts of two others by exchange. The land (2,296 acres) was eventually added to the park (although not until 1976).<sup>213</sup>

Also relevant is the Crown's previously noted power to prohibit the alienation of Māori land to private buyers.

Restrictions of this kind could be used to preserve lands that might be required in the future, for a range of purposes including the park. As Dr Anderson observes,

with the exception of lands along the railway line, the [Tongariro National Park] Board could usually afford to wait. Māori owners were generally unable to raise the finance to improve or utilise these lands themselves, so there was no urgency for the Crown to ensure that scenic areas were acquired for formal addition to the park.<sup>214</sup>

As we have seen, prohibitions of alienation except to the Crown were imposed over many blocks of Māori land in the inquiry district. That said, only a few blocks desired for addition to the park were restricted in this way. For instance, of the blocks on the 1918 list of desired acquisitions, only two were put under prohibition (both of them being in Rangipō North).

Between 1922 and 1952 (when a new National Parks Act was passed) only a comparatively small area (4,756 acres), all of it already owned by the Crown, was added to the Tongariro National Park.<sup>215</sup> Most of this land was from the Rangataua North blocks acquired by the Crown before 1900. It was added to the park in 1925, forming a substantial southwards extension towards the Ōhakune enclave but still separate from it.<sup>216</sup> This advance encouraged efforts to finally join the enclave to the rest of the park by acquiring the intervening Māori land, Rangataua North 2B2B, which by that time was the only portion of the Rangataua North and South blocks situated within the inquiry district that was still Māori-owned. In the event, neither this nor any other Māori land was added in this period, although attempts continued to be made to acquire blocks regarded as desirable for park purposes (including Ketetahi, where efforts continued until 1955).<sup>217</sup>

'From the evidence', writes Ms Edwards, 'it cannot be concluded that the park board, under the chairmanship of the Under-Secretary of Lands, was aggressively pursuing the extension of park boundaries in this period.'<sup>218</sup> At the same time, however, steps were taken to create or extend scenic reserves, such as Rongokaupō and Pihanga, that were later brought into the national park. The aim of



extending the park still existed. ‘Over the course of these years’, writes Dr Anderson, ‘the Park Board, and successive government departments with general oversight for park matters, worked towards the goals originally outlined’ for the Tongariro National Park in 1908. She goes on to add that Māori Land Board and Māori Affairs officials ‘were generally sympathetic to scenery preservation and national park goals and facilitated purchases for these purposes.’<sup>219</sup>

(e) *Further expansion after 1952*: After 1952, when New Zealand’s national park administration was reorganised, the expansion of the park’s boundaries increased in momentum. Tens of thousands of acres were added between 1952 and the end of the century.<sup>220</sup> Again, much of the additional area was Crown land that had been purchased in the nineteenth century, or obtained in the twentieth century through purchase, exchange, survey awards, or Public Works takings for military purposes.<sup>221</sup> Another category of land added in this period was the nearly 15,000 acres that made up the Rongokaupō and Pihanga Scenic Reserves, which, as we will see later, were incorporated into the national park in 1972 and 1975 respectively. Aside from this, more than 2,000 acres in the Raetihi and Urewera blocks were purchased from private owners for the park. The remainder of the new park land – more than 5,000 acres in the Raetihi blocks (as described in the Raetihi case study), the various Urewera blocks, and Rangataua North 2B2B – was purchased from its Māori owners specifically for addition to the national park. This was the first time that such purchases were made, and we will examine them more closely here.

The Urewera lands were an important focus of the new effort in the 1950s to strengthen and expand the southern boundaries of the national park. Some of the lands were owned by timber companies, but several blocks, covering a comparatively large area, were still Māori-owned. ‘Like other Māori-owned blocks with multiple owners, and in some cases, extant timber leases’, comments Dr Anderson, ‘they had been regarded as too difficult to acquire, but with an enhancement of political will, signalled by the passage of new legislation in 1952, attention now turned to these

areas.’<sup>222</sup> In 1954, officials briefly gave consideration to taking the land under the Public Works Act, but decided instead to try to purchase it. At a meeting of the owners of Urewera 2A2 (2,909 acres), however, a majority resolved to decline the government’s offer of £3,000.<sup>223</sup> Given that interests in the block were regarded as ‘uneconomic’, this result came as a surprise to Māori Affairs officials:

From the attitude of the owners there is no likelihood of sale to the Crown. . . . They had never put foot on the land; were aware that it had no farming potential; timber had been exhausted, but they were still disinclined to sell.<sup>224</sup>

But, in the case of Urewera 1B, 1C2, and 1C3 (with a total area of 3,088 acres, of which 2,561 acres are within our inquiry district), a meeting of owners in 1954 led to acceptance of the Crown’s offer to purchase, at a price of £3,650. Two years later, in 1957, 1B was added to the national park. The addition of 1C2 and 1C3 (or the northern parts of these blocks) did not occur until 1964: the Horopito Timber Company’s leases of these two blocks ran until 1962, and it seems that the company was able to continue milling until then.<sup>225</sup>

Meanwhile, also in 1955, the Horopito Timber Company had purchased Urewera 1C1 and 2E, and it had agreed to on-sell its interests to the Crown. These sales were later made, and the northern parts of the blocks were eventually added to the national park.<sup>226</sup> Another transaction completed in 1955 was the Crown’s acquisition of three blocks that had been sold years before to the sawmillers Bennett & Punch (namely 1C6, 1C5, and 1C4, purchased in 1908, 1920, and 1923 respectively); it should be noted that the company retained cutting rights for 10 years after selling.<sup>227</sup> In 1932, Bennett & Punch had offered to exchange the three blocks for an area of Crown land, and in 1949 an exchange agreement was made: the Crown would take over most of the land in the three blocks, granting permission for supervised milling of specified timber stands on it, while the company received some Crown land near Ōhakune.<sup>228</sup> All the land in Urewera 1C4, 1C5, and 1C6 was later added to the national park, in 1961 and 1972.<sup>229</sup>

The aim of acquiring Urewera 2A2 had to wait a few

years more until it was achieved, but in 1967 the matter came up again, brought forth by the issue of rates arrears. As will be seen shortly, when we examine specific claims concerning this block, it was purchased in 1968 and added to the national park in 1969. This was the last Urewera land held by Māori.

We have already noted the Crown's long-sought aim of linking the Ōhakune enclave to the rest of the national park. This was eventually achieved by means of acquiring Rangataua North 2B2B. Officials were spurred into action in 1947 when the sawmillers Bennett & Punch applied for permission to begin logging on the block under a leasehold arrangement with the owners. The land had not been milled before, and native timber was now in scarce supply. The owners resolved to accept the millers' offer to buy and log all the millable timber on the land. The Māori Land Court confirmed the resolution, subject to appraisal and valuation and the consent of the government's timber controller.<sup>230</sup> The plans of the owners were threatened, however, when the national park board wanted the milling application refused and the land purchased by the Crown.<sup>231</sup> Clearly, the long-debated issue of whether forest land should be protected or used for economic gain was still alive, as the park board secretary acknowledged in a letter to the director of forestry:

It is a question of whether we should buy, in the interests of conservation of the park and adjoining lands, or whether the broader issue of the need for millable timber is paramount.<sup>232</sup>

Conservation, and the needs of the park, were given priority and permission for the owners and millers to go ahead with their arrangement was withheld. The government began to negotiate with the owners for purchasing the land and timber, but the necessary appraisals caused long delays.<sup>233</sup> At least one official acknowledged the unjust nature of this as far as the owners were concerned: their intention had been to benefit from the current good price for timber, so they were 'entitled to consideration and it would be grossly unfair to them if they are precluded from selling on the possibility of a contemplated acquisition by the National Park Board'. The official continued:

It is appreciated that the conservation of certain timber areas is of national importance but the interests of the Māori owners must be considered and any undue delay will no doubt react to their detriment.<sup>234</sup>

It was not until 1951 that the Crown's offer was put to the owners of the block. The price offered was rejected as too low.<sup>235</sup>

In the end, the continued resolve of the owners to benefit from their timber resource forced the government to try to reach an agreement with them and the millers, even if it was imperfect from a conservation perspective. The owners' discussions with Bennett & Punch about the acquisition of cutting rights had been renewed, and in 1955 the government asked the timber company if it would purchase the land and, after milling it in a restricted way, sell it on to the Crown. This willingness of the Crown to allow a private company to mill a block that it wished to include in the park stands in contrast to the barriers imposed on Māori owners wishing to utilise the timber on land in the vicinity of the park. Bennett & Punch were interested in the proposal, but the owners of the land were willing to sell only the timber, and not the land under it. In 1956, faced with the owners' determination on the one hand, and conservationist pressure on the other, and reluctant to resort to powers of compulsory purchase or to forbid logging altogether, the government came to an arrangement with the millers and owners: it would allow the former to continue with restricted logging in return for the owners' agreement to sell the land to the Crown. In this way, the land was acquired for the park, while the owners were compensated well for the timber left standing on both sides of the mountain track (which by then was being made into a road); they were paid for the land, and also received a large payment from the millers for the timber to be cut from the main forest area.<sup>236</sup>

After the agreed amount of timber had been cut out, Rangataua North 2B2B was added to the national park (in 1962).<sup>237</sup> This finally joined the Ōhakune enclave to the rest of the park, albeit with some modification of the indigenous forest cover on the land. As for the owners, they had resisted the Crown's attempt to acquire the land and forest

at a price below its market value, and eventually obtained a substantial payment for their timber. This success in utilising their resource as they wished was not achieved, however, until 10 years after they had first entered discussions with the logging company.

Not all efforts to expand the park by purchasing Māori land were successful. In fact Urewera 2A2 was the last Māori land acquired for the national park. Attempts to buy Ketetahi had long been rebuffed. Dr Anderson also describes an unsuccessful attempt in the 1950s, 1960s, and 1970s to extend the eastern boundaries by acquiring Māori land in the Rangipō North blocks (3C, 4C, 5C, and 6C) and adding it to the large area of Crown land in Rangipō North that had been acquired in the nineteenth century and later incorporated in the park. Achieving this would have been in keeping with what had long been envisaged as the eventual boundaries of the park in that direction, but all efforts to buy the land failed.<sup>238</sup> In 1954, the Lands Department was opposed to the lifting of alienation restrictions on 6C (situated west of the Desert Road), since its acquisition for the park was thought to be desirable.<sup>239</sup> In 1955, when the owners of Rangipō North 3C (to the east of the road) showed interest in farming the block, the government agreed that extending the national park to the east of the Desert Road was unjustifiable, since the land there was capable of development. Alienation restrictions on some blocks (including 3C) were therefore lifted, but not those on 4C, 5C, and 6C, which, despite indications that the owners were unwilling to sell, the government was still interested in buying.<sup>240</sup> In 1959, there were plans to arrange the acquisition of land west of the road in exchange for blocks to the east of it, but no agreement was reached on what land would be received in exchange. The acquisition of 5C and 6C (the only remaining Māori blocks west of the Desert Road) was still regarded as desirable in 1970, but it was increasingly clear that such a result was unlikely.<sup>241</sup> In fact the Crown never succeeded in purchasing land in the Rangipō North blocks to add to the national park, and 22,165 acres in the area still remains in Māori ownership.

In 1972, when exotic afforestation was being planned for the northern part of the inquiry district (a topic we

will discuss in the next chapter), an opportunity was seen for improving the park boundaries by exchanging Māori, Crown, and national park land. Interdepartmental discussions resulted in a recommendation that the park boundary should be extended north to State Highway 47 so as to include certain Ōkahukura lands between the park and the road. Also recommended (again) was extending the eastern boundary to the Desert Road, and relinquishing park areas east of the road in exchange.<sup>242</sup> The park board stated that, over a period of nearly 70 years, it had

consistently adhered to a policy aimed at achieving a Park boundary which would include land containing all the unique scenic, geological and botanical features common to the volcanic plateau.

The board did not seek, however, to include the area around Pāpakai and Ketetahi, since these were 'considered to be of such historic and social significance' to their owners that 'attempts to purchase may alienate a significant section of the Māori people.'<sup>243</sup> As we have seen, the Ōkahukura blocks were indeed added to the park in 1976, but they had been owned by the Crown since 1949. The proposed Rangipō North exchanges, as we have noted, did not occur.

Dr Anderson's view is that the lack of Crown purchasing for the national park after 1968 'probably had as much to do with continuing Māori refusal to sell their last blocks of land within the park zone, as with any change of heart on the part of the Crown.'<sup>244</sup> A national park management plan published in 1990 stated that there were still areas, including some Māori land, identified as desirable additions to the park. In an indication that perceptions had changed, however, the document mentioned the possibility that 'park management could be achieved other than by outright addition to the park', for example by leasing.<sup>245</sup>

(f) *The case of Urewera 2A2*: The claim concerning the alienation of Urewera 2A2 was made by Maria Perigo, the great-granddaughter of Winiata Te Kākahi, on behalf of herself and other descendants of this notable figure, who was named in 1887 as one of the initial Urewera owners.<sup>246</sup>

The block originated in the partition of Urewera 2A in 1904, and consisted of 2,909 acres lying to the south of the Mangaturuturu River on the lower slopes of Ruapehu. The land was leased by its owners from 1911 to 1932, and again (for £7 5s a year) from 1932 to 1953.<sup>247</sup> As we have seen, in the 1950s the Crown wished to acquire all the Urewera lands that were still in Māori ownership, in order to add them to the national park. The owners of Urewera 2A2 were offered £3,000 in 1954, but declined to sell.<sup>248</sup> From time to time there had been efforts to farm and mill the land, but the indications are that it had little potential for these purposes. It is, therefore, not surprising that the owners had difficulty in paying the county rates levied on the block, and in 1956 a charging order in respect of unpaid rates was issued under the Rating Act 1925.<sup>249</sup>

A decade later the position was largely unchanged. There were still rates owing, and it was this that now led to the removal of the land from the owners' control, and ultimately to its alienation. There were 979 owners at this time, holding 311 shares.<sup>250</sup> During 1966, officials were contemplating having the block transferred to the Māori Trustee, and in August that year they arranged for a report on the land, including its present condition and the likely demand for it if the block was offered for lease or sale.<sup>251</sup> In October, the Waimarino County Council formally applied, under section 438 of the Māori Affairs Act 1953, for Urewera 2A2 to be vested in the Māori Trustee for subsequent lease or sale, on the grounds that the land was unoccupied and had not had rates paid on it for over 10 years.<sup>252</sup>

On 11 October 1966, Alexander Tatana of Waiōuru wrote to JE Cater, the Māori Affairs Department's district officer in Wanganui, asking that Urewera 2A2 be assessed for economically millable timber by a forestry expert, and offering to pay the cost.<sup>253</sup> During our hearing, Mr Tatana appeared before us at the wish of the claimants and explained how he had become involved in matters concerning Urewera 2A2 nearly 40 years earlier. His testimony revealed that his letter in 1966 was not the first communication he had had with the Māori Affairs Department concerning the block.

Although Mr Tatana did not belong to the local iwi,

when he moved to nearby Waiōuru his wife's aunt noted his interest in farming, and shortly before her death arranged for him to succeed to her shares in the block. This was in 'about 1965 or 1966'. When Mr Tatana and his wife visited the Māori Affairs Department in Whanganui to find out more about the land, they met the district officer.<sup>254</sup> According to the witness, Cater told them about the rates problem and said that the owners were going to lose control of the land, because the block was going to be transferred to the Māori Trustee to pay the debt. Mr Tatana told us that he raised the possibility of paying the outstanding rates and then purchasing the block, as he had recently done in the case of a block in another district. Agreeing that this could be done, Cater had undertaken to supply further information about the land and to prepare the documentation needed for the transfer. 'A couple of months after our first visit to Cater', continued Mr Tatana,

he came to Waiōuru to visit us. He talked about the block in general, and said that he was in the process of preparing the documents. He said that the case was proceeding well.<sup>255</sup>

Mr Tatana's evidence, then, is that the Māori Affairs Department was in discussion with him about his wish to purchase the land, and that in his understanding it could be transferred to him following the vesting of the block in the Māori Trustee. We would like to have had the benefit of comparable evidence from the official side, but the departmental documents with which we were supplied contain no record of any discussions held with Mr Tatana before his request for a timber assessment was received in October 1966. His testimony is lent support, however, by a later official document that refers to discussions between Mr Tatana and the Department concerning a purchase of the block from the Māori Trustee in terms of part XIII of the Māori Affairs Act 1953.<sup>256</sup>

We heard from Mr Tatana that at first he was grateful for Cater's assistance and confident that he was being given good advice, but that at some point he became uneasy. During this period he made two trips to see the land for himself. 'When I got back from the second visit to the block', he told us,

I rang Cater and asked what was happening, and where we were at with the block. He started making excuses. He told me that the delays were unavoidable and that he had to get a valuer to value the land.<sup>257</sup>

(The valuation, which was requested by the department in April 1967, was submitted by the district valuer two months after that. The value of the block, which was covered in forest and scrub, was assessed at £1,050, and the comment made that bringing it into production would be ‘a very difficult proposition.’<sup>258</sup>) Soon after the telephone conversation, Mr Tatana told us,

Cater visited us again with the relevant documents. He had an application to the Māori Land Court to transfer the block as well as other documents. I signed all of the documents that he brought with him.<sup>259</sup>

Later, under cross-examination, Mr Tatana explained that he was ignorant of the official procedures but assumed that the Department would guide him through the process of paying the rates arrears and keep him informed about what was happening with the purchasing process.<sup>260</sup> It is an important point in Mr Tatana’s evidence that, at this time, he signed papers which he believed would lead to his purchase of the land, although documents of this kind were not located for us in the official record.

Meanwhile, steps had been taken at the end of 1966 to arrange the timber assessment desired by Mr Tatana, although one official thought that in view of the recent report on the block he should be warned that the appraisal might not be very positive.<sup>261</sup> A letter from Rumatiki Kerei indicated that other owners were also interested in the possibility of using the proceeds of timber sales to pay the rates arrears. This letter also expressed an objection to the county council’s application to have the land vested, since the owners had not been informed about the rates arrears.<sup>262</sup>

On 7 February 1967, however, the Māori Land Court heard the council’s application and made the decision to vest the block in the Māori Trustee, with powers to lease or sell it on behalf of its owners. Cater was present to

provide information about the history of the block and the owners’ efforts to utilise it; he also mentioned Mr Tatana’s offer to pay the cost of a timber appraisal and referred to a discouraging first response from the conservator of forests about the timber prospects.<sup>263</sup> A further communication, received from the Forest Service shortly afterwards, reported that an inspection had not identified any saleable timber remaining on the land, other than a little fencing material.<sup>264</sup> On 13 February 1967, Mr Tatana was informed of the Māori Land Court’s recent decision about Urewera 2A2. ‘In the circumstances’, he was told, ‘your agreement under Part XIII of the Māori Affairs Act 1953 to purchase the above block for farming is not being proceeded with.’ The letter also stated that his request for a Forest Service estimate had been cancelled, and that information about tendering for the lease or sale of the land would be sent to him ‘in due course.’<sup>265</sup>

We note two things in relation to the letter. First, there is reference to an ‘agreement . . . to purchase’ (which may or may not be the papers Mr Tatana said he had signed). Secondly, the reason why the procedure had changed was not explained in the letter, and in fact nowhere in the evidence is it made clear precisely which procedures under the Act were being followed. Despite the signalled change of procedure, however, the letter did hold out hope that an opportunity for Mr Tatana to purchase the land still existed. However, it was necessary for tenders to lease the land to be called first, before it could be offered for sale, and the leasing opportunity was advertised a year later, in February and March 1968.<sup>266</sup>

Meanwhile, the Māori Affairs Department had been reminded of the Crown’s long-held wish to add the block to the national park. (It had been included, for instance, in the 1918 schedule of desired lands.) A few days after the land was vested in the Māori Trustee, the conservator of forests stated that the Lands and Survey Department would be interested in acquiring the block for this purpose.<sup>267</sup> The department was soon given information by the Māori Trustee about the process that would be followed for offering the land for lease or sale.<sup>268</sup> When in due course tenders for leasing the land were invited, the department told the Māori Trustee that it was not

interested in a lease but that it did want to purchase the land if or when that opportunity became available.<sup>269</sup>

We return now to Mr Tatana's side of the story, noting that the timing of the events he describes is not always stated or easy to establish. According to Mr Tatana, after signing the documents brought to him by Cater, he was instructed not to take any further action: 'He . . . told me that to follow procedures, they still had to advertise the block for sale, but he told me not to take any notice of it because this was merely a procedural matter.'<sup>270</sup>

It is not clear why Cater would have said this, and we wonder whether the advice not to take any notice referred not to the sale advertisement but to the procedural need to advertise the lease first.<sup>271</sup> Be that as it may, Mr Tatana saw the newspaper advertisement 'seeking tenders', but duly ignored it. He also told us that he 'tried to contact Cater several times after the tendering process had closed, but he was never available.'<sup>272</sup> We do not know the precise timing of these approaches, but, in Mr Tatana's recollection, it was not long after this that he received a letter from Cater about the tendering process. In Mr Tatana's words,

The letter said that they had given full consideration of the tenders, and that the Māori Trustee thought it would be in the best interests to make the block into a Forest Reserve, for conservation purposes. Cater said that they had had it valued, but he never disclosed to me what the value was.<sup>273</sup>

The letter itself was not presented to us, but we heard from Mr Tatana that, although it could be understood to be referring to the sale of the land, it actually dated from an earlier time.<sup>274</sup>

Mr Tatana told us that his next action was to write a letter himself.<sup>275</sup> This time it was to a higher authority, and the letter, written on 16 March 1968, still exists in government files. Addressing himself to the Minister of Māori Affairs (Ralph Hanan), Mr Tatana expressed his frustration about his dealings with the department since 1966. He informed the Minister that in that year, as a shareholder in the block, he had visited Cater and told him he would like to purchase the other interests. Cater had told him it was possible by having the land vested in the Māori

Trustee and then transferred to him, and they had agreed on this course of action. Cater had said that the timber on the land would have to be valued. Mr Tatana said in his letter that, although he had been promised details of the process for calling tenders for leasing the land, he had not received them. In any case, the land was undeveloped and had rates owing, so leasing it would be 'foolish'. 'All I ask', he wrote, 'is that I have the right to purchase this block'. He felt that he could not make any further progress with the Whanganui office and asked for the Minister's assistance.<sup>276</sup>

The Minister called for an urgent inquiry into the matter. Cater reported back to him on 26 March, confirming that the complainant held shares in the land. He provided the information that the land had been vested in the Māori Trustee and that tenders for leasing it had been invited. Tenders had now closed, and none had been received.<sup>277</sup> On 9 April the Minister relayed this information back to Mr Tatana, saying that that as Minister he could not interfere in the Māori Land Court's decision to vest the land in the Māori Trustee, but adding that, in the absence of any tenders for lease, tenders for purchasing the block would now be invited. Details of the tendering process would be sent to Mr Tatana.<sup>278</sup> Minutes on the official documents at this time indicate that Mr Tatana had in fact been promised information about the leasing tender, too, but that due to procedural mistakes it had not been sent; steps were taken to ensure that such an error was not repeated and in particular that he received notification when tenders for purchase were called.<sup>279</sup>

The tendering process for the sale of the block was initiated at the end of May 1968. Newspaper advertisements were placed and preparations were made for sending detailed information out to a list of 10 people (including Mr Tatana) who were known to be interested.<sup>280</sup> Mr Tatana told us emphatically, however, that he did not receive the information.<sup>281</sup> In any case he did not bid.

The commissioner of Crown lands in Wellington had asked for the information also. He was advised by his superior to tender a sum equal to the last valuation (\$2,100, or £1,050 in its original pre-decimal form) and to tell the Māori Trustee that the Lands and Survey Department

'would appreciate it, if there should be a higher tender than our one, if we could be given an opportunity of increasing our figure.'<sup>282</sup> The commissioner telephoned Cater, who told him that 'a substantial owner' had been corresponding with the Minister of Māori Affairs about the purchase of this block and had been told that he would 'be given at least an equal opportunity as others who may wish to purchase this land'. Cater said that it was his opinion that if the Crown were to be given an opportunity to revise its tender, then it was only fair that the highest tender would have to be given similar consideration. After some discussion within the department, it was decided that the commissioner would submit 'a tender of \$2100 or alternatively \$10.00 higher than the next highest tender'. According to the Commissioner, there was 'a precedent for this type of tender which would avoid the necessity for any tenderer being given the opportunity to revise his tender.'<sup>283</sup> The said tender was duly submitted, with the commissioner noting that the department had been trying for some years to acquire the land for the national park, and adding: 'This block is of considerable importance to the Crown, as it constitutes a salient into the Tongariro National Park.'<sup>284</sup>

Before the process could be completed, the Māori Affairs office in Whanganui received a letter sent on 25 June by solicitors acting for two of the other owners of Urewera 2A2, conveying the owners' dismay at the advertised sale of the block and their concern that the process had been put in motion without any reference to them. The solicitors explained that the owners wished to have the opportunity to take back control of their tribal lands:

We are informed that this is one of the last substantial freehold blocks on this particular portion of the lower slopes of Mt Ruapehu, and our clients wish to have the opportunity of getting in touch with the other owners in the block with a view to have a responsible group of owners take over the block to keep it intact as tribal lands.

The letter requested information about how the vesting occurred and was notified to the owners, and about the rates owing. Assurance was sought that no tender would

be accepted 'until this aspect of the matter has been investigated.'<sup>285</sup> The reply from Cater's office explained that the vesting had been ordered with a view to recovering the rates owed, and promised that no decision would be made 'until the owners concerned have had an opportunity to decide on the steps they wish to take concerning this land'. A new closing date of 19 July was set.<sup>286</sup>

As of 27 June, the only other tender to have come in was one from two Ōhakune farmers, offering \$1,750. At that stage, therefore, it seemed likely that the Crown's offer of \$2,100 would be successful, although the district office in Whanganui noted that,

Should the owners come up with a practical proposition to clear the rate charges outstanding against the property and also to properly utilize the land, then their wishes will have to be considered.<sup>287</sup>

By 18 July, the Māori Trustee had heard nothing from the owners and believed that it was 'very unlikely' that they would 'do anything positive about clearing the charges on this block or otherwise take action to retain the land'. He was on the verge of accepting the Crown tender when a further letter from the owners' solicitors arrived. It informed the department that arrangements had been made for the outstanding rates to be paid so that the charging order could be cleared, and that a lessee who would probably be acceptable to the owners had been found. A further extension was requested so that these arrangements could be finalised.<sup>288</sup> Cater's reply to the solicitors pointed out that three extra weeks had already been given them to present their tender, but he agreed to a further short extension, until 26 July, during which the owners were to produce full written evidence that the intended rates payment and lease agreement had been finalised. On 31 July, he wrote to head office reporting that nothing had been heard from the solicitors or owners by the date indicated, and that the Crown's offer for the block had, therefore, been accepted.<sup>289</sup>

Under the Māori Affairs Act 1953, the Board of Māori Affairs was required to approve the Crown's purchase of the block, and this it did in early August 1968. The board

had been given a report on the land, describing it as 'swampy ground, rocky outcrops and poor soil'; it 'does not appear suitable for farming purposes and has been well cut over for timber'. The approval document stated that there were 1,053 owners, and that the block was to be included in the national park.<sup>290</sup> Eight 'major owners' (not including Mr Tatana) were later informed of the sale.<sup>291</sup> Urewera 2A2 was added to the national park in June 1969.<sup>292</sup>

In this way, as late as 1968, the last part of the Urewera block remaining in Māori ownership was alienated. Its owners had managed to retain it until this late date, but it had little economic potential and its loss was an outcome of its incapacity to support rates payments. This led to its vesting in the Māori Trustee and his decision to sell it. The desire of the Crown to acquire the block for addition to the national park was clearly an important element in the failure of its owners to retain it. The claimants allege that in this context the wishes of the Crown were allowed to prevail over the interests of the owners, and that the Crown did not support the owners in their desire to develop or even retain the land.

After carefully reviewing the archival and oral evidence available to us, we have reached a number of conclusions.

In the whole process of removing the land from the control of its owners and then alienating it from them completely, there are indications that the level of consultation between the Crown and the owners was unacceptably low. It is true that the owners were numerous, not resident on the land, and scattered far and wide, but it seems that little effort was made to communicate with them, either directly or through the Māori Trustee, on matters concerning the future of their land. This is apparent from letters received by the department, including the letter written by the solicitors acting for some of the owners, who said they lacked knowledge about the rates debt, the vesting in the Māori Trustee, and the intention to sell the block. As they said, had they known about all this they might have met other owners to discuss how to 'take over the block to keep it intact as tribal lands'. It is true that the officials did agree to extend the purchase tendering period by three weeks to permit such discussion, but this is not

a long period for the complex agreements and arrangements that were necessary. Later a second extension was granted, but it was very short indeed and unlikely to have been long enough for the required arrangements to be made and finalised. The attempt to notify owners of the sale process was limited to listing a few people to whom the tender information was to be sent, and these were not necessarily owners but just persons known to be interested in the sale.

One of the main grievances of Mr Tatana, the individual owner who made the greatest effort to prevent the loss of the land to outside interests, was that he was not kept fully informed about the progress of his purchase negotiations or notified of the correct procedure at a key point in the sale process. The course of action being followed by officials had changed, but he believed that the original discussions he had held with the department would still lead to his obtaining the land. Whether or not he was advised to ignore the tendering process and simply trust the department and its officers, as he testified, he was clearly frustrated by his dealings with the Crown and felt that his intention to purchase the land was undermined by delays, excuses, and a lack of official commitment to assist him. It was this that led him to appeal to the Minister. We are not convinced that the intention of Crown officials was to deliberately obstruct or deceive. Nevertheless, the lack of information and assistance to the owners as a whole, and Mr Tatana in particular, was clearly disempowering. A more proactive approach by the Crown in this situation would have given the owners a better chance to avoid the vesting and subsequent loss of their land. Instead, the vesting and tendering processes seemed unstoppable, and although the Crown did make some attempt to inform some owners and did give some owners the opportunity to buy the land, these efforts were limited and the time allowed for arrangements to be made was very short.

There are several points to be made about the processes followed by the Crown in this case. Concerning the tendering opportunities, the evidence is not complete or altogether clear, but it does show that Mr Tatana was made aware of the call for public tenders and was told he would receive the relevant information. In the case of the lease



offer, the Crown's own record makes clear that he was not sent the information as promised. In the case of the purchase opportunity, although the department took particular care to ensure that he was sent the necessary details, he said he did not receive them. Also, he testified that he was told that the tender notices about the sale were procedural only, and could be ignored. All this points to either inadequate or unclear communication. Furthermore, in Mr Tatana's view, the calling of public tenders was an unfair deviation from the process that had already begun. 'No consideration was given to any owner, including me', he told us.<sup>293</sup>

With regard to the tendering process itself, the owners were in principle able to participate but the cards were stacked against them under the tender structure adopted: the Crown was permitted to submit a bid that would always be \$10 higher than anyone else's. This was at odds with the promise to Mr Tatana (and confirmed by Cater to the Lands and Survey Department) that he would have an equal opportunity to purchase. As it happened, the precautionary second part of the tender was not needed because the Crown's tender was the highest anyway, but this is not the point. It is clearly an injustice that the Crown used a tender structure – devised by the department making a bid and accepted by the department deciding the outcome – that made it impossible for any other bid, even one from an owner, to succeed. The Crown was the preferred and inevitable purchaser. We agree with Dr Anderson that 'the government's offer was not in accord with an open tender process and would seem prejudicial to the owners.'<sup>294</sup>

After the tendering process had concluded, officials did allow a group of owners a last-minute opportunity to secure the land, but the time offered was very brief. In the event, for whatever reason, the opportunity was lost.

Although the Crown did engage with Mr Tatana and others concerning the future of this block, the officials of the time are open to criticism for not following better procedures for consulting with the owners. This deficiency in communication played an important part in the loss of Urewera 2A2 from Māori ownership, and the practices followed did not meet the standards required for the Crown's dealings with Māori.

There are other more fundamental issues at stake here, however. When all the evidence on Urewera 2A2 is considered, the conclusion we draw is that the Crown's desire to expand the Tongariro National Park was allowed to prevail over all other considerations, including the interests of the Māori landowners. Although the land in question was lacking in obvious economic potential, and the owners were not living on it, Mr Tatana and a few other owners were clearly doing their best to keep it in Māori ownership. Despite these aspirations of the owners, we can find little evidence that the Crown actively encouraged its officers to assist them; instead, it gave priority to its own objective of acquiring the land to add to the national park. This aim, of course, arose from the Crown's identification of national park expansion as important in the national interest – a matter we will pursue further below (see section 8.3.4(2)). Beyond that, the case of Urewera 2A2 and its acquisition by the Crown illustrates the problems arising from multiple ownership of land – problems that were painfully apparent by the middle of the twentieth century, although they were not specifically raised by the claimants in this case. Also, we note again that the sequence of events leading to the acquisition of the block was triggered by the issue of unpaid local body rates. As we said earlier in this chapter (see section 8.2.4(2)), we were not given enough information to make a full study of rating issues in the National Park inquiry district, but we point to the difficulty of raising revenue from multiply owned land with little economic potential. It is likely that the rating burden on unproductive Māori land was unfair, but we leave this issue for other Tribunals. However, the policy which led to the Māori Trustee having the power to sell or lease Urewera 2A2 to recover unpaid rates was in breach of the Crown's duty to actively protect Māori in their ownership of this land which they did not want to sell.

### **(2) Conclusion and findings**

It is obviously a matter of importance in the context of our inquiry that the Tongariro National Park came to occupy more than half of the land within our inquiry boundary. Much of this growth occurred in the twentieth century, after the completion of the initial establishment phase in

1907. By the year 2000, the national park was more than three times the size it had been at the time of the proclamation of 1907.

As the first national park in New Zealand, Tongariro holds an important place in the nation's history. It is a major symbol of environmental conservation, and is also a highly valued site for recreation and tourism. The creation and development of the park have always been considered a task for national rather than local government, and the Crown has, therefore, played an essential role in its history. During our inquiry, the Crown emphasised the extent to which its actions in this district were determined by the goal of preserving the mountains and surrounding lands as an inalienable public reserve. As we have explained, other objectives also played a significant role in Crown policies and practices in National Park, but we agree that the peaks and surrounding natural landscapes that dominate the physical environment also loomed large in the Crown's attitude to the district. It is not surprising that the aim of setting up and managing a magnificent national park was given priority in a region distinctive for its scenery and where, in the words of the Crown's closing submissions, most of the lands 'were not areas of permanent occupation or cultivation'.<sup>295</sup>

We hesitate to use the word 'policy' to describe the aims, intentions, and preferences guiding the Crown's actions in regard to the expansion of the park in the twentieth century – at least until the 1950s. There was certainly pressure, from both within the government and outside it, to extend the boundaries of the park and enhance its value for conservation, tourism, and recreation, but there was no consistent approach to how this might be achieved. Most of the accessions to the park came about in an ad hoc manner. Over the years a varying balance was struck between an exploitive view of resource use and a more conservationist outlook (and, within the preservationist approach, between utilitarian, aesthetic, and ecological or scientific motivations). Nevertheless, it was generally regarded as desirable that certain kinds of land should be reserved, and that if Māori land was needed for the achievement of this aim, that it should be acquired.

Dr Geoff Park points out that the 'core principles' of New Zealand's policies for protected areas (national parks and scenic reserves) have an important feature: they have developed around the exclusion of human habitation and the permission of only certain uses. These principles, he explains, demonstrate a certain cultural bias, reflecting European perceptions rather than Māori knowledge or the customary relationship of Māori with their land. As the years passed, underlying motivations changed somewhat, and preserving scenery for its own sake became less important from about the 1920s (though it is a focus that is still present). Nevertheless, the objective of scenery protection had had the additional valuable effect of preserving the indigenous flora and fauna of New Zealand from destruction and loss, which was important in light of a growing scientific and ecological interest in these matters. Throughout, the protection of nature by excluding human habitation and most uses has been a continued thread in the principles followed in Crown policy towards indigenous flora and fauna and the places where they are found.<sup>296</sup> The perceived need for State acquisition of land for conservation (and tourism), however, opened the door to Crown actions that limited the options available to Māori owners of land in areas desired for these purposes. The landscape required for the national park, says Dr Anderson in her report, was 'a landscape in which Māori had little place'; indeed, she says, Māori retention of the Ketetahi Springs, parts of Rangipō North, and other blocks within the park zone 'was viewed as an undesirable obstacle both to development as a tourist facility and to conservation'. Park development assumed that the Māori relationship with their lands and customary resources would be severed.<sup>297</sup> No mechanisms other than purchase were considered. Only from the 1970s, when the formation of the national park was largely complete, did Māori perspectives start to be taken into account, and the need for outright acquisition of conservation land begin to be questioned.<sup>298</sup> It was not until 1983 that the secretary for Māori Affairs, commenting on the Lands and Survey Department's draft general policy for reserves, indicated that Māori land should be purchased for this purpose

‘only in exceptional circumstances’; he suggested instead that it could be included in a reserve ‘on a leasehold basis, or under some sort of covenant.’<sup>299</sup> In earlier years, land was acquired for park purposes, or attempts made to acquire it, without any attempt to consult Māori owners or otherwise work with them on building up a national asset in a spirit of partnership.

While the idea of a national park to conserve the mountains, forests, and other landscapes in this part of the North Island is entirely admirable, our investigation of the park’s history has enabled us to assess the extent to which Māori of the district have been disadvantaged by the establishment and growth of the park that now exists on land they originally owned.

In the Crown’s incorporation of tracts of land into the national park, the twentieth century pattern differed somewhat from what occurred before 1907. The initial phase of the park’s establishment had been characterised, as we saw in chapter 7, by the acquisition of the peaks and the subsequent purchase from Māori of interests in the immediately surrounding lands. In addition, as we saw previously (see section 8.2.4(2)), two subdivisions of the Urewera block were obtained from their Māori owners in 1904 as survey awards. We have also noted how, within the park’s initial boundaries, three specific pieces of unpurchased land were in effect taken without compensation, because their status had not been properly ascertained. One of those, Rangipō North 8, was discussed in chapter 7. Of the others, we have ascertained that Ōkahukura 1A was eventually acquired by proper means. In regard to the alleged failure to pay for the portion of Ōkahukura 8M2 included in the park, however, we agree with the claimants and the Crown that more research is needed.

After the proclamation of 1907, the bulk of the land added to the park was not Māori-owned but rather Crown land that had originally been acquired for other purposes – from Māori owners of course, but not necessarily for inclusion in the national park. Even extension by this means was slow, with the main accessions taking place in the 1920s and 1950s. In the 1970s a considerable quantity of land that was added to the park – in fact nearly 20 per

cent of all additions in the twentieth century – consisted of land acquired in earlier years for the Rongokaupō and Pihanga Scenic Reserves. (These reserves are examined as case studies later in the chapter.) Some land that had been purchased by Pākehā was also acquired for the park, and finally, during a short period in the 1950s and 1960s, a limited amount of Māori land (from the Rangataua North, Raetihi, and Urewera blocks) was purchased specifically for the park.

To obtain land from Māori, the Crown gave consideration on occasions to taking it compulsorily, but after 1907 there were no instances where this actually occurred. There was no legislative provision for taking land specifically for the national park, and officials were reluctant to take it under the scenery preservation laws. Although certain lands were identified as desirable for addition to the park, few funds were designated for this purpose, and purchasing attempts were often unsuccessful. In the meantime, land could be restricted from alienation to private buyers. Nevertheless, it seems that this happened in only a few cases, and there is no evidence that the restrictions were imposed with a view to coercing or pressuring the owners into selling their land to the Crown for the purpose of adding them to the park. Even without such alienation restrictions, Māori land often remained of no economic value to its owners because they were unable to develop it, and eventually some blocks in this category were obtained for the park. For instance, it was the inability of Urewera 2A2 to support the payment of county rates that set in motion the process of alienation, thus allowing it to be incorporated into the national park. In some cases, timber milling did take place, which deterred the landowners from showing interest in selling until the resource was exhausted. Where Māori resisted Crown acquisition of their land, we saw no evidence that they objected to the park itself.

Some land previously acquired from Māori for defence purposes (in the Waimarino, Mahuia, Tāwhai North, and Rangipō–Waiū blocks) was later added to the national park, and in our chapter on public works takings we will consider whether the Crown had an obligation to consult

the former owners of these blocks before transferring them to another category of State-owned land.

In 1904, an official of the Department of Tourism and Health had noted that the taking of land for scenery preservation was likely to affect Māori land quite heavily because most of the scenic land in the North Island was Māori-owned. He nevertheless assured his Minister that ‘every precaution’ would be taken by the Native Land Purchase Department to protect Māori interests and avoid leaving owners landless.<sup>300</sup> Despite this, we saw no evidence that when acquiring Māori land for the park, the Crown considered the effects on the owners of that land. Later in the chapter, our case study of the Rongokaupō Scenic Reserve, which was eventually added to the national park, shows that land was acquired for the reserve in 1911 without much regard for the interests and wishes of the owners, who had vested their land in the Aotea Māori Land Board in the hope of economic benefit. The Pihanga case study, too, presents evidence that the owners’ economic aspirations were thwarted by the government’s pursuit of land for scenic purposes. Throughout the district, the government’s focus was on the park and scenic reserves rather than on the owners of the land affected, especially as few if any people resided in the park zone and the land in question was generally regarded by officials as of little or no commercial value. In our view, however, there was an obligation, as always, for the Crown to consider the impact of its acquisition of Māori land on the owners.

Later in the chapter (section 8.6), we will consider the overall consequences of land loss in the inquiry district, and give some attention to the effect of the creation and extension of the national park on the economic and social welfare of the former owners of the land on which it was established. At this point, however, we must examine the relative weighting given by the Crown to the interests of the nation on the one hand and the interests of Māori landowners on the other. In this section, we have shown that the expansion of the park was seen by the Crown as an important national objective, and we accept that establishing and extending the park was expected to benefit the whole national community (including Māori). Clearly,

however, it was possible that the Māori owners of land in the park region could be disadvantaged by the loss of this land to the Crown for park purposes. In a situation of this kind there is an inherent tension between the Crown’s right to exercise *kāwanatanga* and the Māori right of *tino rangatiratanga* – rights that must be carefully balanced. The appropriate weighting between these rights of the Crown and of Māori depends on the circumstances of each case.

In the case of the Tongariro National Park, we do not doubt that its creation and expansion, and the protection of its forests and ecologically significant areas from destruction, were regarded as being in the national interest. This does not mean, however, that the rights of the Māori landowners concerned could be disregarded. No land was compulsorily taken under public works legislation for the park, but we have seen that, in a number of cases in the 1950s and 1960s, the only period when Māori land was purchased specifically for the park, the Crown acquired such land against the wishes of the owners who were wanting to develop it economically. Urewera 2A2 is a particular case in point. The Crown’s communication with the owners fell short, at a number of points, of the standard required by the principle of partnership. Also, although the Crown did make some attempt to help these owners secure their land, its determination to acquire the block for the park led it to adopt a tendering structure that made it impossible for the owners to succeed in purchasing it from the Māori Trustee, in whom it had been vested. This was a failure to meet the obligation to act in good faith. A similarly heavy weighting was given to Crown objectives over owner interests when land was acquired for the Rongokaupō and Pihanga Scenic Reserves, but we will look at those instances in greater detail in the case studies below.

All in all, the Crown’s acquisition of Māori land for the expanded Tongariro National Park was implemented in ways that did not always reach the standards required by the Treaty. Only a limited amount of Māori land was for the extension of the park, and none was compulsorily taken, but the importance of the objectives being pursued in the national interest appears to have blinded successive

governments to the need to respect principles arising from the Treaty. Although the creation and expansion of the park was a laudable national aim, and the Crown was entitled to exercise *kāwanatanga* by pursuing that aim, it was still necessary to protect the interests of the Māori landowners concerned. It was also necessary to respect the principle of partnership by gaining the informed consent of the owners and seeking to involve them in the project of conserving the landscapes and natural phenomena of the region as a treasure for the whole nation.

In summary, it is our view that the legislation which enabled the Crown to acquire Māori land against the wishes of its owners was in breach of the principles of partnership and active protection and that, as a result of these breaches, Māori were prejudiced thereby.

#### 8.4 INDIGENOUS FORESTS

We turn now to the large areas of indigenous forest that surrounded the central mountains on all sides except the east. Our discussion does not go past the 1960s, since this is the period with which the submissions are concerned and for which evidence was made available to us. In considering the policies and actions of the Crown as they affected the forested lands of the district in the first seven decades of the century, we look both at alienated land and at land retained by Māori. First, we investigate Crown purchasing to see how the loss of the forest areas affected the people who sold them. As for forested lands that stayed in Māori ownership, we have already mentioned the impact of orders prohibiting private alienation, but will now examine in greater detail how these and other Crown actions and policies impinged on the use of forest lands by their owners. We evaluate whether these policies and actions were consistent with the Crown's Treaty obligations.

Much of this section is concerned with issues arising from the early twentieth century growth and development of an important timber cutting and milling industry in the area. An equally important development at the same time, or shortly afterwards, resulted in efforts to preserve the forest rather than cut it down. Both milling and

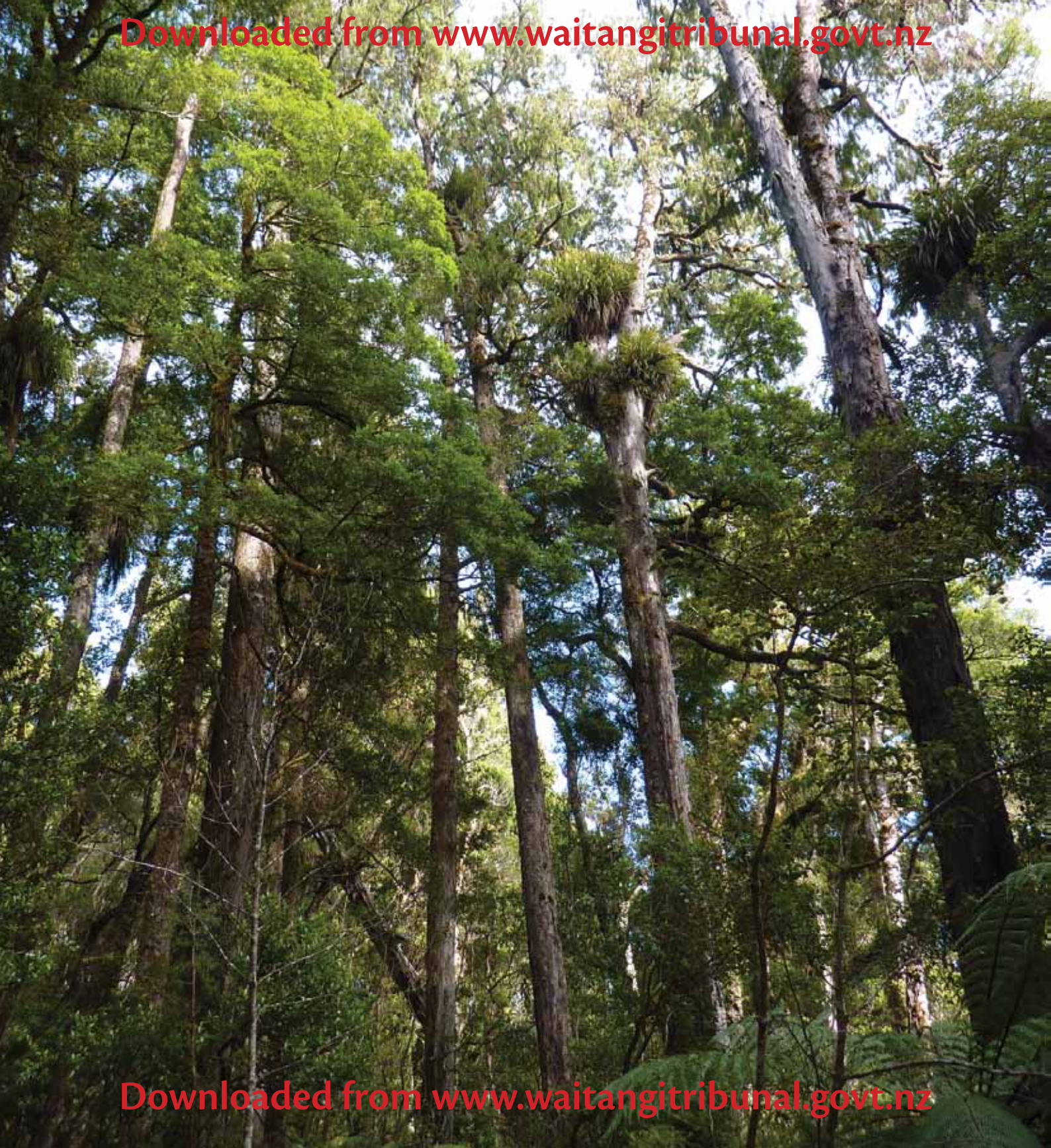
conservation had a significant impact on the owners of Māori land in our district.

##### 8.4.1 Claimant submissions

In generic submissions, counsel stated that the Crown's purchasing of Māori land in the district, and its restriction of land transactions, were motivated not only by its wish to acquire land for settlement, but also by its desire to have control of timber resources and timber milling, in the interests of resource conservation and scenery preservation. This was an important reason why restrictions on some blocks were imposed, and maintained for so long.<sup>301</sup>

Counsel for Ngāti Tūwharetoa submitted that the desire of the iwi to profitably utilise its extensive forestry resource was threatened by the Crown's programme for acquiring Māori land, including forest lands, to further its own objectives.<sup>302</sup> The alienation restrictions that were placed over many forested blocks had the effect of 'locking up' the iwi economy. The restrictions not only interfered with the private property rights of the landowners but also affected their livelihood.<sup>303</sup> In the case of forest resources that were available for utilisation, owners were given no assistance by the Crown to set up timber ventures themselves, and the Crown failed to protect their interests when they made arrangements with private companies.<sup>304</sup>

With specific reference to the northern lands that later became part of the Pihanga Scenic Reserve, Ngāti Tūwharetoa claimed that the owners were prevented from utilising their timber resources, which might have been an important source of income for them, because the Crown wished to preserve the forest for scenic purposes. Orders prohibiting private alienation (including leasing agreements) were imposed, despite the owners' protests, thus preventing them from putting their land to economic use and pursuing development opportunities. Preservation of the bush was considered to be in the national interest, and was a laudable objective, but the conservation aim was achieved at the owners' expense and cut across their right to utilise their property. There appears to have been no consultation with the owners about the issue, and for a long time no proposal of any alternative, such as leasing the land to the Crown or making exchanges (as



eventually occurred).<sup>305</sup> The case of the Downs brothers, who were prevented by proclamations from using their land (Ohuanga South 2B2) for several decades, despite their continued protests, is a notable example of this practice, and its use was ‘a kind of de facto scenery preservation law’.<sup>306</sup>

In detailed submissions on the Tongariro Timber Company (TTC), Ngāti Tūwharetoa said that, though the issues arising from the joint venture between the company and the Māori landowners were considered by the CNI inquiry, the matter also needed attention in the current inquiry because a number of National Park blocks were included in the agreement.<sup>307</sup> Reviewing the overall TTC story, counsel emphasised that the arrangement made between the landowners and the company was not merely a private commercial agreement, and hence outside the scope of the Treaty. Rather, it was a multifaceted iwi survival strategy and development plan, and one in which the Crown necessarily became involved from an early stage. Through a number of acts of omission and commission, the Crown was implicated in the eventual failure of the scheme and continuing problems for several years afterwards, which brought loss of income and loss of development opportunity to the iwi and the landowners over a lengthy period.<sup>308</sup> Counsel acknowledged that the timber on the land formerly subject to the TTC agreement was eventually milled but submitted that the failure of the original scheme came at a critical time in the iwi’s development.<sup>309</sup>

Ngāti Hikairo adopted Ngāti Tūwharetoa’s submissions and the generic submissions on forestry matters, and alleged that the Crown’s policies restricted or prevented the hapū from utilising their indigenous forest resources, specifically those located on various Taurewa blocks. The claimants submitted that the grievances arising from the TTC agreement were significant to them. The failure of the venture, in which the Crown was involved throughout, caused them disadvantage, hardship, and lost opportunity.<sup>310</sup>

◀ Indigenous forest in the south-west of the Tongariro National Park. Similar native forest covers much of the northern, western, and southern areas of the park.

As a final point, Ngāti Tūwharetoa emphasised that the lack of economic alternatives for Māori landowners regrettably resulted in the destruction of large areas of indigenous forest.<sup>311</sup> Ngāti Hikairo pointed to the Crown’s responsibility, by permitting timber companies to operate, for serious environmental damage to the forests and the traditional food resources contained within them.<sup>312</sup>

#### 8.4.2 Crown submissions

Crown counsel acknowledged that stands of indigenous timber were a valuable economic resource for Māori on whose lands they existed.<sup>313</sup> In the early decades of the twentieth century such lands began to be affected by an emerging Crown policy of conserving and managing the national indigenous forestry resource, and by a programme of Crown purchasing of forested land. Most of the Crown’s purchasing in the inquiry district was for the Tongariro National Park – that is, for the purpose of forest protection and conservation.<sup>314</sup> In response to charges that the Crown’s use of proclamations and other regulatory measures in respect of Māori forest lands were an unfair limitation of the rights of the owners of these lands, counsel submitted that Crown policy in this regard was soundly based. Its legitimate objective was to ensure long-term sustainable management and conservation of the national forest resource.<sup>315</sup> At the same time, Crown policy was protective of Māori interests in that it ensured that landowners received an equitable return and were not exploited by private interests. Counsel submitted that the extent of any economic loss suffered by Māori landowners as a result of Crown restrictions is unknown, as it is not sufficiently demonstrated in the evidence presented. Counsel submitted that regulation policies ensured that good timber prices could benefit owners later when their forests were logged, and permitted a transition from once-only native timber milling to an industry based on a renewable exotic forest resource.<sup>316</sup>

Counsel acknowledged that private logging and sawmilling enterprises engaged with Māori landowners within a general context of government regulation, but argued that such relationships were private commercial agreements. The agreement with the TTC was a business

arrangement of this kind, carrying commercial risks. It should not be regarded as an iwi development plan.<sup>317</sup> Counsel submitted that the Crown cannot be held responsible for the ultimate failure of the scheme.<sup>318</sup>

The Crown did not directly address the depletion of forest resources, but counsel submitted that it was unlikely that preserving the forests for traditional use could be reconciled with the owners' desire to utilise them as an economic resource.<sup>319</sup>

#### 8.4.3 Submissions in reply

Ngāti Hikairo submitted that the Crown had not sufficiently addressed the implications of its aim of regulating and controlling the timber industry. Such control enabled it to purchase forested land at less than a fair price.<sup>320</sup> In response to the Crown's submission that it did not engage in milling itself, Ngāti Hikairo emphasised the Crown's role in facilitating private milling and thus the loss of the forest resource.<sup>321</sup> These claimants disputed the Crown's view of its role in the TTC agreement, and emphasised the economic and social hardship that was suffered by the affected landowners as a result of the Crown's part in the failure of the venture.<sup>322</sup>

#### 8.4.4 Tribunal analysis

##### (1) *Crown policies for indigenous forestry in the district*

Bush clearance as a preliminary to farming was still an important part of the land settlement process at the turn of the century, and in the National Park district this was extensively practised on the south-western fringe, near Ōhakune. The advance of the main trunk railway fostered land settlement in this part of the district, and also, from the time of its completion, encouraged the rapid development of a commercial timber industry in the wider area, both within our inquiry district and beyond. The attention of timber millers turned to the extensive rīmu, tōtara, matai, miro, and kahikatea forests of the central North Island, including our inquiry district, and production from this area soon outstripped that of the declining kauri timber trade further north.<sup>323</sup> By 1907 there were three small timber mills just outside the south-western boundary of our district (at Ōhakune, Raetihi, and Mangaeturoa), as

well as three larger mills not far beyond the north-western extremity (at Kākahi, Piriaka, and Manunui). Others were expected to open before long at Ōhakune and Raetihi.<sup>324</sup>

As we have seen, there was extensive purchasing of Māori land in the National Park district in both the nineteenth and twentieth centuries, most of it by the Crown. Much of this land was under forest, and it was bought for a variety of reasons. Some was acquired for its perceived settlement potential (which would necessitate removal of the forest cover); some because its forest made it desirable for designation as permanent native bush, under the scenic reserves or national parks legislation; some in order to gain control of the indigenous timber resource as a national economic asset (a motivation that we will discuss shortly). But in all cases, the outcome was that such land was no longer available to its former owners to use for their own purposes. One effect of this was a reduction in their economic opportunities, which is an issue we will consider in a later section.

Nevertheless, many forested blocks in the district remained in Māori ownership, and from the beginning of the century owners who retained forest land showed interest in working with timber cutters and millers to benefit from this valuable resource. Logging enterprises and the owners of forested land were not entirely free to deal with each other without restriction, however, since dealings in Māori land had long been regulated by the Crown. Furthermore, the early twentieth century also saw increasing government intervention in forestry and timber matters specifically, which had a significant impact on Māori forest land in this district.

Despite the expression of fears, from the latter part of the nineteenth century, that New Zealand could run out of timber supplies, milling of indigenous forests in this and other regions was extensive throughout the early twentieth century. To avert a 'timber famine', there were moves – marked in the central North Island by the establishment of a State nursery at Whakarewarewa near Rotorua in 1898 – to promote reforestation with exotic trees. We will come to this in the next chapter, but here we are considering policies for conserving the remaining indigenous forests. Conservation policies recognised the value of forestry





Logging railway track and a locomotive hauling timber for the Taupō–Tōtara Timber Company. In the early 1900s, timber millers were drawn to work in the central North Island, where there were extensive areas of native forest. The completed main trunk railway, especially near the south-west corner of the national park, encouraged this commercial development.

cover for soil protection, water conservation, and rainfall control, and in the later nineteenth century this awareness had resulted in the setting up of forest reserves in various parts of the country for these purposes. As we have seen, this objective was strengthened around the turn of the century by a growing interest in scenery preservation and national parks. To these kinds of conservation motivations was now added a parallel aim of protecting the timber supply. In this early part of the century, there was

growing pressure from interest groups for addressing the timber shortage and halting the continuing loss of native forests.<sup>325</sup> Even with this intensifying advocacy, conservation proposals still had to compete against the priority given to the development of farming. As the Minister of Lands explained in 1916, an exception to the government policy of not felling the bush on Crown land was made if the area was suitable for settlement or contained valuable timber.<sup>326</sup>

The objectives of forest conservation included both protection and production, which were not sharply distinguished or mutually exclusive. The production objective was important until after the middle of the century when the permanent protection of indigenous forests overshadowed it as an aim. Conservation for production was focused on the management of forest utilisation, aiming for the regulated long-term use of forests as a natural resource. This kind of forest management worked towards a sustained yield of timber, and was seen in simple terms as the wise use of forests.

In the nineteenth and early twentieth centuries, safeguards against the unrestricted removal of native forest existed only for Crown land. Timber cutting on such land had long been regulated by means of licensing, which became royalty-based in 1885.<sup>327</sup> One way of extending the scope of official regulation was, therefore, to extend Crown ownership of forested land. For the rest, however, as the Minister of Lands stated in 1916, 'no restrictions [could] be placed on the rights of private or native land owners in the management of their lands.'<sup>328</sup>

Nevertheless, controls over Māori land had long existed, and these certainly affected the ability of owners to utilise any timber resources present on their holdings. Under the Native Land Laws Amendment Act 1895, private dealings in Māori land were permitted only if excepted by the Governor from the operation of section 117 of the Native Land Court Act 1894. The Crown's pre-emption rights, as stated in the Act, covered all alienations, specifically including 'any sale, lease, contract or other disposition'. The granting of timber cutting rights was an arrangement of this nature, and continued to be so after 1900 when new legislation required alienations to be approved by the Māori Land Councils (Māori Land Boards from 1905). The ability of Māori forest owners to deal with the timber industry was thus restricted, except of course when (as happened on occasions) the law was ignored and informal (illegal) arrangements were made.

Early in the century, timber milling interests began to dispute the inclusion of cutting rights in the restrictions against private dealing in Māori land. In 1903, this issue was discussed by parliament's Native Affairs Committee,

which examined several timber leases. Solicitors acting for GA Gammon had recently made an agreement with the owners of the Raetihi blocks (a matter we will examine shortly in our first case study). They told the committee that their client's leases were not contrary to the 1894 Act, since timber was a chattel and therefore could be disposed of by its owners without infringing any law governing Māori land.<sup>329</sup> The matter was aired in parliament itself, and as the CNI Tribunal pointed out, speeches made by the Māori members showed that while they were not opposed to Māori utilisation of their resources, they were supportive of Crown controls that protected Māori rights by preventing speculative, unfair, or destructive dealings in Māori land.<sup>330</sup> The topic came up again in 1905, when Tūreiti Te Heuheu appeared before the Native Affairs Committee. In contrast to the Māori viewpoint expressed in 1903, he essentially agreed with the argument of the solicitors. Reflecting the fact that the utilisation of forest resources was a very valuable opportunity for landowners in Ngāti Tūwharetoa's rohe, Te Heuheu asserted that all restrictions on how Māori landowners managed the sale of their timber should be removed.<sup>331</sup>

The restrictions remained, however, and section 211 of the Native Land Act 1909 clearly specified that 'alienation' included any 'contract of sale of timber, flax, minerals, or other valuable thing attached to or forming part of Native land'. In addition, as we have seen, specific lands could be subjected to orders prohibiting private sales or leases. The imposition of such orders on many blocks in this area, and the monitoring of all leases and agreements by the land boards (under the 1909 and 1913 Acts), along with the Crown's initiation of an extensive Māori land purchasing programme in this region in 1918, had important effects on the future of Māori-owned forests.

It was also at about this time that specific forestry-oriented restrictions began to be applied to Māori land for the first time – a development connected with changes in the government's forestry administration. A strengthening in this area of State activity had been advised by the 1913 royal commission on forestry, but the First World War delayed implementation of this and other recommendations. Urged on by the Forestry League (an interest



Sir Francis Henry Dillon Bell. A prominent politician, Bell believed strongly in forest conservation, becoming commissioner of State forests in 1918. In 1919, he initiated an attempt through legislation to control the sale and cutting of timber.

group founded in 1916), the government made important structural changes after the war. Early in 1918, ministerial responsibility for forestry passed to Sir Francis Bell. This prominent political figure was known for his interest in forest conservation, and now as commissioner of State forests he quickly took action in a strongly conservationist direction.<sup>332</sup> Bell told forestry officials in 1921 that their work was forward-looking and in the national interest:

We have got to be missionaries. We have got to show and prove that the principle of maintaining and establishing,

controlling and managing our forests is a matter of public concern.<sup>333</sup>

One of Bell's first initiatives was an attempt to continue the far-reaching controls of wartime. This resulted in early 1919 in an Order in Council under section 34(6) of the War Legislation and Statute Law Amendment Act 1918 requiring the approval of the Governor-General for all sales of standing timber and all licences for cutting it. The regulation was applicable (for the first time) to all land, including private and Māori land. Historian Tony Walzl states, however, that this provision was quickly found to be unworkable because its scope was too broad. Furthermore, he says, Māori Land Court officials believed that they already had 'a process in place which adequately inquired into all circumstances surrounding Māori land alienation including those related to timber.'<sup>334</sup> But, as we will see, it was not long before an effective forestry control regime proved to be feasible.

To further the Crown's forestry objectives, the State Forest Service was established. With its roots in the nineteenth century, the service was reconstituted in September 1919 as an entity administratively separate from the Lands Department. The new department began to devise an active programme of Crown involvement in forestry matters, including the management of forested Crown land and the regulation of the indigenous timber industry.<sup>335</sup> The service's revised administrative structure and its objectives were formalised in the Forests Act 1921–1922. Included in this legislation was a requirement (section 35) for the commissioner's approval for any timber cutting rights granted in respect of Māori land. However, this new provision does not appear to have been enforced consistently until the 1930s.<sup>336</sup> Nevertheless, its presence in the statute book can be seen as an important strengthening of the Crown's desire and ability to regulate the use of Māori-owned forests.

At that time, the market value of standing native timber was continuing to rise greatly, and Crown policy had to steer a course between permitting commercial utilisation of the forests and conserving what was increasingly recognised as a resource that would before long be exhausted.

Policy concerning forested Māori lands in the 1920s went in two directions: towards acquiring them for the Crown or, alternatively, controlling milling on them if they were retained by their owners.<sup>337</sup> Māori timber blocks in the National Park inquiry district were affected by both tendencies. The first director of forests, LM Ellis, strongly advocated putting as much forest land as possible under Forest Service control, for both production and protection purposes, and he succeeded in greatly increasing the amount of Crown land designated as State forest. He urged the government to acquire Māori forest land and deplored its sale to private interests; much less than he wanted, however, was purchased.<sup>338</sup> An early indication of the acquisition option was Bell's attempt in 1919 and 1920 to buy the interests of the TTC in forests in and near our inquiry district, and there were other moves in this direction later in the 1920s (see below). A forestry official told the Native Department in 1925 that the Forest Service 'strongly urges the acquisition of all forested Native lands to the south and west of Taupo.'<sup>339</sup> This desire to purchase forest lands, both those under the TTC agreement and those outside it, continued even after the government's purchasing initiative of 1918 (described earlier) petered out. It was hindered by financial constraints, however, as the prices offered were often regarded by Māori landowners as too low.<sup>340</sup>

In 1924, recognising the lack of progress made in purchasing forest land in the area, the Forest Service began to consider taking on the management of Māori forests for their owners (as provided for in the Forests Act 1921–1922), in order to forestall millers and speculators. The service believed that this action would be of benefit to the owners by bringing them better timber prices later.<sup>341</sup> Noting the activities of private interests in the area, an official wrote:

speedy action is advisable as the owners of the Māori forests near Taupō are very dissatisfied with the present state of affairs under which their lands are now under prohibition against private alienation. It may be stated that the bulk of the privately-owned forests in the Dominion is owned by Natives under Native Land Court titles. Sawmillers are gradually

absorbing these lands on tenures advantageous to themselves and to the detriment of the conservation of forest resources.<sup>342</sup>

No government action was taken at this time, however.<sup>343</sup>

In the following decade, the Forest Service turned its attention to regulation, and successfully resumed and extended its efforts to exercise control over the cutting of native timber on Māori land – efforts that had begun in 1918 but not been altogether effective initially. The resultant control programme operated until the 1960s.<sup>344</sup> One forestry official later explained this appraisal and valuation system as having originated in a desire to 'protect the Maoris from unscrupulous sawmillers.'<sup>345</sup> Some of those affected, however, saw it entirely as a conservationist move to protect the nation's forests and lobbied strongly in favour of landowners' rights. In 1931, for example, a solicitor representing forest owners in the central North Island wrote in protest:

It may be that the Government has decided that it is not in the interests of the country that the Natives should be allowed to dispose of their timber. This, of course, is a matter of policy, which is outside our purview

We have written you definitely on this point, because it appears to us that whether or not it be in the interests of the country that Native timber should be locked up, it is grossly unfair to the Native owners that they should be compelled to suffer.<sup>346</sup>

The new procedures for timber-cutting applications were introduced by the Forest Service in 1934. It was quickly apparent that the requirements for timber appraisals and royalty payments would be more rigorous and expensive for logging companies than they had been in the past, and opposition was expressed by forest owners and others.<sup>347</sup> The milling industry had felt hampered by Crown forestry policies even before this, when higher royalties and more rigorous quantity assessments had been introduced after the war.<sup>348</sup> The president of the Aotea Māori Land Board was now concerned that the new requirements would disadvantage forest owners

in his district, who were 'dependent, to a large extent, on the proceeds of their timber and the work they will obtain through the sale of it, for their means of sustenance'. He did not believe it would be 'either fair or equitable' to delay logging proposals by imposing unreasonable requirements. Furthermore, he worried that if a logging contract failed to be confirmed because the price offered did not match the government appraisal of the timber's value, there was a danger that 'the Native owners, or some of them, [would] simply go into the bush, "slaughter" the totara for posts, and in the end leave the bush valueless to any miller'.<sup>349</sup>

The commissioner of State forests, however, defended the policy as being 'in the interests of the native timber owners and of the general tax payer'.<sup>350</sup> Officials who were involved with Māori matters, especially at district level, were aware of the economic impact of Crown forestry policies on forest owners, but the Forest Service had different concerns. In Mr Walzl's view, there is little if any evidence that the Forest Service saw any need to consult Māori or consider their economic interests.<sup>351</sup>

By 1939, it was increasingly common for owners and their milling partners to circumvent the cutting controls, leading officials to consider imposing more rigorous ones.<sup>352</sup> Wartime needs then saw the introduction of Emergency Timber Regulations, controlling the sale of all standing timber and the production and distribution of sawn timber.<sup>353</sup> Even after the war, the proposed Forests Act 1949 maintained a high level of control over cutting on Māori land, by allowing the Minister of Forests to grant or refuse his consent to cutting applications (as before), or to partly grant or refuse his consent, subject to conditions.<sup>354</sup> The Māori Land Court judges in Waiariki were of the opinion that this system was an injustice to the Māori owners. They were concerned that the legislation ignored 'the fact that the timber on Māori land is owned by private individuals and not by the State'. They also saw the legislation as interfering with 'the proper functions of the Māori Land Court in safeguarding the interests of the Maoris with regard to their lands and the timber growing thereon'.<sup>355</sup> Such views failed to sway parliamentarians, however, and the proposed Act passed into law. When,

in 1951, Māori timber incorporations in the Taupō region requested an increase in their production quota, the Minister of Forests responded that the Crown's policy was motivated by a wish to conserve indigenous forests until exotic timber supplies were available in place of native timber.<sup>356</sup> This regime lasted until 1962, when the Māori Affairs Amendment Act removed the requirement for the Minister of Forestry to consent to sales of timber on Māori land.<sup>357</sup> The director-general of forests commented that it had indeed been anomalous that the requirement had applied only to Māori land.<sup>358</sup>

To sum up, Crown policy concerning native forests was directed, from the early twentieth century, largely at preservation. This was partly for the purposes of environmental conservation (whether for scenery preservation or for scientific and ecological reasons) and partly, until such time as exotic plantations came into production, to protect the timber resource which was perceived as being at risk of over-exploitation. This policy in turn translated into Crown action on two fronts – first, efforts to purchase Māori forest land where possible, and secondly, moves to regulate forestry on Māori land not purchased by the Crown.

Where Māori forest lands were lost to Crown purchase, any prospect of their generating further forestry income for the former owners clearly went too. We will come back to this issue later, when we discuss the sufficiency of Māori land and resources.

Where forest lands were retained by Māori, the regulatory regime – which was at its most rigorous from the 1930s until the 1960s – was seen by the Crown as also being protective of the Māori owners. The director of forestry told Ngāti Tūwharetoa in 1943, for example, that the Forest Service had sought to protect Māori interests by ensuring, by means of the appraisal system, that the owners received the full value of their timber. 'Over the last twenty years', he said,

the Forest Service has secured for you at least twice, if not three times, the value which you would have received for your timber had you carried on your negotiations with sawmillers by the old methods.<sup>359</sup>

This protective element in Crown policy towards Māori was nothing new, although we have seen in the evidence that in this case (as often happened) the owners did not always appreciate the Crown's involvement, since they saw it as infringing on their right to make free use of the resources they owned. Furthermore, in insisting until 1962 that the Minister of Forests give consent to sales of timber on Māori land (but not general land), the law was discriminatory. At the end of the section we will give further consideration to this inherent tension between protection and freedom.

**(2) *The effect of Crown forestry policies on Māori lands***

As explained above, Crown forestry policy did not at first apply directly to Māori forests, although under Māori land legislation the Crown had long been able to influence dealings between landowners and commercial logging and milling interests. We will now examine specific examples of the way Crown policies and actions affected forests owned by Māori in the National Park inquiry district. The long history of the agreement between the TTC, Māori landowners and the Crown looms large in this connection, and that is where we will begin. This relationship is by no means the only example of such dealings, however, and we subsequently go on to a wider consideration of matters affecting the owners of forest land within our inquiry district.

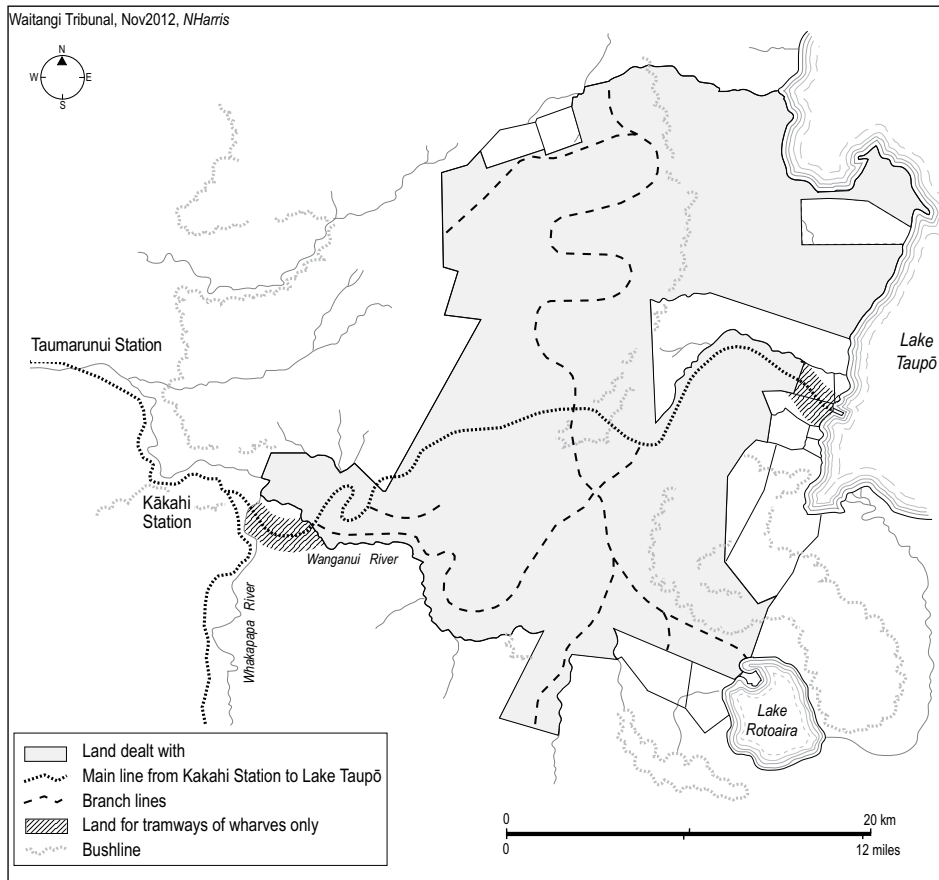
(a) *The Tongariro Timber Company*: The agreement made in 1906 between certain west Taupō Māori landowners and the TTC principally affected the Taupō inquiry district. It was, nevertheless, acknowledged by all parties in our inquiry that the agreement had some bearing on claims in the National Park inquiry district too. Participants in our inquiry sometimes expressed uncertainty about which land in our district was included in the TTC agreement, but it is clear that there were four National Park blocks involved. Any ambiguity arises from the differences between the various lists that emerged from the early discussions between the company and tribal leaders.

The earliest piece of relevant evidence we were given was a document signed by Tūreiti Te Heuheu and dated

12 April 1906, taking the form of an application from some 800 individual owners of certain Māori land blocks. They were described as representing 13 named hapū of Ngati Tūwharetoa. The applicants asked the Native Department for an Order in Council that would permit them to sell the land needed for building a 'tramway' from the new main trunk railway eastwards to Lake Taupō, together with any necessary branch lines. They explained that they lived beside or near the lake and were cut off from the main trunk line by 30 miles of inaccessible bush country. They now wished 'to open up their country', as the development of its resources was 'essential to them and their welfare'. If a connection was established between their settlements and the main railway line, 'all this country and all its resources, timber, flax and other produce would be thrown open to development to the enormous advantage of themselves, the District, the Railway and the Colony.' The letter clearly portrayed the proposal as an important development opportunity for the landowners (and also for the wider community). It stated that the land concerned had a total area of more than 180,000 acres, and identified 25 blocks situated to the south-west of Lake Taupō, extending west towards Taumarunui. The list included two blocks in our inquiry district – Waimanu and Taurewa.<sup>360</sup>

A supporting letter from the owners' solicitors endorsed the development objectives of the scheme: the tramway 'would enable our clients to utilise their lands to advantage and to obtain a revenue therefrom wherewith to maintain themselves and to educate their children.' The applicants' difficult economic situation was set out in some detail and the letter then went on: 'Their lands are now lying idle and must remain in their present unproductive condition unless opened up by railway or tramway.' Although the land had little farming potential, the timber and flax on it, if it could be transported out, would be of great economic benefit to them.<sup>361</sup> Some months later, in January 1907, another supporting letter gave further explanation of the scheme and its benefits, and described a detailed agreement that had been made with a 'syndicate of capitalists' (identified as the TTC) that would obtain cutting rights in exchange for royalties and the construction of a railway.<sup>362</sup>

In February 1907, the Native Land Court supplied



**Map 8.6: Lands of the Tongariro Timber Company**

the Native Department with details of the blocks (now stated to be 27, with an area of more than 125,000 acres) that would participate in the scheme. The schedule again included Waimanu and Taurewa, showing Waimanu to have an area of 8,200 acres and the three Taurewa blocks involved (4 West and 4 East A and B) to have a total of 28,860 acres.<sup>363</sup> There was no indication as to how the list of blocks was compiled, but as it turned out, the schedule did not yet represent a final record of which lands were subject to the agreement.

The process of gaining government approval continued in 1907. After a positive recommendation from the Maniapoto–Tūwharetoa Māori Land Board, the Cabinet

authorised the issuing of an Order in Council, in January 1908, permitting the sale of land for the railway. The schedule attached to this document again included Waimanu and Taurewa. It also, however, listed Taurewa among several blocks that were not subject to the provisions of the TTC agreement (although the named Taurewa blocks were affected by another milling agreement, as we shall describe shortly, and parts of them were to be traversed by the proposed railway). Also now appearing among the blocks subject to the TTC agreement were Ōkahukura 3, 4, and 6. The document gave details of the agreement and described the route to be taken by the railway and its five branch lines.<sup>364</sup>

Steps were then taken towards gaining approval of a timber cutting lease to be granted to the TTC. In March 1908, a letter from the company's solicitor supplied another list of the blocks affected: there were now 28 (approximately 130,000 acres in area), with Waimanu still included but the three Taurewa blocks omitted. The three Ōkahukura blocks were also listed: Ōkahukura 3 (473 acres), Ōkahukura 4 (2,362 acres), and Ōkahukura 6 (1,818 acres).<sup>365</sup> It was these four contiguous blocks that finally made up the area of land in our inquiry district that was subject to the agreement with the TTC.<sup>366</sup>

There was further discussion of the terms of the agreement, which was referred to the Native Land commission for an opinion. The commissioners, Stout and Ngata, reported later in 1908 that the original agreement had been signed by Māori who owned nine-tenths of the land in question; they found that the arrangements were advantageous to the owners and also in the public interest.<sup>367</sup> The commissioners provided a schedule of the blocks covered by the agreement; both this and an accompanying map again indicated that Waimanu and Ōkahukura 3, 4, and 6 were included. The map (on which map 8.6 is based) showed that the route of the proposed Kākahi to Taupō railway touched only the north-west corner of our inquiry district: soon after leaving Kākahi it crossed the Whakapapa River and traversed a corner of the Taurewa block (the portion where the Taurewa land development scheme would later be established). It then left the inquiry district by crossing the Whanganui River and entering the Whangaipeke block (where sites for a mill and a station were marked), before proceeding at length to Lake Taupō. Branch lines were also marked, three of them extending into the Waimanu and Ōkahukura blocks, and it was stated that strips of land would be bought along all these routes.<sup>368</sup>

A modified deed of agreement was finally signed by the TTC and the Maniapoto-Tūwharetoa Māori Land Board (now designated by legislation as agent of the owners) on 23 December 1908.<sup>369</sup>

The complex history of the relationship between the TTC, the Crown, and the Māori landowners of the south-western Taupō blocks was made available to us in Mr

Walzl's comprehensive report.<sup>370</sup> Detailed submissions on this matter were made to the CNI Tribunal, which gave them full consideration and referred extensively to Mr Walzl's information in its report.<sup>371</sup> Because of this, and also because only a comparatively small portion of the land covered by the agreement lies within the National Park inquiry district, we do not need to review this history in detail here. Nevertheless, issues surrounding the venture are an important part of the grievances brought by claimants in our inquiry, and the agreement did affect a considerable area of land in the north of the district. We therefore need to give the matter some attention, concentrating on how it impinged on our own inquiry district.

In simple terms, the TTC agreement involved the sale of timber cutting rights by Māori landowners to a private company formed specifically for milling in this area. In return for granting commercial access to the largely untapped timber resource in the district, the owners were to receive annual advance royalties and a 40-mile private railway link between Lake Taupō and the main trunk line at Kākahi. As we have seen, the iwi and hapū involved in the venture regarded it as a major development initiative for their communities, and the Ngāti Tūwharetoa leadership strongly promoted it. The scheme featured a new system for the payment of royalties – the 'hotch-potch' arrangement that would provide income shares for all owners throughout the life of the venture, rather than matching royalty payments to individual interests in the lands actually milled. As the CNI Tribunal noted, this joined the owners in something resembling an incorporation.<sup>372</sup> The company anticipated profits from an expected significant rise in timber revenue as the rail infrastructure made the cutting sites accessible and as declining supplies of alternative sources of quality timber pushed prices up.

The company soon struggled to raise finance for the venture, however. In recognition of the future development potential of the project, the landowners agreed to accept lower royalties, payment delays, and extensions of time for the building of the railway. The company negotiated the first such concession at the end of 1910, but it continued to experience difficulty in finding capital. More concessions were made by the owners in 1913 and





**‘The cutting’: Dug in the early 1920s, the cutting was for a railway that was to have connected Kākahi with Taupō. Māori landowners entered into an agreement to obtain royalties in exchange for timber cutting rights with the Tongariro Timber Company. The railway was never built.**

subsequently. By 1918, the agreement had been in existence for 12 years, with only one royalty payment made, no railway built, and no logging done.<sup>373</sup> In the 1920s, however, the owners’ patience began to run out, and moves were made to end the agreement and find an alternative. This proved to be a difficult task. The situation had been complicated in 1918 by the commencement of a government push to purchase interests in Māori land in the area, even in blocks subject to the agreement with the TTC.<sup>374</sup> Relevant here is the imposition of prohibitions against alienation, discussed earlier. In regard to the timber venture, this threatened to undermine the agreement between the company and the owners.

By 1927, the Māori Land Board was in agreement with Ngāti Tūwharetoa that the contract should be ended, since none of the owners’ expectations – for regular royalty payments, timber milling, railway construction, employment, and farming development – had materialised. Furthermore, their lands and forests had been tied up and were thus incapable of giving them any commercial benefit, and there was a heavy rates burden. Legislation in 1929 enabled the board to cancel the agreement early in 1930. Even this was not the end of the matter, for the rights of one of the company’s creditors, the Egmont Box Company, had been recognised in legislation. Negotiations between the board and this firm continued for another five years,

putting other arrangements for the timber lands on hold, until the owners were placed in debt by a payment of £23,500 made in 1935 to the creditor on their behalf. Ngāti Tūwharetoa challenged this in a long and ultimately unsuccessful legal action. Finally the matter was considered in 1951 by a royal commission, which confirmed that the owners were liable for the debt, or most of it.<sup>375</sup> Although much of the land and timber remained in the owners' possession, the long and sorry saga had delivered virtually no benefit whatever. For nearly four decades, moreover, they had been prevented, first by the timber agreement and then by disputes arising from its termination, as well as by government controls, from utilising their estate in ways of their own choosing.

The CNI Tribunal arrived at significant general conclusions concerning the TTC. We will mention these shortly when we discuss the Crown's involvement in Māori forestry activity generally. In the meantime, we will look more closely at how the TTC issue affected Māori land within the National Park inquiry district. We will do this as part of a wider consideration of other aspects of the Crown's influence on Māori forest ownership and utilisation in the district, including the questions of land purchase and forestry conservation policy.

(b) *The Taurewa block*: We did not receive comprehensive or systematic evidence about the dealings of Māori forest owners in our inquiry district – either with the Crown or with private timber logging and milling interests – but Mr Walzl's report, supplemented by information from other sources, has enabled us to explore many aspects of these relationships and some specific cases. The activity of commercial operators is not always fully documented in government records, but we were given a certain amount of information about this, and more about the Crown's intervention in forestry matters. Our consideration of this topic focuses on the four main forest areas in the inquiry district.

In the large Taurewa 4 block, which was the only part of Taurewa not sold by 1900, much of the land was covered in indigenous forest. Indeed, as we have seen, some parts of it were initially listed among the lands that were

to be included in the agreement with the TTC. As with the forests in nearby blocks that did become subject to that agreement, interest in milling the valuable Taurewa resource became evident soon after the turn of the century. Some owners were able to take advantage of this. In July 1905 and January 1906, for instance, some of the owners of Taurewa 4 West, 4 East A, and 4 East B entered into arrangements with Thomas Holden, by which he obtained timber rights in parts of these blocks for a period of 50 years. These alienations were confirmed by the Māori Land Board.<sup>376</sup> In 1913, a significant new participant entered, when the presence of kahikatea in the Taurewa blocks led the Egmont Box Company to acquire the cutting rights originally granted to Holden. This company had been founded in 1906, its shareholders being 60 Taranaki dairy cooperatives. Its business was the manufacture of butter boxes and cheese crates for the dairy products export trade, and it soon began its logging and milling operations in the Taurewa forests, taking timber from areas that were close to a batten factory it built at Kākahi.<sup>377</sup>

Before long, the Egmont Box Company decided to collaborate with the TTC, which had rights in forest land outside the National Park inquiry district (to the north of the Box Company's area). In 1913, the TTC had purchased seven acres in Taurewa 4 West D for the railway line it was required to build from Kākahi across the Taurewa land to its own area north of the Whanganui River.<sup>378</sup> In 1914, the two companies reached an agreement, under which the Egmont Box Company would pay for the construction of the first five miles of the company's railway line east from Kākahi and across the Taurewa lands. This would enable the Box Company to transport logs more easily from its milling area in the Taurewa blocks, and also assist the company to meet its obligation to build a railway across Taurewa and into its own forest blocks.<sup>379</sup> In 1914, the Egmont Box Company secured 60 acres in Taurewa 4 West D, which it leased for 50 years for the purpose of building a sawmill.<sup>380</sup>

Construction of the line began, and by 1916 the Box Company had spent £3195 on earthworks and tracks and £209 on bridging. Soon, however, the work was brought to

a halt by the war and also by expensive changes required by the Railways Department at the point where the line would meet the main trunk line.<sup>381</sup> In a further agreement with the TTC in 1919, the Egmont Box Company undertook to continue building the first part of the line from Kākahi, including a bridge over the Whakapapa, and to make payments to the TTC in return for permission to mill in the Whangaipeke block (across the Whanganui River and outside our district).<sup>382</sup> In 1921, the Box Company built a new mill at Te Rena on the Taurewa block and began to carry sawn timber on its bush tramlines to the Whakapapa River and out to Kākahi (when the river was fordable).<sup>383</sup> Finding that kahikatea supplies were smaller than expected, the company tried in 1921 and 1922 to interest the Forest Service in purchasing its cutting rights, but without success.<sup>384</sup> Milling of other timbers, however, continued at Te Rena until 1935, when the supply was considered exhausted.<sup>385</sup> This significant industry was mentioned by several witnesses in their evidence. Sonny Te Ahuru recalled that ‘hundreds of people used to live here . . . [There was] a big mill down the bottom of the flat run by the Egmont Box Company’.<sup>386</sup> John Manunui spoke of ‘extensive logging’ and the many employment opportunities provided by the extraction of timber and its milling at Te Rena and Kākahi.<sup>387</sup> We were not provided with detailed evidence about this activity, although Mr Manunui did comment that despite the opportunities, he thought the forestry operations worked more to the advantage of the millers than the landowners:

Even though a lot of timber was taken from their land, the people didn’t receive the full benefits. I believe that the Crown should have done more to regulate the activities of the timber companies and to protect the landowners.<sup>388</sup>

He did, however, single out one company for praise, saying it was ‘the only milling company trusted by the local Māori land owners’, and that it ‘offered the owners a good cutting price for their stands of timber’.<sup>389</sup>

Among other milling agreements made by Māori owners was the decision in September 1917 of the owners of Taurewa 4 West A to sell all the milling timber on the

block to the Kaupokonui Dairy Company of Taranaki, at £4 an acre, and to lease the whole block to the company for 42 years. In 1918, this block, like others in Taurewa, was made subject to a prohibition of alienation. At the company’s request the prohibition was lifted in respect of two of the divisions, allowing the Māori Land Board to confirm the leases and cutting rights. In this way milling activity was made possible for the company in agreement with the owners of Taurewa 4 West A3 (159 acres) and 4 West A4A (336 acres).<sup>390</sup> In another of the 4 West A blocks, A2 (235 acres), the owners sold cutting rights to the sawmillers Weir & Kenny in 1928 while prohibition was still in place. Revocation of the prohibition order was requested and initially declined, but after a second request succeeded the Māori Land Board confirmed a grant of timber and tramway rights to the millers.<sup>391</sup> A request for prohibition to be revoked so as to permit owners to grant timber rights was also successful in the case of Taurewa 4 West D6 and D9, in 1925.<sup>392</sup>

Extensive Crown purchasing eliminated the possibility of Māori forestry in much of the Taurewa area. Land in the largely forested Taurewa 4 East A and B blocks (more than 15,000 acres) was all alienated to the Crown between 1919 and 1944, the alienations all occurring by 1925 except for one small block. At the beginning of that period, the Crown also purchased more than 7,500 acres of the forested part of Taurewa 4 West.<sup>393</sup> Most of the area acquired in these three parts of Taurewa 4 (East A, East B, and West) became part of State Forest 42, which is now conservation land and known as the Tongariro Forest Conservation Area.

(c) *The Waimanu and Ōkahukura blocks*: The Waimanu block of more than 10,000 acres was another heavily forested area, and as we have seen, in 1908 it was included in the TTC agreement. Much of the Ōkahukura block, by contrast, was open country, but some parts did carry indigenous forest. Ōkahukura 3, 4, and 6, with a combined area of just over 4,500 acres, were forested blocks that came under the company agreement. In 1910, however, Inia Ranginui and others petitioned the Governor to ask that Ōkahukura 6 and certain other blocks be removed

from the agreement. At a meeting soon afterwards, Ranginui spoke against the agreement and expressed his wish as an owner to have the use of the land himself, but opposition to the agreement was rejected by Te Heuheu. In 1914, when a company sought to buy other lands covered by the agreement, Te Heuheu again defended the TTC scheme.<sup>394</sup>

Some of the other Ōkahukura blocks, not covered by the company agreement, were also in forest. In 1911, owners in Ōkahukura 8M2 were interested in selling part of the block. The Crown's offer, which was based on the low potential of the land for farming, was rejected in 1913 by the assembled owners as being much too low, in view of the valuable timber present on the land.<sup>395</sup> By 1917, two other blocks, Ōkahukura 1 and 5 totalling over 2000 acres, were subject to cutting rights, but the evidence contains no details about the agreements involved.<sup>396</sup>

When Crown purchasing in the district was being planned in 1918, the Native Department supplied a list of blocks in the area that 'appear to be unalienated, except that in certain cases the timber rights are affected'. The list included Waimanu and Ōkahukura 1 to 6 and 8M2, some of which were under the TTC agreement.<sup>397</sup> Waimanu 1 (335 acres) and 2 (9,960 acres) had already been put under orders prohibiting alienation except to the Crown, as part of the government plan to purchase in the area, and shortly afterwards the same was done in respect of all the Ōkahukura blocks that remained in Māori possession.

In December 1918, the native land purchase officer, Frank Acheson, reported that some owners in the wider area covered by the company agreement were very interested in selling their land, because they were tired of waiting for the company to commence its operations.<sup>398</sup> The only progress made by the company in Waimanu and Ōkahukura in this period was in 1922, when, after the Crown agreed to lift prohibition on the area sought, it purchased 16 acres in Waimanu 2 and 31 acres in Ōkahukura 3 along the route for a branch line of its railway.<sup>399</sup> Commenting on the company area generally, Mr Walzl points out that 'a significant resource that was supposed to supply a consistent source of income for many owners had not produced any of its potential'. With this disappointing

record in mind, it is perhaps not surprising that some owners would eventually want to offer their interests for sale – which provided an opportunity for Crown purchase agents even though they apparently did not initially target lands covered by the company agreement.<sup>400</sup>

In January 1919, Acheson proposed a way of enabling the Crown to buy blocks that were subject to cutting rights, essentially by valuing the land and the timber separately, the payment for the land to be made immediately and the payment for the timber to be made when any charges due to the holder of the cutting rights had been cleared. He mentioned, too, that the president of the Aotea Māori Land Board was supportive of Crown purchasing in the company area.<sup>401</sup>

It was not long before protests were received from the company and owner representatives, reminding the government about the agreement it had authorised and endorsed. It was not denied that some owners were willing to sell and were offering land, but this was explained as springing from urgent personal need. It was also pointed out that any sales of individual interests would be in disregard of the 'hotchpotch' provisions that made the timber the property not of individual owners but of all participants in the agreement. In March 1919, however, the solicitor general ruled that there was no legal impediment to purchasing in these circumstances.<sup>402</sup>

Crown counsel submitted to us that there is no evidence to suggest that the Crown's motive at the time was improper or in disregard of the owners' interests; he also said that acquiring some of the land from (willing) sellers did not affect the agreement as a whole, as any title acquired would remain subject to the company's cutting rights.<sup>403</sup> The CNI Tribunal concluded, however, that the Crown's view of its actions in 1919 was 'entirely based on commercial and legal considerations', taking no account of the rights of the owners to 'remain in control of their resource' or to pursue 'wider development objectives for their communities'.<sup>404</sup> It is not difficult to see that purchasing land from dissentient owners would have the effect of undermining the agreement worked out by the iwi for the benefit of its members.

Owners' meetings were held throughout the district in

1919 to consider selling, but those attending often wanted higher payments than the Crown was offering.<sup>405</sup> Acheson noted that Māori at Tokaanu and Kākahi were ‘badly in need of money at present, both for their personal needs and for purposes of stocking and improving their other lands’.<sup>406</sup>

In April 1919, the Native Minister instructed officials to go ahead with purchasing the three Ōkahukura blocks that were under the TTC agreement.<sup>407</sup> However, a meeting of the owners of Ōkahukura 6, more than half of which was in bush, revealed that only some were willing to sell. Land purchase officials recommended that individual interests be acquired, and by 1935 interests accounting for nearly nine-tenths of the area of the block had been acquired. The land was partitioned in 1936, with the Crown being awarded the larger portion, and further partitioning took place in 1949. The only portion remaining in Māori ownership was Ōkahukura 6A2 (126 acres).<sup>408</sup> In the case of Ōkahukura 3, which was mostly in forest, the owners were reported to be seeking money for a meeting house near Tokaanu. At their meeting in 1919, a majority resolved to sell at the government valuation of £3 10s an acre. Transfer to the Crown did not immediately occur, however: the interests of one owner were purchased in 1928, but the acquisition of the rest of Ōkahukura 3, or most of it, was not completed until 1948.<sup>409</sup> The forested portion of Ōkahukura 4 (about 500 acres, or half of Ōkahukura 4A), on the other hand, has remained in Māori ownership until today. The Ketetahi Timber Company was issued a cutting licence there after the Forest Service appraised the land in February 1918.<sup>410</sup> In Waimanu, owners wishing to sell their interests made approaches in 1920 and 1921.<sup>411</sup> By 1926, the Crown had purchased more than half of Waimanu 2, and the block was partitioned into seven divisions. The largest, Waimanu 2G, represented the interests purchased by the Crown. Purchasing continued in some of the other divisions and in Waimanu 1.<sup>412</sup>

The interests acquired by the Crown in Waimanu 1 and 2 by 1929 amounted to 5,776 acres, over half of the total area. In Ōkahukura 3, 4, and 6 the figure was 2,989 acres, or about two-thirds.<sup>413</sup> This was only a partial success, from the Crown’s point of view, although a higher proportion of

the land was acquired here than in the wider TTC area. Crown purchase efforts wound down in the early 1920s. In Mr Walzl’s opinion, failure to buy occurred to a large extent because the prices demanded were considered too high. Despite pursuing purchase for many years and despite ‘the widely recorded dissatisfaction of the owners and their supposed willingness to sell’, he writes, the Crown succeeded in purchasing only a quarter of the lands within the TTC area.<sup>414</sup> A government valuation report on the Waimanu blocks in March 1919 stated that about a third of Waimanu 1 and about half of Waimanu 2 were in millable bush, worth £1 an acre.<sup>415</sup> In 1920, however, a Forestry Department official estimated the value of the timber in the forested portion of the Waimanu blocks to be at least £30 an acre, compared to a land value of £1 2s per acre for the open country.<sup>416</sup> In 1924, the land purchase officer in the district was instructed not to attempt any more purchasing in the TTC lands.<sup>417</sup>

Te Heuheu and other iwi leaders later complained, in a letter to the Prime Minister, about the Crown’s purchasing activities in the TTC lands. In their view, the owners of the land had been forced to sell the land: the purchases had been made ‘at a time when our people were starving, having no means of subsistence’, and when large royalty sums owed by the TTC could not be recovered because, despite the protests of the iwi, legislation had prohibited any action against the company. The letter stated that the purchase efforts ‘only ceased when our Counsel expressed personally to Sir Francis Bell, then Commissioner of Forests, that such “purchases” were unjust’.<sup>418</sup> Not long before his death in 1944, Hoani Te Heuheu again referred to this undervaluing of the ‘Taupō Timber Lands’ in another letter he sent to the Prime Minister:

Briefly, sales to the Crown went through under a ‘nibbling’ process which undermined the resistance of needy members of the tribe at a period of great economic distress in this district. Owners accepted the Crown price under what amounted to undue pressure of their circumstances. That price was fixed by the Crown itself, without an open market, and the Legislature denied the people the protection of the Native Land Court.<sup>419</sup>

Although the efforts of native land purchase officials lessened, the interest of the State Forest Service in securing a stake in the forest resource of this area grew. Late in 1919, the commissioner of State forests (Bell) was giving consideration to a government purchase of the lands subject to the TTC agreement, or at least of the company's timber rights. The possibility was discussed for some months, but in the end the government decided not to make the purchase, for financial reasons.<sup>420</sup> The Forest Service took no more steps at this stage to acquire land or timber rights, but the idea remained alive. In March 1923, the director of forestry reported on the high value and 'unexcelled milling quality' of the TTC forests. When the company offered in 1924 to sell its interests to the government, both Lands and Forestry officials acknowledged that such an acquisition 'would be greatly to the advantage of the State'; the money could not be found, however.<sup>421</sup>

On blocks unaffected by the TTC agreement, owners were able to deal with logging and sawmill operators, though always only with government approval. In 1928, for instance, the owners of Ōkahukura 8M2C (near Ōtūkou) reached an agreement with a sawmiller who planned to build them a mill and work with them in cutting and milling the timber on the block. Soon afterwards, the block was partitioned and the Crown was awarded a large part of it. On the advice of the Native Department, the owners of the remaining land set up an incorporation over 8M2C2C (1916 acres), and successfully applied for the prohibition of alienation to be revoked. The cutting rights were granted to a different sawmilling operation (Bishara & Simpson). Bishara and the associated Ōtūkou Timber Company milled there for some years. The owners of nearby Ōkahukura 8M2B3B asked for the revocation of the proclamation affecting their land, and were supported by the Māori Land Board on the grounds that otherwise the timber might be cut illegally to the detriment of non-resident owners.<sup>422</sup> Initially the request was declined, leading one of the owners to write to the Prime Minister asking him to enable them 'to cut the timber to provide for ourselves, our children, and grandchildren.'<sup>423</sup> Some months later the order was revoked, and Bishara was soon milling on this block too. We were not given detailed evidence

about the history of these and other such leases, but it is clear that they brought in valuable income and employment opportunities. When the government gave consideration in 1938 to purchasing these blocks for the national park, it found that the owners' perception of the timber value made the price for the land unacceptably high. Officials were unwilling to risk an outcry by taking the land compulsorily.<sup>424</sup> Another block leased to a sawmiller was Ōkahukura 8M2C2B1 (233 acres), over which one KR Kapoor took a 42-year lease at two shillings an acre in 1931.<sup>425</sup>

Mr Walzl writes that as the TTC agreement 'sourred and increasingly frustrated the landowners during the 1920s', some of them sought to use the timber themselves.<sup>426</sup> Waimanu 1 was affected in this way, and in 1925, apparently at the request of some of the owners, an injunction was put over the block to prevent other owners from cutting or removing timber for sale. In 1926, the TTC itself complained of unauthorised cutting by two Pākehā on Waimanu 2, and later took steps to stop it. The resultant investigations revealed that cutting activity by various people was still going on in Waimanu despite the injunction.<sup>427</sup> It seems also at this time that some owners who had sold their interests to the Crown believed that they had sold the land only, and should still be paid royalties for the timber. The government assured them that this was a misunderstanding of the position.<sup>428</sup>

In 1929, it was reported that some of the owners of certain blocks (in Waimanu and in two others outside our district) were again about to cut and sell timber, despite the illegality of this under the TTC agreement and its unfairness to the other owners under the hotchpotch arrangements.<sup>429</sup> When the owners planning this action were given a warning, one of them, Inia Ranginui, wrote to tell the Native Minister that the cutting by the owners was necessary 'to enable them to live', as the TTC royalties had not been paid.<sup>430</sup> Later that year, another report referred again to these activities, this time also mentioning land in the Ōkahukura block; it was stated, however, that after being warned most of the owners concerned had stopped taking the timber. Where owners had persisted, the products of their labours (mainly railway sleepers and

fence-posts) had been seized, upon being brought out of the bush.<sup>431</sup>

When the TTC agreement was finally terminated in 1930, there was discussion of what policy to adopt in respect of the lands involved. In recommending the termination, the Native Affairs Committee had stated that it was desirable for the Crown to acquire the land and timber, or to devise a joint scheme for managing them.<sup>432</sup> The owners were generally not in favour of selling the land, but offered the timber rights at £20 per acre. The government was not prepared to pay that much, but offered £500,000. This was less than a fifth of what the owners had asked for; later they said they would accept £560,000, but the negotiations went no further at this time.<sup>433</sup> The Forest Service was still interested in the prospect of acquiring the forests, however, pointing out in 1935 that the owners were impatient to use the resource and were discussing timber rights with millers (and damaging the bush in the meantime by splitting timber for posts). Officials considered whether the existing alienation prohibitions could be relaxed to permit logging in defined areas, as the owners wished, or whether the land could be acquired as State forest for future harvest or conservation. Resolution of the issue was delayed by the ongoing legal proceedings concerning the TTC. In the meantime, the Crown maintained its restrictions on alienation.<sup>434</sup> Owners of land affected by this stalemate, for example Ōkahukura 4A and Waimanu 2F, were told by the Native Minister that they could not yet cut their timber.<sup>435</sup> The Prime Minister acknowledged, in a letter to the Governor-General in 1934, that the forest owners had been 'unfortunate in that the valuable timber assets held by them have been tied up to the Company for over twenty years to the detriment of their social and physical welfare.'<sup>436</sup>

Greater opportunities became available later. Although an injunction was placed on Waimanu 2D in 1939 to prohibit the cutting of timber there, and the owners' appeal against this in the Supreme Court in 1940 did not succeed, the situation had changed by 1941 when they asked the Native Minister to have the alienation restriction removed. Now that Ngāti Tūwharetoa's case in the Privy Council concerning the TTC had been lost, officials saw

no reason to maintain the restriction: it was lifted in 1944 and an agreement in respect of one of the subdivisions was subsequently made with the sawmillers Weir & Kenny.<sup>437</sup> Meanwhile, in 1942, it was decided that there was no point in keeping a restriction on Waimanu 2G.<sup>438</sup> A little later, in 1946, no objection was offered to a request from the owners of Ōkahukura 4A to have the alienation restriction lifted so that they sell their timber to the Ketetahi Timber Milling Company. It was understood that the owners wanted to use the income from the timber rights to build new homes.<sup>439</sup>

In the early 1940s, officials were discussing the future of the forest lands in the region – not just the blocks that had been subject to the TTC agreement but also the whole forested area to the west and south of Taupō, consisting of Crown land (including State forests), Māori land, and Māori land in which the Crown had acquired a predominant interest. The under-secretary of lands told his Minister in 1940 that he, as well as the Native Department and the Forest Service, were anxious 'to see that this country, containing as it does the largest Native forests remaining in the North Island, is dealt with in a manner which will prevent any waste of its natural resources'. He wanted to 'ensure that it is properly divided into milling areas, reserve and protection areas, settlement and land development areas etc'. He went on to express the concern of the three departments that the land might be alienated to private milling operators:

It is of the utmost importance that the acquisition of interests from the Natives by sawmillers and others should be discouraged, and I should like to have your approval please to the Native Department being asked to take whatever action is possible under the present circumstances to prevent or delay the granting of milling rights over Native lands within the region.<sup>440</sup>

At this time, forestry officials wrote other letters conveying their concern about the increasing likelihood that the TTC forests would be destroyed by milling.<sup>441</sup>

The Crown's lack of success in purchasing the land made continued maintenance of the alienation prohibitions

difficult to defend in terms of their original justification, but the restrictions provided interim protection of the forests against premature destruction, and Crown purchase attempts had not ended yet. The government was aware that forest owners were negotiating with millers, which the Forest Service feared would result in destruction of the forest, ruin of the land, and exploitation of the owners, who would benefit only briefly.<sup>442</sup> In 1943, the government decided to start negotiations for purchase. This followed the recommendation of the director of forestry in respect of forest lands in the west and south Taupō regions: although their acquisition would facilitate farming development in ‘those areas which are capable of successful settlement’, it would

mainly provide for controlled milling practices whereby the best use would be made of the forest, not as in the past for the quick and wasteful exploitation of its wealth, but for its wise use in perpetuity combined with the retention of the full conservation value of a most vital area.<sup>443</sup>

The Crown’s offer in 1943 to purchase the lands formerly under the TTC agreement was declined by Ngāti Tūwharetoa, and the iwi looked for an opportunity to free their lands from restrictions and to use the forestry resource themselves.<sup>444</sup>

Mr Walzl commented on this development:

In the face of continuing pressure from officials to give up the management or ownership of their forest resources, Ngāti Tūwharetoa needed to find a workable solution to achieve benefit from their timber resource but in a way that did not encourage unnecessary or unwanted Crown intervention. The creation of Incorporations to utilise the timber resource would prove to be the answer.<sup>445</sup>

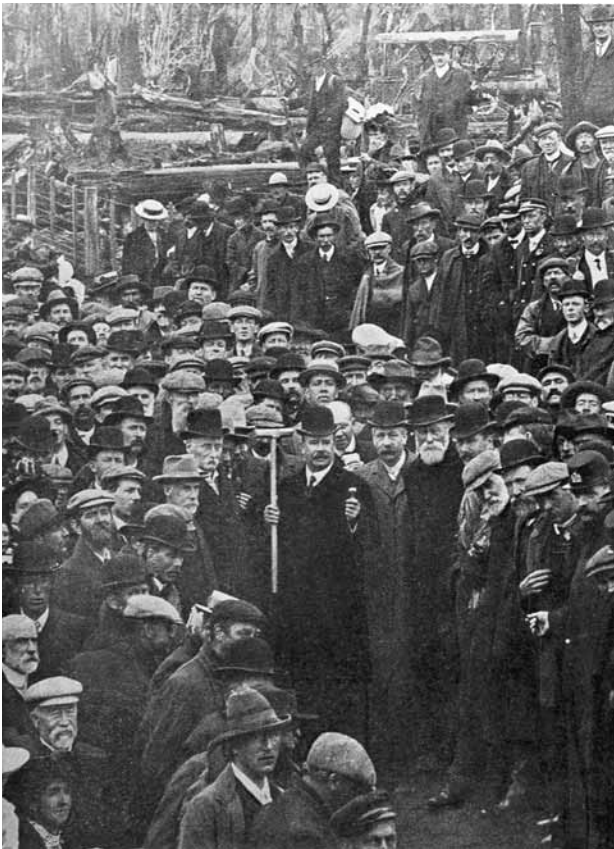
The iwi’s timber incorporations, beginning with Puke-tapu 3A (which lies outside our inquiry district) in 1944, enjoyed considerable commercial success in the 1950s and 1960s, despite continuing attempts by officials to control timber production on the blocks.<sup>446</sup> In this way, as Mr Walzl noted, Ngāti Tūwharetoa had regained control of

their remaining Tongariro timber lands and were ‘utilising them for the benefit of owners in accordance with the desires they had expressed fifty years earlier’, when the TTC scheme was devised.<sup>447</sup> We were given very little information, however, about the extent to which the timber incorporation model was adopted in the National Park district. In 1947, the owners of Ōkahukura 6A (230 acres, but soon reduced when the block was partitioned) were among 15 groups to form incorporations (under section 382 of the Native Land Act 1931) in Ngāti Tūwharetoa’s forest area.<sup>448</sup> The Ōkahukura 6A2 incorporation granted cutting rights to the sawmillers Weir & Kenny in 1960, but it was wound up in 1968.<sup>449</sup> In 1954, the owners of Waimanu 2A (1003 acres) were also constituted as an incorporation, but in 1970 this too was wound up.<sup>450</sup> Incorporations do not appear to have played an important part in Māori utilisation of the indigenous forestry resource in this inquiry district.

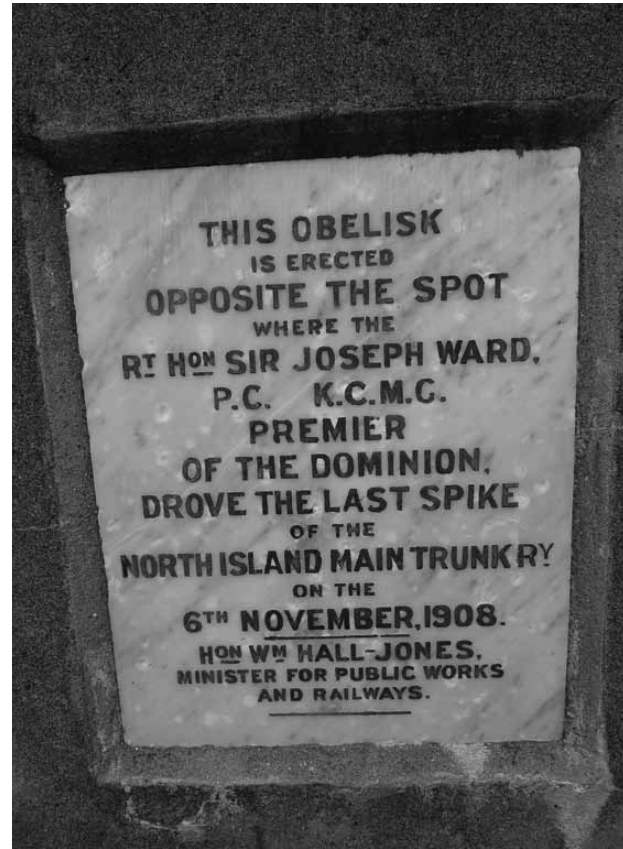
(d) *The Tokaanu, Waipapa, and Ohuanga blocks:* In the Tokaanu, Waipapa, and Ohuanga blocks, or the parts of them that lie within the National Park inquiry district, much of the land was in forest. The logging potential of the area was well known in the early decades of the century, but in many cases the Crown’s desire to conserve the forest stopped the owners from using their timber resource. In 1920 and 1921, a number of injunction orders were issued, prohibiting the owners of specific blocks from cutting or removing timber for the purpose of sale.<sup>451</sup> In the main, however, the prevention of milling was achieved by means of alienation restrictions and Crown acquisition by purchase or exchange. In 1931, for example, a proposed agreement between a miller and the owners of Ohuanga South 2F and 2G went no further when the Native Department pointed out that an alienation restriction was in force (and explained that its purpose was to preserve the forest).<sup>452</sup> In the 1950s, requests for the restrictions to be lifted were still being received.<sup>453</sup> One such approach was made because the owners believed that the Crown was ‘not likely to pay ruling rates’ and that it would be to their benefit to sell the timber privately.<sup>454</sup>

Much of the forest land in these blocks was acquired by





Prime Minister Sir Joseph Ward preparing to drive the last spike of the North Island main trunk railway, Manganuioteao, 6 November 1908. Following the completion of the railway, the timber industry sustained considerable growth in the area around Manganuioteao.



Obelisk commemorating the driving of the last spike of the North Island main trunk railway, 6 November 1908

the Crown for the Pihanga Scenic Reserve. We will make a detailed examination of the experience of owners in this area later in the chapter, in our Pihanga case study.

(e) *The southern blocks*: The southern sector of the National Park inquiry district was another heavily forested area. Of those block areas lying within our inquiry boundary, no parts of Rangiwaea or Waiakake remained in Māori ownership by 1900, and very little of Waimarino. The whole of that part of Urewera within the boundary, however, was as

yet unalienated, as was much of Raetihi and a small part of Rangataua North.

The arrival of the railway, and its completion in 1908, brought a rapid expansion of the timber industry in this area. To add to the three small mills we have already mentioned as being in existence by 1907, Wilson's mill opened at Rangataua in 1907, Gammon's at Ōhakune in 1908, and many others in these areas and at Horopito in the years following.<sup>455</sup> During the first decade of the century, the owners of forested Māori land in this part of our district



Gamman's sawmill, Ōhakune. The sawmill, which opened in 1908, was one of an influx of new timber mills that sprang up in the area about the time the railway was completed.

arranged a number of timber cutting leases with sawmillers. Gammon & Company were able to secure cutting rights on some of the Raetihi blocks at rates that were comparatively low (which was explained at the time as being due to the lack of good access, since the railway was still incomplete). Professor Michael Roche, an eminent historical geographer who has written extensively on the history of forestry in New Zealand, makes a comparison of the royalties paid in the Raetihi area on Crown land, on which controls were exercised, and on Māori land, where

they were not: to him the figures 'suggest that at least some sawmillers had succeeded in negotiating contracts with various groups of Māori landowners at lower rates than were available from the Crown.'<sup>456</sup>

Between 1907 and 1911, leases were taken out on all the blocks in the lower (forested) part of Urewera, except on one that was purchased by Bennett & Punch in 1908. The lessees were various sawmilling enterprises, including Bennett & Punch (who bought two more of the blocks in the 1920s); they or their successors were still holding the



Horses transporting timber on a bush railway near Ōhakune, 1909

leases in the 1950s.<sup>457</sup> Some of the cutting arrangements are mentioned later in our case studies of the Raetihi lands, where we discuss the conflict that developed between the owners' plans to utilise their forest resource and the government's wish to preserve the bush in the interests of tourism and conservation. Although the owners' development aspirations in this area were obstructed in several instances by moves to create scenic reserves and extend the national park, logging and milling agreements were made on many of the blocks.

In addition, in some blocks interests were purchased by private buyers intending to conduct logging operations. As mentioned above, the sawmillers Bennett & Punch purchased Urewera 1C6 (662 acres) in 1908, and Urewera 1C4 and 1C5 (1,124 and 331 acres) in the 1920s.<sup>458</sup> JM Wells, who was connected with the Matipo Land and Building Company, acquired interests in Raetihi 5B1 in 1919 and 1922.<sup>459</sup> At about this time the same purchaser also secured all the interests in Raetihi 5B2, after offering the owners twice what the Crown was prepared to pay, and acquired



Climax locomotive 898 hauling logs in the bush near Ōhakune. Rail was another means of transporting timber in the early 1900s.

Raetihi 5B4 as well.<sup>460</sup> Much later, in 1955, the Horopito Timber Company purchased Urewera 1C1 (1,261 acres) and 2E (254 acres).<sup>461</sup>

Dr Robyn Anderson's view is that for financial reasons and an 'unwillingness to deal with the complications of multiple owners and timber leases', the Crown took no steps for several decades after the passing of the Tongariro National Park Act 1922 to add land in the Urewera blocks to the national park.<sup>462</sup> The existence of valuable timber on this land, she says, led the government to permit milling by timber companies to continue.<sup>463</sup> Not until the

1950s was there a change of direction, signalled by efforts to acquire Māori-owned Urewera forest land (some still under lease to timber companies), and also land in the possession of the companies themselves.<sup>464</sup> Even when land leased by the Horopito Timber Company was acquired, it seems that the company was able to continue milling on it for some years.<sup>465</sup> In our earlier section on Crown acquisitions in the Urewera blocks for the national park, we gave other examples of these arrangements that allowed the extraction of timber to continue until it was completed. This also occurred in the case of Rangataua

North 2B2B. As outlined in our discussion of the extension of the park, a low valuation was first made for this land; it was rejected by the owners until a better offer was made in 1956. Raetihi 5B1A, too, was still in Māori possession in the 1950s, when the owners showed interest in benefiting from the timber on it. A government assessment of the timber value was acknowledged by forestry officials as being lower than what could be obtained in the open market.<sup>466</sup> It was some time before the owners secured a more advantageous arrangement.

In the southern blocks, and indeed in all parts of the National Park district that we have considered here, the high proportion of forested land meant that Crown forest policies significantly affected Māori landowners. While some found it possible to put their forest land to profitable use, others were prevented from doing so. We will present our conclusions about the effects of the Crown's forest policies at the end of this section.

### ***(3) The effect of the Crown's exercise of governance over forests on the rights of Māori landowners***

As we have seen, Crown policies in regard to indigenous forests affected Māori landowners in the National Park district in a number of ways. The policies often resulted in limitations on the owners' ability to freely utilise the timber growing on their land. Claims were made to the Tribunal that these restrictions were imposed for the Crown's own purposes and, as well as disadvantaging landowners economically, were an infringement of the ownership rights guaranteed to Māori by the Treaty. The Crown's response was that its forestry policies were intended to secure legitimate objectives in the national interest and were also protective of the specific interests of Māori forest owners.

The restrictions complained of were imposed by the Māori land administration, through the requirement for Māori Land Board approval of alienations, and also by means of orders prohibiting private alienation of Māori land (including the sale of timber cutting rights on the land). Later, too, the Forest Service restricted forestry operations by means of its processes for monitoring and regulating the utilisation of indigenous forests on Māori

land. We need to consider whether these efforts of the Crown to restrict and control the disposition of Māori forest land were justified.

The acquisition of land (including forested land) for settlement was still on the government's agenda in the early decades of the century, and it seems that in 1918 the potential for settlement and farming was a factor in the Crown's use of prohibition orders as part of its efforts to purchase land in the northern part of the district. This goal quickly faded away, however, and later was not prominent at all in the district.

There was no requirement for the Crown to state its reason for imposing or renewing particular prohibition orders. However, as a mechanism for exerting power over the present or future ownership or use of Māori land, including forest land, prohibition was obviously of value to the Crown. Claimants argued, with some justification in our view, that an important reason for the imposition and prolongation of alienation restrictions was to enable the Crown to pursue its own goals, which was done at the expense of the owners of the land. In the case of the specifically forestry-oriented controls applied to Māori timber land from the First World War onwards, the restrictions were clearly intended to advance the Crown's national forest policies. It was only in the final years of the indigenous timber industry, in the 1950s and 1960s, that a lessening of the controls permitted an increase in the utilisation of the Māori forestry resource.

We accept that the government's forestry objectives were legitimate. It was important to conserve the national timber resource, and forest cover also had an acknowledged value for soil protection, water conservation, and rainfall control. The related goals of preserving natural landscapes for scenic reserves and the national park, which would have the additional benefit of contributing to the national economy through tourism, are likewise justifiable. It was very difficult for a long time for forest conservation policies to make headway against New Zealand's scarcely questioned drive for bush clearance and farming development, or to hold back the influential timber interest. Nevertheless, there were strong arguments in favour of conservation, especially when it was seen as a

nationally important objective. Alick Poole, the director-general of the Forest Service, commented on this in 1969:

Forests are of such importance in land use, and are normally such a permanent form of land use, that in forestry more than in most spheres it is necessary to adopt the principle of the greatest good for the greatest number of people, and to over-ride or control, where public needs demand it, the desires of the individual owner.<sup>467</sup>

By their very nature, policies that restrained the exploitation of natural resources were likely to conflict with the wishes of those who owned those resources or could profit from using them. In our inquiry district, in the conflict between the development goals of Māori forest owners and Crown objectives for the region and nation, the latter usually prevailed. Some owners did manage to profitably utilise their forested blocks, but others were prevented from doing so by the Crown's restrictions, imposed in the national interest. In such instances, the Crown's aims were pursued at the expense of the rights of the Māori owners of forest lands. This was done despite the owners' protests that it was unfair, and on occasion the Crown's own Māori land officials also described the forestry policies as unjust.

The Crown argued, however, that this view is 'overly simplistic'.<sup>468</sup> In the Crown's view, it should not be overlooked that legitimate and important national interest objectives existed, that the policies benefited the Māori owners in several ways, and that contemporary dissatisfaction with the restrictions partly reflected the self-interested complaints of the powerful sawmilling lobby. We point out, however, that although criticism of the forestry restrictions did come from the timber industry, concern was also expressed by the Māori land officials who were required to monitor transactions affecting Māori interests. As for the national interest, we have already stated that we regard the Crown's national objectives as legitimate and very significant in this issue.

We are also aware of the protective dimension of the Crown's policies. Under the Treaty the Crown was obliged to provide active protection of Māori rights and interests. We acknowledge that Māori land law did indeed have a

protective element where forestry was concerned, as seen in the monitoring of alienations, leases, and timber cutting agreements by the Māori Land Court and Māori Land Boards, and we have mentioned the operation of these mechanisms several times. A protective role was also played by the forestry control system that operated from the 1920s and which the Forest Service clearly believed was able to shield Māori forest owners from the actions of any unscrupulous logging and milling operators. We have quoted, for example, the statement of the commissioner of State forests in 1936 that the Crown's forestry policy served both the national interest and the interests of Māori timber owners, and the assurance given to Ngāti Tūwharetoa in 1943 by the director of forestry that the successful aim of the Forest Service's appraisal system had been to protect Māori interests by ensuring that forest owners received the full value of their timber.

By their very nature, protective measures were paternalistic. They also tended to inhibit Māori entrepreneurial aspirations. This inherent tension between protection and freedom has existed since 1840. The claimants in the National Park inquiry were more conscious of the restrictions imposed by Crown policies than appreciative of the protection they offered, but in our view both aspects must be considered. This is why we emphasise that the administrative procedures in question were designed in part to ensure that Māori landowners received an equitable return from their resources and were not exploited by private interests, and that they did indeed sometimes achieve this result. We accept, however, that they could also be used to further the Crown's objectives, and our conclusion is that this outcome was often sought as a priority. In this we are in agreement with the CNI Tribunal, whose report includes a detailed commentary on the Crown's management of forestry activity on Māori land from the 1920s to the 1960s.<sup>469</sup> The Forest Service had a 'potentially protective role for iwi and hapu in monitoring timber consents', states the report:

However, the weight of evidence available to us indicates that [Māori Land Board and Native Department] officials responsible for monitoring timber alienations from Māori

land had become convinced that Forest Service timber management objectives for national interest purposes were effectively taking precedence over iwi and hapu interests in gaining a market benefit from their timber.<sup>470</sup>

It was not illegitimate for the Crown to aim for forest conservation if this was important to the national community. As in the case of the national park and its extension, in this situation the weight came down on the Crown's rights of *kāwanatanga*. Proper balancing of the obligation to respect owner interests, however, as well as the duty to offer protection from unfair dealings and the need to pursue wider objectives in the national interest, required the Crown to consult with the owners who would be affected by its policies, and to consider what impact these policies might have on them. We have seen scant evidence, at least in the period we are concerned with (up to the 1960s), that the government met these requirements. Instead, the policies were generally implemented with little regard for the opinions and wishes of those affected, apparently without any attempt to explain the reasons why the policies were necessary, and with no monitoring of the effects on the owners' immediate and long-term economic interests.

#### **(4) *The Crown and the depletion of forestry resources***

Several groups of claimants made mention of the severe environmental damage brought about by the logging of indigenous forests. Using words that emphasised the grievous nature of the loss and destruction caused by timber cutting on their lands in the National Park district, Ngāti Tūwharetoa described the 'rape' of the forests as a 'tragedy'.<sup>471</sup> It was not just the trees that were destroyed. Sonny Te Ahuru recorded his regret about the disappearance of the many native bird species that were formerly found in the Taurewa bush and were valued not only as food sources but also as an integral part of the *wairua* of the forest. 'There used to be thousands upon thousands of birds', he said. 'The bush was alive with all the colours and calls of all the different birds. But now it is dead. All the timber milling did that. Now there is nothing.'<sup>472</sup> Hilda Te Hirata Otene explained that not only was there a physical loss in the disappearance of the forests, but also a

severe cultural and spiritual loss; she gave as an example the *tikanga* associated with the taking of food from the bush.<sup>473</sup>

Some claimants emphasised the role of the Crown in this damage and loss. We are not concerned here with the cutting of indigenous timber in State forests, such as the one established on Crown-owned parts of the Taurewa block. Our discussion is limited to what role the Crown might have had in the destruction of forest on Māori land. Claimants pointed out that although the Crown did not generally engage in the logging and milling of these lands itself, it administered the system that permitted private operators to do so. By facilitating private milling, say the claimants, the Crown had failed to protect the forests and the bird life and other traditional food resources contained within them.<sup>474</sup>

Recognising that landowners in the National Park district had been willing and even eager to benefit financially from the timber they or their industry partners could cut from the forest, claimants asserted that logging was an activity made necessary in the past by the owners' struggle for survival and their lack of economic alternatives. 'It is hard to believe that Tuwharetoa would have openly chosen to devastate their forests if there had been alternatives open to them', explains the iwi's submission.<sup>475</sup>

In the submissions made to the Tribunal there is a tension between claims that the Crown hindered the owners of forest land from profitably harvesting their timber resource and claims that the Crown allowed such harvesting to occur and to devastate the forest *taonga*. On the face of it, the economic use of forest lands is incompatible with their preservation for customary use. In the Crown's submission, it was unlikely that the owners' wish, as *kaitiaki*, to preserve the forests for traditional use as *mahinga kai* could be reconciled with their desire to utilise them as an economic resource for generating income or capital.<sup>476</sup> On the other hand, sustainable forest policies could have accommodated both objectives, if the owners wanted to pursue both. As we have seen, the forestry conservation policies espoused by the Crown were aimed at achieving the sustainable use of the forest resource. There is little sign, however, that the Crown made any attempt to

involve the forest owners in a collaborative endeavour to utilise the resource without destroying it. Such an effort may have brought the apparently incompatible objectives of the Crown and the owners closer together in the context of the time, by permitting a modified harvesting programme but not a potentially devastating onslaught by loggers.

In our view, the Crown cannot be held responsible for the depletion of the indigenous forest resource by private logging and milling operators who negotiated agreements with Māori landowners in National Park. It is true that much damage was done by the extraction of timber from the Māori-owned forests of the district, most of which occurred with the permission of the government or through the actions of the owners themselves. But much more destruction would have occurred if the Crown had not limited the ability of the owners to sell the rights to timber on their land. The opportunity to exploit the timber resource in the inquiry district was much desired by private forestry enterprises, and as we have seen, the restrictions imposed on Māori landowners wishing to engage with these operators were not welcomed by the iwi and hapū of the district. The most important reason for the Crown's obstruction of the aspirations of millers and forest owners was a desire to conserve the forest. This is an objective that resonates with modern environmentalism and much popular opinion today, but in the first half of the twentieth century it went against the grain of commercial and political thinking. Conserving the forest was also in keeping with Māori respect for a valued physical, cultural, and spiritual resource. But it is clear that in the period we are concerned with, many landowners believed it was necessary, for their economic wellbeing, to participate in an industry that depleted the indigenous timber lands. Destructive though it was, logging was an accepted activity in the early twentieth century. The Crown played an important part in limiting the exploitation of the forests in National Park, and the only sense in which it could be seen as responsible for the damage done to the forested lands in this district is its failure to bring Māori owners into a willing participation in the sustainable forestry programme promoted by its forestry officials at that time.

#### **(5) Conclusion and findings**

Obviously, the sale of timber cutting rights in the heavily forested parts of this district offered a valuable economic opportunity. There would be a regular income from royalties, and jobs would be available as the timber was felled and milled. There was also the prospect of obtaining capital for future development of the land, though in many cases this benefit was not obtained because the money earned was needed immediately for basic living costs, especially during the Depression years. In this connection, we note the statement of Judge Browne in 1934: 'The Natives have no resources beyond what they can obtain for their timber and the work they can get from the mills.'<sup>477</sup> In 1935, he wrote about this again:

The Natives, in the majority of cases, in the Taupō district at any rate, are more or less in a state of poverty, and are dependent, to a large extent, on the proceeds of their timber and the work they will obtain through the sale of it, for their means of sustenance.<sup>478</sup>

Forest land that had been sold, of course, could not benefit the owners once the purchase money had been used. The value of the timber resource to Māori in this district was thus greatly reduced by the Crown's acquisition of large areas of forest land, both within the TTC blocks and beyond. In pursuing an active land purchasing programme, the Crown demonstrated no concern for its responsibility to protect owner interests and development rights in the indigenous forest resource that promised such a significant economic opportunity in this district. Hapū whose forest lands were purchased were prevented from using this resource for participation in the indigenous forest industry. The Crown had not recognised any obligation to ensure that sufficient lands were being retained specifically for present and future forestry opportunities. We discuss land sufficiency, more generally, in chapter 9.

Ngāti Tūwharetoa's agreement with the TTC seemed a promising opportunity when it was arranged in the first decade of the century. A number of landowners in the National Park district were affected by the agreement



and its eventual failure, as we have explained above. In the Waimanu and Ōkahukura blocks, the long years during which the TTC held rights but did not use them had an impact upon the financial situation of the owners. Submissions from groups particularly associated with these lands claimed that the failure of the venture caused them hardship and lost opportunities. We mentioned several instances of such effects in our account above. Regarding the TTC, we are in overall agreement with the conclusions of the CNI Tribunal, which gave the matter detailed attention. We accept that the Crown played an important role in the company agreement throughout its history, and, like that Tribunal, we see the history of the agreement as illustrative of many aspects of Crown policy with regard to Māori development, particularly Māori rights to forestry development. The CNI Tribunal investigated whether the Crown took reasonable steps to ensure that the interests and rights of Māori owners in the TTC scheme were adequately considered and protected, given the range of responsibilities and obligations the Crown had accepted through its involvement in the venture. It concluded that, given the Māori Land Board's role as agent for the owners, and the series of government legislative interventions in the relationship, the Crown had an increased level of responsibility to protect the owners in their Treaty development rights, but that these obligations had not been met. Although the Tribunal was not able to quantify the actual losses suffered by the owners, it concluded that the Crown's policies 'had serious economic impacts' for them.<sup>479</sup>

Only a few National Park blocks were part of the TTC agreement, however, and participation in forestry took many other forms in the district as a whole. In our review of indigenous forestry in the district, we have discussed company issues as part of the wider history of the involvement of landowners, the sawmilling industry, and the Crown in forestry. In blocks not affected by the company agreement, the Crown's restriction of the ability of forest owners to make agreements with logging and milling operators clearly had a negative economic effect on the land holders, at least in the short term. Commercial utilisation was by no means totally barred, however. Some

areas were not subjected to alienation prohibitions, and as we have seen, in many cases where restrictions were imposed in 1918 and afterwards, they were eventually lifted and the owners were enabled to benefit financially from milling agreements. Owners also later benefited from the fact that the restrictions had protected their forests from premature milling and ensured they were available for more profitable utilisation in mid-century. In the case of TTC lands, too, when they finally became available, the owners benefited from the high prices that could be earned in the 1950s and 1960s from forests that had been preserved untouched because of the earlier impasse. As the CNI Tribunal pointed out, however, this success came after a long period of delayed development, and is 'unlikely to have fully made up for the earlier losses.'<sup>480</sup>

Exerting control over the timber that grew on Māori land appeared to be more important to the Crown than its responsibility to work in partnership with the landowners to enable them to benefit from the valuable resource contained in the forests. Although we did not receive comprehensive or systematic evidence on Māori participation in the indigenous forest industry and the income earned by this involvement, we could see that owner engagement in forestry endeavour occurred in the face of considerable obstacles. Participation had to surmount the difficulties posed by Crown restrictions, and it was largely at a relatively low level – that is, it was seen in cutting agreements and employment opportunities rather than in owner-directed enterprises that depended on access to finance.

Our view is that it was not necessary for the Crown's governance responsibilities, in respect of indigenous forests, to have been exercised at the expense of the rights of forest owners. The responsibilities of kāwanatanga were real, and legitimate, but the Crown's aims could have been pursued with a much greater level of consultation with those most affected – the Māori landowners whose interests the Crown was obliged to protect. There is little evidence that the Crown considered negotiating arrangements that would both reach towards nationally important objectives and provide economic activity for the Māori owners. In this connection, we agree with the observation of the CNI Tribunal that the Crown assumed that

Māori owners were either uninterested [in] or incapable of participating in sustainable long-term management of the sawmilling industry and interested only in short-term gain.<sup>481</sup>

This assumption was not tested by any attempt to set up a joint forestry venture directed towards sustainability (as opposed to merely logging), and was an important factor in the Crown's policy of purchasing forested land from Māori in order to secure control of it. The Crown's failure to include Māori owners in the sustainable forestry programme implicit in the Forest Service's regulatory regime also contributed to the damage done to the forested lands in this district.

Our finding is that in implementing its forestry policies in the National Park inquiry district the Crown was pursuing a legitimate national objective. It was inescapable, however, that this meant removing or reducing the right of Māori in the district to utilise the forest resource on their land. Although this affected the degree to which the Crown was actively protecting the Māori ownership of lands and resources, the controls applied to Māori forestry did contain a protective element that was in keeping with Treaty principles. We, however, find that the Crown breached the principles of partnership and reciprocity, which envisage that there will be a relationship of mutual advantage and benefit, developed through consultation. In this instance, although the Crown had a legitimate governance responsibility to conserve the indigenous timber resource in the national interest, it did not meet its obligation to give due consideration to the interests of Māori forest owners, or to consult with them concerning timber issues.

### 8.5 TWO CASE STUDIES OF THE IMPACT OF TWENTIETH-CENTURY LAND TRANSACTIONS

In other parts of this chapter, we have investigated selected themes or topics on a district-wide basis. In this section, by contrast, we focus on two particular areas (both eventually incorporated into the Tongariro National Park) and trace the whole history of twentieth century land transactions as it impacted on them. By this means, we examine

the combined effect, at a local level, of the Crown's policies on matters such as land purchase, the extension of the national park, and indigenous forestry.

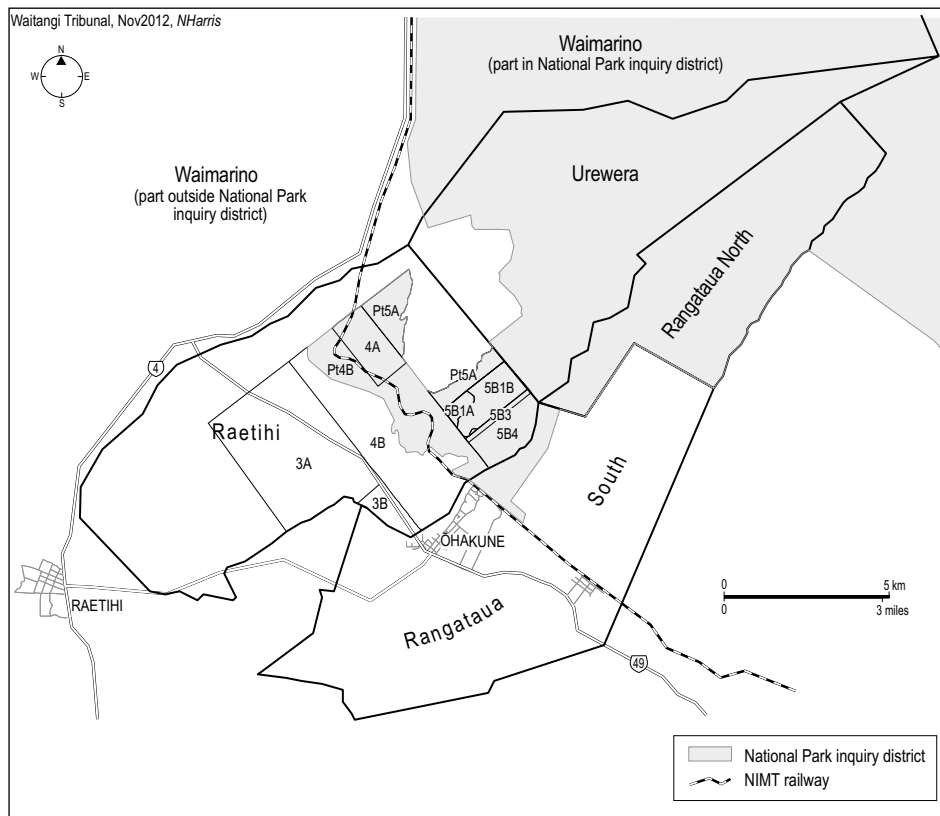
#### 8.5.1 The Raetihi lands, including the Rongokaupō Scenic Reserve

Part of the Raetihi block, which was divided into five blocks by the Native Land Court in 1889, lies within the south-western part of the National Park inquiry district (see map 8.7). The land within our district is just north of the present town of Ōhakune and consists of 1,933 acres from Raetihi 4 and 1,818 acres from Raetihi 5.<sup>482</sup> In 1896, both these blocks were further partitioned. Most of Raetihi 4 was retained by non-sellers as Raetihi 4B, part of which (1,407 acres) is within the inquiry district. The rest of the block, again including a portion within the inquiry district, was purchased by the Crown and designated 4A. Raetihi 5 was similarly divided between a Crown purchase (5A, of which 644 acres lie within the inquiry district), and an area of 1,174 acres (5B) retained by the owners and located wholly within the inquiry district.<sup>483</sup>

##### (1) *The creation of the scenic reserve, 1911*

In the 1880s and 1890s, Crown purchasing for land settlement had been extensive in the other Raetihi blocks to the south. The non-sellers in the vicinity of the planned railway line through this part of our inquiry district, however, appear to have had ambitions for developing their land by milling it and then farming it. Unfortunately, they lacked the funds for cutting and milling the timber themselves, and their ability to lease, mortgage, or sell the land was initially hindered by legislative restrictions against private dealings.<sup>484</sup> They were also soon to be confronted with restrictions of a new kind, arising from the Crown's fast-growing interest in scenery preservation and tourism. The example of the Raetihi lands illustrates the conflict between Māori development goals and Crown objectives for the region.

Raetihi 4B was among the lands vested by their owners in the Aotea Māori Land Council (later board). The decision to entrust the land to the council was made in 1902.<sup>485</sup> We have little evidence about why this action was taken,



**Map 8.7: Raetihi lands in the southern part of the inquiry district**

but it seems it was in expectation of economic benefit: as stated a few years later, in 1911, part of the reason for the decision had been the

glowing persuasions . . . and promises of government assistance in farming their own lands, and that a saw mill would be given them with which to saw off the timbered lands of the . . . block.<sup>486</sup>

The lands were transferred to the Aotea Māori Land Council in 1903, although they were not officially vested (in the successor board) until September 1907.<sup>487</sup>

The owners of Raetihi 4B and 5B had taken steps to arrange 21-year timber cutting leases with Gammon & Company, an action ratified in 1908 by the Aotea Māori

Land Board (except for 5B4).<sup>488</sup> The areas covered were 1,600 acres in 4B and 879 acres in 5B.<sup>489</sup> A member of the board later described the lease payments originally negotiated by the company as ‘ridiculously low’ but said that better royalties of £5 to £7 10s had subsequently been arranged under the board.<sup>490</sup> Before Gammon even started cutting, however, the owners’ development plans came into conflict with the government’s desire to develop tourism by reserving lands of scenic value.

In 1905, the Scenery Preservation Commission was giving thought to the creation of scenic reserves along the railway as line construction approached the Ruapehu area. There was clearly a need to avoid delay if the bush was to be preserved, as the commission was told on several occasions that milling was imminent.<sup>491</sup> A prominent advocate

was the parliamentarian Harry G Ell, who wrote to the Minister of Public Works in 1906:

I am not asking you to accomplish anything impracticable. . . . Bush must be felled if our roads and railways are to be made. Bush must be felled if the settlement of the country is to continue. But that is not to say that scenic reserves are not to be made. In this connection all that I have ever asked you to do is this, that your staff, when making roads or railways shall leave in the immediate neighbourhood of the railway line or road line twenty-five to thirty acres of native bush absolutely intact say every two miles or so. Surely this is not an impossible request. You may take the large trees or such trees as may be required for the carrying out of the public works on either side of such reserves; but I do urge for the sake of those who will come after us and of the people living now, to make reserves such as I suggest.<sup>492</sup>

In accordance with Ell's urging, instructions were given in 1906 for areas of forest to be reserved along the line every two miles, and in preparation the new Scenery Preservation Board completed an inspection of this part of the route by March 1907.<sup>493</sup> Its report, which was soon published by parliament, spoke lyrically of the need to preserve the central high country bush:

The hundred odd miles of scenery traversed from Makohine [near Hunterville] to Manunui [near Taumarunui] forms a national asset that, in our opinion, should be most jealously conserved and protected. . . . Most of the area is not well adapted for close settlement, and the timber growing thereon forms its principal value. The varieties of timber, the natural beauty of the forest, its magnificent situation amongst numerous deep ravines and sinuous gorges through which run rapid mountain streams, together with the background of frowning hills and lofty ranges, and in the distance the grand snow-capped peaks of the Ruapehu, Ngauruhoe, and Tongariro Mountains, all unite in proclaiming this portion of New Zealand as one of the principal attractions of the colony.

As time goes on forest country will disappear from most of the other parts of the colony, but its picturesqueness will be more appreciated as its extent diminishes. It is almost



The 'Daylight Limited' passes through a cutting of native bush near Ōhakune. The Scenery Preservation Commission, which aimed to acquire land for scenic reserves and to preserve tracts of native bush along sections of the railway and roads, had to act swiftly to avoid bush like this being felled.

needless to say that once the forest is sold and felled it can never be replaced as it now stands, and from the climatic and utilitarian points of view its retention is necessary to secure much broken and otherwise comparatively useless country from slipping into the valleys and gorges and thus becoming a perpetual eyesore in contrast to its present pristine beauty.<sup>494</sup>

The board made recommendations for certain areas along the line to be added to the existing scenic reserves further south. The land identified for this purpose

included 1,300 acres of the Māori-owned Raetihi 4B and 1,000 acres of the former Raetihi 4A and 5A, which was Crown land.<sup>495</sup> As Mr Philip Cleaver remarks,

The report does not indicate that there was any consultation with those Māori whose lands would be acquired for the proposed scenic reserves, or that the interests of the owners were in any way taken into consideration.<sup>496</sup>

Significantly, the Board stated that acquiring land that had already been purchased by settlers but was still bush-clad would be too expensive. In contrast, it seems to have believed that the Māori land needed for reservation could 'no doubt be easily acquired', since it was 'not very suitable for cultivation – in fact much of it is quite unsuitable'.<sup>497</sup> This assessment fitted in with the prevailing view that scenic reserves should be created only where settlement was unlikely. But it also ignored the value of the timber standing on the land.

In May 1908, the Lands and Survey Department recommended to its Minister that steps be taken to survey and proclaim the Crown lands needed for the reserves. As for the Māori-owned lands, it was noted that some areas had already been leased for milling, but where the bush was still intact it should be surveyed. There was still no mention of any need to discuss the matter with the Māori owners, but the cost of compensating them for their land was estimated. The Native Department was given a list of the Māori blocks required, and requested to exclude them from any disposal. The intention at this time was to take the land under the Public Works Act, and pay compensation.<sup>498</sup> The Lands and Survey Department knew that leasing of some of the land had been arranged under the Māori Land Board, but noted that a clause had been inserted in the lease documents to exclude compensation to the lessees if the land was taken. There is no evidence about whether or not the Māori Land Board informed the owners of the proposed reserves about what was happening, but arrangements were made before the end of 1908 for surveys of the land to begin.<sup>499</sup>

In the area we are concerned with here, the scenic reserve surveys identified a sizeable tract of Māori-owned

forest land near Ōhakune: 1,235 acres of Raetihi 4B and a smaller area of 5B.<sup>500</sup> The Aotea Māori Land Board agreed to the scenic reserve proposal, and issued a restraining order on Gammon & Company. This removed the anticipated milling opportunity from the landowners, who were additionally aggrieved by the government's tardiness in compensating them.<sup>501</sup> Indeed, the under-secretary of Native Affairs regarded the action as a breach of trust, as his letter to the Lands Department made clear:

In effect your Department said to the Board, 'Don't touch the bush on that area, we want it and will take it'. The Board went beyond its jurisdiction to say 'Very well'. Four years have elapsed and nothing has been done by your Department to recompense the Board.<sup>502</sup>

Under the Native Land Act 1909 the Crown could purchase land, including land vested in a Māori land board, following a resolution of its assembled owners. The suggestion of the board was that the reserved land could be acquired by means of exchanging it for Crown lands in the former Raetihi 3A block (outside the inquiry district). Valuing the land and timber in all the blocks involved, and disputes over the valuations, took a long time. The Native Department challenged the assessment that the Crown land involved was much more valuable than the Māori land, but eventually a compromise was reached. The outcome, however, was still in the Crown's favour; furthermore, the difference in value between the two areas of land (amounting to a few thousand pounds) was to be paid to the Crown out of timber royalties from the new land in Raetihi 3A.<sup>503</sup>

Whether or not the owners were consulted about these proposals before a meeting was called is not known. When they did assemble at a meeting of owners called in October 1910, to consider authorising the Māori Land Board to accept the Crown's offer of an exchange, nine of the 15 owners were in favour, with the others signing a memorial of dissent.<sup>504</sup> The board confirmed the resolution, 'in view of the advantage of the exchange from the interests of the owners as a whole, and in the public interest in the preservation of the scenic area'.<sup>505</sup> In May 1911,

the Raetihi 4B land (1,250 acres) was gazetted as Crown land, having been acquired by exchange under sections 380 to 386 of the Native Land Act 1909. In July 1911 it was gazetted as a scenic reserve, being added to 908 acres of Crown land that had been reserved in 1910 (4A and part of 5A), to form the new Rongokaupō Scenic Reserve.<sup>506</sup>

We note that at this time steps had also been taken under the Public Works Act to secure land for railway purposes: within the portion of Raetihi 4B that lies within our inquiry district, 115 acres were taken in 1909, and 22 acres in 1910.<sup>507</sup> In the space of two years, between 1909 and 1911, the portion of Raetihi 4B situated in the inquiry district (a total of about 1,400 acres) was thus lost in its entirety, depriving the owners of the economic opportunities they had hoped for from it. They did receive a similar acreage on flat land nearby (outside the inquiry district), also with forest on it, but as we have seen, the new land was of lower value. It also lacked traditional resources and associations that the owners had valued in the 4B land. In short, this was a transaction which had been opposed by 40 per cent of the owners and where the advantages were clearly weighted towards the Crown. It seems, furthermore, that the Māori Land Board had paid little attention to its protective role.

### **(2) Additions to the scenic reserve**

By 1911, the year when acquisition of land in Raetihi 4B for railway purposes and the Rongokaupō Scenic Reserve was completed, Māori ownership of the Raetihi lands situated within the National Park inquiry district had been reduced to one block, Raetihi 5B, which had been partitioned into four sections in 1907. Very soon the attention of the Scenery Preservation Board turned in this direction. A steep bushclad portion of the land in 5B1 was visible from the Ōhakune railway station and had been identified for some years as desirable for preservation, and officials were aware that it might be milled at any time. A section of the land (100 acres) was surveyed for reservation, and in 1914 consideration was given to preventing any private dealings in this particular section until a formal taking could be arranged, but no action was taken at that stage.<sup>508</sup> Nevertheless, although the land was

not formally a reserve, a document confirming the lease of 5B1 in 1920 excluded an area of 105 acres described as 'scenic reserve'.<sup>509</sup> In the main part of 5B1, the chances of commercial bushfelling activity had increased when, the previous year, the undivided interests of five owners had been acquired by JM Wells of Whanganui (or, according to some documents, the Matipo Land and Building Company). In 1922, the same purchaser acquired the interests of another owner.<sup>510</sup>

Although no Crown acquisitions had yet been made in 5B1 (the largest of the four Raetihi 5B partitions), moves were being made at this time for obtaining land for scenery preservation in another large section, 5B3. The transaction was initiated in 1914, when one of the owners of the block offered her 80 acre share to the Crown, mentioning that the other owners might also sell if approached. The land was found to be lacking in farming potential and also difficult to mill. The approach led the Native Department to instruct the Aotea Māori Land Board in 1915 to acquire as many interests in 5B3 as possible. Asking a Land Board to buy land for the Crown was in itself unusual, and, as Dr Terry Hearn notes, the question of conflict of interests arises. The board was asked to make sure that none of the vendors would be left landless, though it is not known if that was done. The owners accepted the Crown's offer, and the acquisitions were completed in 1916. The whole of 5B3 (403 acres) was declared Crown land. It was not reserved for scenery protection, however. Two years later, a Crown lands ranger suggested that 113 acres of the block be added to the Rongokaupō Scenic Reserve but this was not put into effect for nearly 20 years.<sup>511</sup>

The purchaser who acquired interests in 5B1, Wells, continued to add to his holdings in the area. In the case of 5B2 (81 acres), he was able to offer a better price than the Crown. In 1918, the Crown was prepared to offer 30 shillings per acre for this block, with the aim of adding it to the Rongokaupō Scenic Reserve, but two owners sold their interests to Wells for £3 per acre. Officials enquired about the other interests, offering an increased price, but found that the owners wanted far more. Wells succeeded in obtaining the remaining shares for £3 per acre. The transfer of 5B2 was registered in 1920.<sup>512</sup> Wells also



Native bush behind Ōhakune Railway Station. Some of the magnificent bush-clad hill behind the station became part of the Tongariro National Park after it was bought by the Crown from 1914 to 1916.

succeeded in purchasing 5B4 (121 acres), in 1919.<sup>513</sup> In addition, in 1924 he became the owner of part of 5B3, which, as we have seen, had been purchased by the Crown from its Māori owners in 1916. This came about when the Lands and Survey Department decided to exchange 55 acres in the top part of 5B3 for an equivalent acreage at the lower end of 5B4 (the property of Wells since 1919), thus acquiring a scenic forest section near the railway line.<sup>514</sup>

The existence of this privately owned land in the vicinity of the scenic reserve and national park affected the

Crown's actions in subsequent years. In the late 1930s, under a later owner, the land was occupied by WF Hussey, who farmed part of it. The Lands and Survey Department believed his stock were damaging the nearby national park land.<sup>515</sup> The decision was made to give better protection to the national park by adding to it the 55 acres of Raetihi 5B4 acquired from Wells by exchange in 1924. This was done in 1936.<sup>516</sup> Later, Hussey himself became the owner of 5B2 and what remained of 5B4 (both originally purchased by Wells) as well as the portion of 5B3 that Wells had received

by exchange, and also Wells' interests in 5B1.<sup>517</sup> The department continued to regard Hussey's farm as an intrusive anomaly in a scenic forested area. Periodically there were moves to acquire his land by purchase or exchange, but nothing was achieved until well into the 1950s.<sup>518</sup> The opportunity came with Hussey's death. In 1959, his widow offered to sell her interests to the Crown, a proposal that was gratefully accepted. An inspection report showed that the land was largely unsuitable for farming, and highly desirable as a protective border for the existing scenic reserve and national park. The Hussey freehold land (5B2, part 5B3, part 5B4) was purchased, and in 1960 was added to the national park, along with adjoining Crown land.<sup>519</sup> At this stage, Hussey's interests in 5B1 were still undivided.

In the 1950s, Raetihi 5B1 (partitioned into 5B1A and 5B1B in 1958) was still Māori-owned, apart from the interests acquired many years before by Wells and now owned by Hussey. The small 5B1A was the location of the 100 acres that had been considered for scenery preservation in 1914, and surveyed for this purpose, but never acquired or proclaimed. In the early 1950s the matter resurfaced when one of the Māori owners inquired whether the Crown intended to formalise the planned reserve. The Lands Department looked at the block and in 1952 assessed its value at £25 for the land and £4,470 for the timber. Purchase was recommended, but none of the owners attended a meeting called in 1953. It was found that some of the addresses used were incorrect. It seems also that there was some resistance to the sale, and that the owners wanted a new valuation. The conservator of forests acknowledged that the timber would attract a higher price on the open market, but the Crown was not prepared to pay more, and the matter was dropped.<sup>520</sup>

In 1957, when the owners were considering milling 5B1A, officials could see that access would be difficult, and thought it likely that the conservator of forests would refuse permission because of a fire risk. The view of the commissioner of Crown lands was that in these circumstances the government had a moral obligation to offer to purchase the land. Having arrived at a new valuation (almost £9,095), the Crown offered the owners, in exchange for 5B1A, cutting rights for 20 years on land it

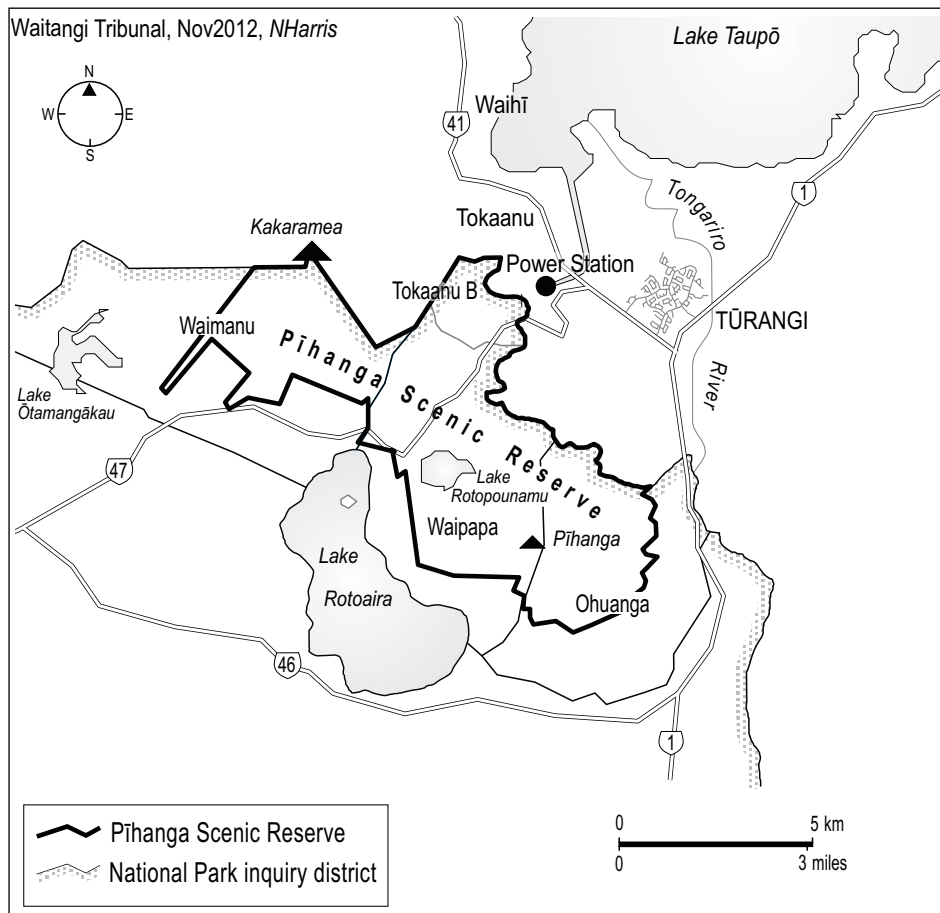
owned elsewhere: Ōkahukura 6A1 and (if necessary) 6B, which the Crown had acquired in the 1930s and 1940s. (It might be noted that Ōkahukura 6A1, now designated for milling, had apparently originally been acquired for forest preservation purposes). The offer was accepted unanimously by those owners who attended the meeting, and in this long-delayed conclusion to a matter that had first arisen more than 40 years earlier, the 105-acre block was transferred to the Crown.<sup>521</sup> (It was added to the national park in 1979.)

As for 5B1B, it had been logged twice, had no legal access, and showed little potential for farming. In 1961, Hussey's interests (nine-fourteenths of 5B1B) were purchased by the Crown from his widow, along with the other interests after approaches were successfully made to the Māori owners. They agreed to accept an offer of 10 shillings per acre, plus £900 for the timber (for a total price of £1,130). In 1962, the whole 461-acre block was added to the national park.<sup>522</sup> The Rongokaupō Scenic Reserve (2,297 acres) became part of the national park in 1972.<sup>523</sup>

### (3) Conclusion

The outcome of all these dealings with the owners of the Raetihi lands situated within our inquiry district is clear, and the case study illustrates the conflict between the landowners' economic aspirations and the Crown's pursuit of forest conservation in the national interest. Between 1896 and 1961 all the land was alienated (although the owners of the 1,250 acres lost from 4B in 1911 were given an area of roughly equivalent size, outside the inquiry district, in exchange). A small amount of Māori land was taken under the Public Works Act 1910 and 1911 for railway purposes, but purchases and exchanges accounted for most of the alienations made to the Crown. The first of these acquisitions, in 1896, was made to further the government's general settlement objectives, though only part of the land obtained then was ever used for that purpose. Some of the land that was purchased by the Crown in 1896 was later designated as scenic reserve land, and the acquisitions made in 1911, 1916, and 1958 to 1961 were for the express purpose of preserving scenic forest lands. The 1911 acquisition formed the basis of the Rongokaupō Scenic





Reserve, which was incorporated into the national park in 1972, and the land obtained around 1960 was taken, then or later, directly into the park. At certain times, some of the remaining Māori land was leased by its owners to commercial enterprises, although this possibility was removed from the owners of Raetihi 4B when that block was deemed by the Crown to possess scenic value. Several Māori-owned portions, amounting to less than a tenth of the total area, were purchased in the years 1919 to 1922 by private interests, apparently for milling and farming, but they eventually all came into Crown ownership and were also added to the national park.

### 8.5.2 The Pihanga Scenic Reserve

The land we are concerned with in this section is a forested area in the north of the inquiry district. It includes the mountain Pihanga (1,325 metres) and a small lake, Rotopounamu, and consists of parts of the Ohuanga, Waipapa, Tokaanu, and Waimanu blocks (see map 8.8). None of this land had been alienated by 1918 when the Crown decided to begin purchasing in the area. Much later, in 1965, the Crown's acquisitions were grouped together as the Pihanga Scenic Reserve (with an area of more than 12,000 acres), and in 1975 the reserve was added to the Tongariro National Park.

**(1) *The beginnings of acquisition by the Crown***

Ohuanga had been partitioned in 1913 (and again in 1916, though this was never formalised).<sup>524</sup> Partitioning in the other three blocks took place in the early months of 1918. In March 1918, however, the Native Department took steps to have the recently created partitions of Tokaanu B cancelled, as it was thought they would make Crown purchasing more difficult. The partitions of Tokaanu B1 and B2 and Waipapa 1 and 2 were cancelled by the Native Land Court in April.<sup>525</sup> As we saw earlier in the chapter, a report submitted soon after this by a native land purchase officer, WH Bowler, recommended that purchasing in the Ohuanga, Tokaanu, and Waipapa blocks should go ahead. His recommendation was accepted. Prohibition of alienation except to the Crown was imposed on these and other blocks across the northern part of the inquiry district, meeting with protests from Ngāti Tūwharetoa. (We have already mentioned the appeal made in June 1918 for the restrictions to be lifted so that development of the land could proceed, and the government's response that it could not accede to the request).<sup>526</sup>

The Crown sought land in this area largely to facilitate settlement and development, and mention was made at the time that the bushland parts of the blocks were of value for milling. Along with interest in the logging potential of the forested sections, however, there were also indications from time to time that their value for scenery preservation was recognised. In April 1919, in a report assessing the suitability of the Ohuanga block for settlement and milling, it was noted that an area of 800 to 1,000 acres at the top of Pihanga was 'practically useless' land, 'suited only for [the] National Park'.<sup>527</sup> This summit area was open land, but in 1920 the under-secretary of the Native Department expressed his opinion that the Ohuanga and Waipapa bush areas should also be acquired for scenery preservation.<sup>528</sup> His counterpart in forestry thought the same about the Tokaanu block, stating that 'a good deal of this bush should certainly be reserved for scenery preservation seeing that the new road to Tokaanu will be one of our chief tourist routes'.<sup>529</sup>

Land purchasing in the blocks did not prove to be easy. The owners of the Ohuanga North and South blocks met

in March 1919 to consider an offer made by the Crown, but decided against selling.<sup>530</sup> The following month, however, the Native Department was informed by Frank Acheson, its native land purchase officer, that there was some willingness to make sales, but only if the Crown withdrew its objection to the partitioning of Waipapa 1. As we explained earlier, partitions there and elsewhere had been arranged by the owners as part of their plans for profitable land use. The Native Department had already agreed to grant the Tokaanu B1 owners' request that their partitions should be reinstated in order to encourage the sale of interests in other blocks (a reinstatement that was made on 17 March). The Department quickly agreed to change its stance on the Waipapa partitions, adding that the forested slopes of Pihanga should be acquired if possible. Efforts to purchase continued in 1919 and 1920, but the owners were divided about selling. Some interests were acquired, but no one was prepared to sell the commercially valuable forest sections. The purchasing officers found that the prices being offered were regarded as too low.<sup>531</sup>

Crown purchasing efforts met with a greater degree of success in 1921, although matters initially did not look promising. On 2 March that year, the owners of Ohuanga North met to consider a new offer from the Crown. Again they decided not to sell.<sup>532</sup> At a Native Land Court hearing on 8 March, however, the Waipapa 1 partitioning of 1918 was reinstated and the Crown was awarded Waipapa 1N (70 acres) to represent the interests it had purchased in 1920, this small section being the first block acquired in the Pihanga area.<sup>533</sup> Acheson, who was now a judge of the court, had supported the idea of reinstating partitions so that the owners would make some of the land available for purchase.<sup>534</sup> Events now moved quickly.

**(2) *The gifting of Pihanga summit***

When the owners of Ohuanga South met on 10 March, they indicated that they were now willing to alienate some of their land to the Crown. According to Native Department official GP Shepherd, they 'resolved to present South 2A to [the] Crown and asked that prohibition be removed'. The land offered was a 400 acre block at the top of Pihanga, one of the never-formalised partitions

of 1916. Shepherd's suggestion was that the department should express its appreciation of the offer but also its regret that the restriction could not be removed. This was done. Another meeting, this time of the Ohuanga North owners, was to be held the next day.<sup>535</sup> No record of the meeting is available, but events were to show that the owners of this block made a similar offer.

The court dealt with Ohuanga shortly afterwards, on 15 March. Shepherd told the court that partitions had been fully discussed with the owners and that they understood the position. Representatives of Ohuanga North and South agreed to new partitioning that would replace that of 1916. Many owners were present, and no objections were made. Shepherd explained that the Crown desired 'to acquire Pihanga Mountain so as to set it aside as a scenic reserve for all time.' Having purchased certain interests in the past few years, the Crown wished to have, as its share of the Ohuanga blocks, the top of the mountain (an estimated 200 acres in Ohuanga North and 412 acres in Ohuanga South), together with a semi-circular tract of bush below the top in both North and South. The area described as mountain top would include some land awarded in recognition of purchased interests, but would consist mainly of two pieces of land 'given' by their owners. One of these was a 30-acre block from Ohuanga North (the Ohuanga North 4 of 1916), which the court recorded as being 'given to the Crown'. The owners of North 4 confirmed that it was a 'gift' and that they wanted it to 'go into the composition without any compensation to us'. The second piece of land was in Ohuanga South. Speaking on behalf of these owners, Morehu Downs told the court that they were unanimously resolved to 'give to the Crown' the 400 acres at the top (the Ohuanga South 2A of 1916). The Crown accepted what the court decided to award, consisting of the semi-circular bush area and the summit. The court record described the latter as an 'utterly barren mountain top of no value whatsoever but rather a liability to the Natives (apart from sentimental value)', but for the Crown the acquisition of the peak and a large part of the forested area below it was a good outcome. As for the owners, it was recorded several times that everyone present agreed with the decisions.<sup>536</sup> In reporting the court proceedings to the

Native Department soon afterwards, Shepherd stated that the Crown had been awarded 1,236 acres in the Ohuanga blocks, including 430 acres at the top of Pihanga as a 'gift without conditions'.<sup>537</sup> This award to the Crown was made up of three new partitions: Ohuanga North 4 and 6, with a combined area of 336 acres, and Ohuanga South 2A (900 acres).<sup>538</sup>

As we have seen, the Crown had withdrawn its objection to the Waipapa partitioning of 1918, and the Waipapa 1 partitions had been reinstated shortly before the Ohuanga hearing. A few days after the hearing, the Waipapa 2 partitions were also reinstated and the Crown was awarded Waipapa 2D, consisting of 1,800 acres extending to the top of Pihanga.<sup>539</sup> With land in Ohuanga and Waipapa thus acquired, the mountain and the bush immediately surrounding it were secured for scenic preservation.

Ngāti Tūwharetoa reminded us that the peak of Pihanga maunga was a taonga of Ngāti Tūwharetoa. 'Our ancestress mountain Pihanga is known to be the wife of Tongariro', said Tuatea Smallman in his evidence for the iwi.<sup>540</sup> In Ngāti Tūwharetoa's closing submissions, it is stated that the mountain top was transferred to the Crown in 1921 on the understanding that on its acceptance the alienation restrictions on other Ohuanga blocks would be lifted. According to the iwi, Dr Hearn's evidence is that it was not handed over willingly.<sup>541</sup> In the view of these claimants, the peak was not voluntarily gifted, but handed over 'under duress'. The owners made a 'sacrifice' of the mountain, but in an 'act of bad faith' the Crown did not 'adhere to the reciprocity expected' by lifting the restrictions. The mountain should now be returned to its owners.<sup>542</sup> Other claimant groups also linked the gifting of the peak with the desire of the owners to have the Crown reinstate partitions and cancel orders prohibiting private alienations, and pointed out that although the gift was accepted and the partitions reinstated, the prohibitions remained. This was seen as lacking in good faith.<sup>543</sup>

It is certainly clear that owners in this area wanted the recently arranged partitions reinstated. They also wanted the Crown-imposed alienation restrictions lifted, and asked for this at the same time as they offered the Pihanga peak for inclusion in the land that would be awarded to



Mount Pihanga as seen from Lake Rotopounamu. The barren section on Mount Pihanga's summit can be seen clearly above the densely clad native forest of the slopes.

the Crown by the Native Land Court. As Crown counsel rightly pointed out, however, Dr Hearn did not say in his report that the peak was handed over unwillingly. The Crown also questioned the phrase 'under duress'.<sup>544</sup> We agree that the evidence does not indicate that the owners were forced to hand over the mountain. The most we can say is that they chose to offer a treasured part of the land, which no doubt they knew was wanted very much by the Crown, in an effort to encourage officials in directions

desired by the owners. The first of these directions, the reinstatement of partitions, had long been under discussion as a way of encouraging owners to offer land for sale. The idea had already been agreed to, and its implementation had commenced before the peak was offered. The second request, the lifting of the alienation restrictions, had also been made for several years, and was now made again. As before, it was refused. Although the request was made at the same time as the offer of the peak, there is no

indication that its granting was a condition of the transfer. Despite the Crown's refusal of the request, the offer of the peak still stood, and the gifting went ahead. There is no mention of the request in the court record, and the owners are reported to have agreed to the court's decisions. No protest or complaint was recorded. Nevertheless, the Crown obtained a desirable scenic feature, and its unwillingness to lift prohibition orders was clearly a disappointment.

We note that Ngāti Tūwharetoa has asked the Tribunal to recommend that the mountain should be returned to its people, because, as Tuatea Smallman expressed it,

Pihanga remains a very special maunga to us and it was never meant that Pihanga be given to the Crown, because of the whakapapa she has to the area and her importance to us all. We have seen the way in which she has been treated, from deforestation to the use of her water sources for the public to the use of Pihanga for telecommunication purposes. We want Pihanga back so that we can determine what happens to her and so that we can go some way to re-establishing our relationship with her and through us to Tongariro.<sup>545</sup>

### (3) *The case of Ohuanga South 2B2*

Ohuanga South 2B2, a block of 304 acres adjacent to the forest land acquired by the Crown in 1921, was created as a result of partitioning in 1922.<sup>546</sup> One of the two owners, Te Hoka Downs, wrote to the Native Department soon afterwards, requesting the revocation of the alienation restriction that was in place over the block. The prohibition order over 2B2 and other Ohuanga blocks was renewed later that year, however. Downs and his brother Morehu, who was the other owner, enlisted the aid of member of parliament, Māui Pomare. Pomare's approach to the Native Minister outlined the case of the Downs brothers and their wish to make use of the land and the timber that was present on part of it, but was unsuccessful.<sup>547</sup> The Native Department explained that the prohibition order did not prevent the owners from using their land or timber for their own purposes. It was highly desirable, however, to protect the forest on the slopes of Pihanga – 'a gap in the bush would spoil its great scenic beauty' – and in order to continue

the Crown's purchasing programme and prevent milling it was necessary to maintain the Ohuanga prohibitions.<sup>548</sup> The State Forest Service, too, was in favour of alienation restrictions because there was, in the Ohuanga and other Pihanga forest blocks, 'a considerable area of good milling forest which it is highly advisable should be possessed by the Crown.'<sup>549</sup>

The Downs brothers and their relatives did cut timber from the block. 'It was a joint whanau venture', we were told by Rangikamutua Henry Downs (son of Morehu Downs), but it came to an end in the 1920s:

Dad told me that the Crown had wanted to get hold of Pihanga Maunga for a while . . . My dad fought for many years for the right to develop their lands. We were never given any options for saying what land could be set aside. The Crown put proclamations over the Pourongo land to stop it being logged. This in effect put my dad and many of my family out of work, as well as the people who came from Ōtūkou, Pāpakai and Poutu to work at that place.<sup>550</sup>

When the brothers wrote to the government for a second time, in 1923, their reason for requesting the removal of the prohibition order over their land was so that they could accept a good commercial offer to buy the timber for logging. With the income they could then free the land from survey liens and other charges. Officials were aware that the owners would not sell the block to the Crown at government valuation, and therefore that the continued prohibition of alienation could be questioned. They still wished to acquire the land, however, and the request for revocation of the order was not granted.<sup>551</sup>

In 1924, Morehu Downs made another approach to the Native Minister. 'We are of the opinion', he told him, 'that our land has been under prohibition long enough and as a result we are not receiving any benefit from it'. Worse than that, however,

We have been put to considerable expense over this block. We have paid the survey liens and the expenses in getting the title in order. The Crown has not offered any suitable scheme whereby this block could be made productive and of benefit

to us. It is quite satisfied to impose on it a prohibition thus debarring us from improving it and receiving some benefit from it. We consider this attitude of the Crown towards us unreasonable. We respectfully request that the prohibition be removed from our land.<sup>552</sup>

Again, the response was that the Forest Service still wanted to obtain the block and other land in the vicinity. It was hoped that a price attractive to the owners could be offered, and until then the prohibition would remain.<sup>553</sup>

A new threat to the block emerged in 1925: a proposal for compulsorily acquiring nine acres under the Public Works Act. This part of the land was near the Tongariro River and was wanted for a trout hatchery. (This taking is discussed in more detail in chapter 10.) Morehu Downs objected strongly, but the taking went ahead in 1926.<sup>554</sup> The purpose on this occasion was not scenery preservation, but as Dr Anderson comments, ‘the owners saw the government’s actions here as part and parcel of its dealings with them; in particular, of the sacrifice of their interests to Crown-controlled tourist activity and public works projects.’<sup>555</sup>

The continued imposition of alienation restrictions on the remainder of Ohuanga South 2B2 met with two more protests from the owners before the end of the 1920s. A letter to the Native Minister in 1926 pointed out that they had been waiting a long time for the government to make an acceptable purchase offer.<sup>556</sup> The Minister told the brothers that the Crown still wanted to purchase the forested part of the land (the Department having advised that it was ‘not politic on account of the scenic beauty to allow the timber to get into private hands’).<sup>557</sup> In 1927, Morehu Downs told the Minister that he and his brother had been waiting for three years to be informed of the government’s intention, and that they still had the opportunity to sell the timber for a good price. ‘It will therefore be obvious to you,’ he wrote, ‘that on account of the prohibition, undue hardship has been inflicted upon us in respect of obtaining an income for the maintenance of our families.’<sup>558</sup> The Crown was obdurate. An official commented that permitting logging on this block ‘would destroy the scenic value of the whole of the Pihanga Mountain’ and proposed that

the Downs brothers be approached about selling the timbered portions to the Crown.<sup>559</sup> There the matter rested until 1940.

#### **(4) Crown acquisition of Pihanga land continues**

During the 1920s and 1930s, the Crown continued to purchase interests in the forest blocks around Pihanga. Attention was drawn to this process in 1928 when the Tongariro National Park Sports Club, seeing a danger that logging might commence on Māori land around Lake Rotopounamu, told the national park board that Crown interests in the area should be partitioned out and that the mountain and the lake should be added to the park. The Native Department replied that the Crown was still engaged in purchasing and would prefer to wait before having its interests defined and partitioned out. The park board assured the club that adding land to the park would be kept in mind when the process was further advanced.<sup>560</sup> Indeed it had already been stated, in a book published by the board in 1927, that ‘[t]he upper parts of Pihanga Mountain are Crown land, and most likely will become part of the National Park.’<sup>561</sup>

It was in fact many years before the Pihanga acquisitions were grouped together as a reserve (and later added to the national park). In the meantime, the prohibitions against alienation were maintained and partitioning out for the Crown began to take place. For example, in 1935 nine new Ohuanga partitions were awarded to the Crown.<sup>562</sup> Parts of some of these (Ohuanga North 1B1, 2A, and 3B1, and Ohuanga South 1B1) were later included in the scenic reserve and national park. The same occurred in the case of Ohuanga North 3A1, a block awarded to the Crown in 1936, and in Waipapa 1C, 2A, 2B, and 2C, portions of which went to the Crown as a result of partitioning in 1936, 1937, and 1938.<sup>563</sup>

A new way of acquiring scenic bush land for the Crown – one that reduced the level of loss suffered by the Māori owners of such land – emerged at the end of the 1930s, in a series of events leading to what became known as ‘the Tongariro bush exchanges’. This development was sparked originally by a plan to mill Tokaanu B1R, a block of about 117 acres near the hill road to Tokaanu (now State

Highway 47). The land had been free of alienation restrictions since 1929.<sup>564</sup> In November 1938, the owners decided to sell the cutting rights to the sawmiller, Bishara, for which they needed an appraisal of the timber by the Forest Service. The report of the conservator of forests contained a comment on the scenic value of the forest and a recommendation that its conservation should be considered. In response to the Native Land Court judge's observation that the owners were legally entitled to utilise their timber resource, the conservator replied that he did not dispute the owners' rights but still wanted the possibility of preserving the bush considered. Understandably, Bishara was soon complaining about the delay in what he had been assured was an arrangement the owners were entitled to make. The owners, too, asked what was happening.<sup>565</sup>

In July 1939, the under-secretary for lands discussed the possibility of negotiating with the owners to exchange the bush land for open areas of Crown land elsewhere. He had met with Jack Asher, a spokesman for Ngāti Tūwharetoa, and they had agreed on the undesirability of logging Tokaanu B1R and other Māori forest land between that block and the areas acquired by the Crown in the Waipapa and Ohuanga blocks. The under-secretary had told Asher that the Crown wished to acquire further bush areas around Pihanga and that the department would be interested in exchanging such land for areas of Crown land in the Hautu and Tauranga-Taupō Blocks (outside the inquiry district). Asher had said that the exchanges could probably be arranged, and the under-secretary now proposed that steps be taken to go ahead and acquire Tokaanu B1R and other forested blocks by this means.<sup>566</sup>

A few years passed with the logging plan for Tokaanu B1R in limbo, until in 1942 the owners asked the Native Department if there had been any progress with the land exchange proposal. They suggested Waipapa 2D (acquired by the Crown in 1921) as a suitable exchange, especially as the timber there would be useful for fence posts on the iwi's land development schemes, but the lands department was opposed to the extraction of timber from this land.<sup>567</sup> Further discussions occurred. It was not until March 1944 that orders of exchange were issued by the court over three Tokaanu blocks, the largest of which (and the only one

### John Atirau Asher

1892–1966

*John Atirau Asher, also known as Jack, was not originally of Ngāti Tūwharetoa. He was the son of David Asher, a Pākehā of Tauranga, and Katerina Te Atirau of Ngāti Pīkiao, Ngai Te Rangī, and Ngāti Pukenga. Born in Tauranga, Asher moved to Wellington at around the age of 14 to live with his sister and her husband, Charles Parata (who later became the member of parliament for Southern Māori).*

*Gaining employment as a parliamentary messenger, Asher met Tureiti Te Heuheu, who was then a legislative councillor, and became his secretary. Later, Te Heuheu took him to Tokaanu and introduced him to Paekitawhiti Ngakuru, a puhi of Ngāti Kurauia. The pair were married on 21 July 1919 and were to have seven daughters and four sons.*

*Over the years, Asher became increasingly involved in Ngāti Tūwharetoa tribal affairs and took on a range of roles. These included, at various times, the chair of the Tokaanu Tribal Committee and the secretary of the Tūwharetoa Trust Board. Like his father before him, Asher also worked as a licensed interpreter in the Native Land Court, and in 1926 he helped negotiate the sale of the bed of Lake Taupō to the Crown. Around 1924, he took over from his brother-in-law as licensee of the Tokaanu Hotel and in 1962 became the first chairman of the Taupō County Council.<sup>1</sup>*

within the inquiry district) was B1R. As part of the wider Tongariro bush exchanges, the arrangement was that a portion of Tokaanu B1R, together with parts of several other blocks, were awarded to the Crown in exchange for interests in Crown land in Opawa-Rangitoto 1 (outside the inquiry district).<sup>568</sup> We will return to the exchanges shortly, after looking again at the case of Ohuanga South 2B2 which in the 1940s was once again under discussion.

**(5) *The continuing story of Ohuanga South 2B2***

The question of the restrictions on Ohuanga South 2B2 had resurfaced in March 1940 when Morehu Downs again asked the Native Department to revoke the prohibition order on the block, so that he and the family of his late brother could utilise their land and proceed with a timber cutting arrangement. Once more, however, the Native Department and the Forest Service agreed that it was still desirable to maintain the prohibition.<sup>569</sup> The director of forestry was of the opinion that any 'interference with the existing prohibition by one owner would create a precedent and other applications would follow'. He explained that

To allow milling timber to be removed from 2B2 would mean opening a wedge in an otherwise unbroken forest of protection and scenic value. The outer or eastern portion of the area contains good milling timber, but its removal would endanger the forest behind.<sup>570</sup>

Officials now recommended that the Crown give further consideration to purchasing the block. The idea of an exchange was also put forward: Ohuanga South 2B2 could possibly be obtained if part of Ohuanga North 5A (which was Crown land near Tūrangi and suitable for farm development, but outside our inquiry district) was given in exchange.<sup>571</sup>

By 1941, the owners were pressing the government to clear away obstacles to timber cutting on Ohuanga South 2B2 and several other blocks.<sup>572</sup> The under-secretary of the Native Department wrote to the director of forestry about the alienation restriction: 'I have considerable doubt whether the Crown can justify retention of the Order in Council if it does not intend to purchase or acquire the land by exchange.'<sup>573</sup> Representing the owners, Asher met the acting Minister of Native Affairs and told him of the need to allow the millers Weir & Kenny to purchase the timber and provide employment in the locality. The Minister told his department that he could see no reason why the restriction should not be removed. The resultant exclusion of part of Ohuanga South 2B2 from the prohibition order, on 10 September 1941, finally released the block

from the restriction that for so many years had prevented the owners from profiting from their timber resource. Soon afterwards they granted cutting rights to Weir & Kenny for a 15-year period.<sup>574</sup>

In the event, milling did not take place after all on Ohuanga South 2B2, the forested part of which was soon acquired by the Crown by means of an exchange (as we will shortly explain). The removal of the prohibition order in 1941, however, marked the success of a long campaign by the owners to be permitted to enter into commercial arrangements with private timber interests. The Crown's unwillingness to grant the owners' request had been motivated by a desire to preserve the forest for scenic purposes, but in pursuing this goal the Crown inflicted an injustice on the owners of the block – a point that the Crown conceded, admitting that in this case it made unreasonable and unfair use of its monopoly purchasing power over Māori lands. In making its concession, the Crown accepted that the owners of Ohuanga South 2B2 lost economic opportunities, and may have experienced undue pressure to sell, when alienation restrictions were imposed. Although these owners had made many attempts to have the restriction on their land lifted, informing the government that the prohibitions were causing undue hardship, on each occasion their requests were unsuccessful. Accepting that it had a duty to act in good faith in the exercise of its monopoly powers over Māori lands, the Crown conceded that where prohibitions were maintained for long periods, where the owners had shown no wish to enter purchase negotiations with the Crown, and where the owners lost opportunities as a result, the Crown had acted in a manner inconsistent with its duty to purchase reasonably and regulate processes appropriately.<sup>575</sup>

In a postscript to the Ohuanga South 2B2 story, we note that the Crown's willingness to impose restrictions on the owners did not come to an end with the decision of 1941. In 1948, the Department of Internal Affairs wanted the government to purchase part (44 acres) of Ohuanga South 2B2B, the 139-acre subdivision that remained in Māori ownership after the Crown had obtained the bush section. This land was known as Kōwhai Flat, and was situated between the river and the road, adjacent to the



fish hatchery reserve acquired by the Crown in 1926. A prohibition order was imposed on it in 1949, but Morehu Downs rejected the Crown's purchase offer as too low. Efforts to purchase the land continued for some years, but they were unsuccessful and the alienation restriction was finally lifted in 1956.<sup>576</sup>

**(6) *The 1940s land exchanges and the creation of the scenic reserve***

Acquiring Māori land in the Pihanga area by exchanging it for Crown land in localities not desired for conservation was an idea that emerged in the late 1930s, although it was some years before the exchanges were implemented. In the meantime, the government's wish to obtain forest land in the Pihanga area became even stronger. By 1942, a plan had emerged to complete the acquisition of such land, both for its scenic value and to protect the waterways flowing into Lake Taupō. The Crown was aware that milling was a strong possibility, for instance on Ohuanga South 2B2 which had been leased to the millers Weir & Kenny. These operators had not yet commenced their logging, however, and it was thought they might be willing to relinquish their rights if the government decided to acquire the land. The exchange proposals were aired at a Native Land Court hearing in September 1943, when owners showed an interest in the opportunity to establish themselves on new lands and received the Crown's offer to write off survey liens and meet all new survey costs.<sup>577</sup>

In 1944, the court defined interests in a considerable number of Pihanga forest blocks. Orders of exchange were issued for parts of 15 blocks in our inquiry district. We have already mentioned Tokaanu B1R. Another noteworthy acquisition at this time was the long-desired forest part of Ohuanga South 2B2, which was exchanged for interests in Waimanu 2E (a block that had itself just been obtained by the Crown through exchange).<sup>578</sup> Besides Waimanu 2E, the other lands acquired by exchange at this time were parts of Ohuanga North 3A2 and 3B2 (sections of the Tokaanu Land Development Scheme); Ohuanga South 2B1, 2D1B, 2D2, 2H2, and 2J1; Tokaanu B2M7; and Waipapa 1C2, 2A1, 2A2A, 2A2B, and 2B2. Crown land for these exchanges was made available both within the inquiry district (in

Ohuanga South 2D1A, 2F, and 2H1A; Waipapa 1C, 2A2A, and 2B2; Waimanu 2G; Ōkahukura 2B1) and in other nearby areas (in the Opawa–Rangitoto, Hautu, Tauranga–Taupō, and Waituhi–Kuratau blocks). The exchanges were finalised in 1949 when the land obtained by this means in the various blocks was partitioned out and awarded to the Crown.<sup>579</sup>

Forest lands in the Pihanga area had been acquired by the Crown by various means over a long period, and in the early 1960s steps were taken to gather them together and formalise their status. Much of the land had been obtained through purchase, commencing in 1921 and continuing into the late 1930s when a shift towards exchanges occurred. A few more purchases were made after the many 'Tongariro bush exchanges' were negotiated in 1944, notably the large area obtained in Waimanu 2G3 (finalised in 1948) and also some smaller purchases in the Tokaanu blocks.<sup>580</sup> All this land was grouped together on 18 November 1965 as the Pihanga Scenic Reserve, consisting of 36 pieces of land, with a total area of 12,708 acres.<sup>581</sup> Of these, 21 had been purchased and 15 obtained by exchange. Another block, Ohuanga North 1B2 (61 acres), was added in 1968, after the owners agreed to exchange it for a block of mostly open Crown land (Ohuanga North 3B1) and the grant of timber cutting rights in Opawa–Rangitoto (outside the inquiry district).<sup>582</sup>

The new scenic reserve was not contiguous with the Tongariro National Park, but eventually the decision was made to upgrade its status and include it in the park. This was done on 30 June 1975. The land added to the park had a total area of 12,674 acres.<sup>583</sup>

**(7) *Conclusion***

Although the Pihanga forest lands were a notable accession to the conservation estate and increased the attractiveness of the area to tourists, there was a cost to Māori: acquisition of these lands by the Crown had deprived the owners of the opportunity to derive economic benefit from the timber resources present on the blocks. The land was not obtained by means of compulsory transfer under the scenery preservation legislation, but by purchase and exchange. In an earlier section of this chapter,

we have already discussed the problems associated with Crown purchasing at this time. In particular, the prohibition of alienation except to the Crown was used as the main means of preventing sales and leases to private interests and the destruction of the forest by milling. In many instances, prohibition orders were maintained for long periods without any progress being made towards purchase. Māori landowners repeatedly objected to this, and even gifted the valued Pihanga summit to the Crown, apparently in the hope of softening the Crown's attitude, but to no avail. The case of Ohuanga South 2B2, where alienation restrictions were maintained for a period of nearly 20 years despite ongoing protest from the owners, stands out as a striking example of this way of protecting the forest. Clearly this was an injustice, and the Crown has acknowledged it as such.

The inherent conflict between logging, conservation (and tourism), and cultural harvest in this area was not resolved during the years when the Crown insisted on protecting the forest at the expense of the owners. Later, however, the Tongariro bush exchanges were devised as a better alternative to simply locking up the land: it was a way of compensating owners for the economic opportunities lost when their lands were made unavailable for logging. The exchanges brought in a large amount of new Pihanga land for the Crown, and were followed by a formalisation of the Crown's acquisitions as a scenic reserve. Since the 1920s there had been some thought that the lands obtained for 'scenery preservation' might eventually become part of the Tongariro National Park, and in 1975 this is what occurred.

We have accepted that the transfer of Pihanga was a genuine gift. In both Māori and British culture acts of generosity often create something of an obligation, at least of friendship and courtesy, for the recipient to reciprocate. In this case, the expectations of the donors were not met at the time of the gift. There is now room, however, for the Crown to reciprocate with a generous gesture. Some way should be found of recognising and respecting the spiritual regard that the claimants express for the peak, perhaps with a view to Māori involvement in joint management with the Crown.

## 8.6 GENERAL CONCLUSIONS

The present chapter has shown how legislation and policy served to assist the Crown in pursuing goals of its own in the region: the opening up of land for settlement and development, the regulation of the forest industry, and the expansion of the Tongariro National Park. These goals, pursued in the 'national interest', were often in direct competition with those of Māori in this district who wished to retain and develop their remaining lands as a basis for their own economic development, and it is to the latter topic that we will turn our attention in the next chapter. As part of that discussion, we will pick up again on our analysis, above, of what happened in the case of indigenous forestry.

## 8.7 SUMMARY OF FINDINGS

In the legislative regime that it established in 1905, 1909, and 1913 to govern the alienation of Māori land, and in the practices it followed as the major purchaser of Māori land in the National Park district, the Crown failed to provide active protection of the right of Māori to retain the possession of their land and resources if they so wished. A particular aspect of this is the Crown's ability to impose, without consulting the owners or obtaining their consent, orders prohibiting alienation except to itself. This power was not used fairly and reasonably (as the Crown conceded in respect of some cases). It is likely also that it reduced the ability of Māori to secure full market value when selling land (especially land with timber on it). The legislative provisions for ensuring that Māori were left with sufficient land were inadequate, and the Crown also failed to apply them.

Some Māori land was acquired by the Crown for addition to the Tongariro National Park and the Rongokaupō and Pihanga Scenic Reserves. Although not a compulsory taking under scenery preservation legislation, this land was acquired in disregard of the wishes of the owners who wanted to develop it economically. The Crown was entitled to take action in the national interest. In acquiring such land, however, the Crown's pursuit of an important national objective led it to give priority to this aim

over its duty to protect Māori interests and ownership rights, instead of seeking to balance its own rights with those of Māori. Land was acquired, on occasions, without due regard for the owners' economic interests and without consulting them concerning the reasons for expanding the national park or seeking to gain their informed consent and willing cooperation. This was a violation of the principle of partnership. In the particular case of Urewera 2A2, the Crown's adoption of a tendering structure that made it impossible for the owners to succeed in purchasing the land was a failure to meet the obligation to act in good faith. The principle of equity was ignored when logging companies were permitted to cut timber on land desired for the park, or even already acquired for it, but Māori owners were often not permitted to do the same. The policy which led to the Māori Trustee having the power to sell or lease Urewera 2A2 to recover unpaid rates was in breach of the Crown's duty to actively protect Māori in their ownership of this land which they did not want to sell. It is our view that the legislation which enabled the Crown to acquire Māori land against the wishes of its owners was in breach of the principles of partnership and active protection, and as a result of these breaches, Māori were prejudiced thereby.

In the case of the Ōkahukura 8M2 land that was incorporated into the park in 1907, we find that further research is necessary if it is to be confirmed that compensation was never paid for this acquisition. In regard to the gifting of Pihanga peak, we recommend that the Crown find a way of (belatedly) reciprocating the generous gesture of the original donors.

By removing or reducing the right of Māori in the National Park district to utilise the indigenous forests on their land, the Crown did not meet its Treaty obligation to offer active protection of the Māori ownership of lands and resources (although the controls applied to Māori forestry did contain a protective element that was in keeping with Treaty principles). The Crown had a legitimate governance responsibility to conserve the indigenous timber resource in the national interest, but it did not meet its obligation to give due consideration to the interests of Māori forest owners, or to consult with them concerning

timber issues and the possibilities for sustainable management of the resource into the future, or to compensate them for loss of economic opportunity.

#### Notes

1. Counsel for claimants, twentieth-century Crown purchasing – generic submissions, 14 May 2007 (paper 3.3.20), pp 2–3
2. *Ibid*, p 3
3. *Ibid*, pp 4, 8–11, 18
4. *Ibid*, pp 3–8, 10
5. *Ibid*, pp 9, 13, 22; counsel for Ngāti Hikairo ki Tongariro, closing submissions, 28 May 2007 (paper 3.3.42), pp 94–95; counsel for Ngāti Waewae, closing submissions, 28 May 2007 (paper 3.3.41), pp 77–80; counsel for Tamakana Council of Hapū and others, closing submissions, 23 May 2006 (paper 3.3.40), p 75; counsel for Ngāti Tūwharetoa, closing submissions, 7 June 2007 (paper 3.3.43), p 325
6. Paper 3.3.20, pp 15–18
7. Paper 3.3.43, p 308; counsel for Ngāti Hikairo, closing submissions, 15 May 2007 (paper 3.3.30), p 148; paper 3.3.42, p 190; paper 3.3.40, p 232
8. Counsel for Ngāti Rangī, closing submissions, 15 May 2007 (paper 3.3.33), p 26; paper 3.3.40, pp 74, 76
9. Paper 3.3.41, pp 139–142
10. Counsel for the descendants of Winiata Te Kākahi, closing submissions, 15 May 2007 (paper 3.3.32), pp 6, 8
11. Paper 3.3.20, pp 3–4, 10, 23–24
12. *Ibid*, pp 2–3, 7, 15
13. *Ibid*, pp 6–7, 9
14. *Ibid*, p 8
15. *Ibid*, p 3
16. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 10, pp 8, 12
17. *Ibid*, p 13
18. *Ibid*, pp 13–14
19. *Ibid*, pp 31–32
20. *Ibid*, p 17
21. *Ibid*, pp 23–24
22. *Ibid*, pp 4, 29–30
23. *Ibid*, pp 25–26
24. *Ibid*, pp 27–29, 34
25. *Ibid*, pp 76–77
26. *Ibid*, pp 32–33
27. *Ibid*, p 33
28. *Ibid*, pp 26–27
29. *Ibid*, pp 56–58
30. Counsel for Ngāti Waewae, submission in reply to Crown counsel closing submissions (paper 3.3.53), p 18
31. *Ibid*, pp 19–20
32. Jamie Mitchell, 'Quantitative Study of Māori Land Alienation and Management in the National Park Inquiry District' (commissioned

- research report, Wellington: Waitangi Tribunal, 2006) (doc D11), p 7. The total area includes Lake Rotoaira.
33. T J Hearn, 'Crown Land Purchasing in the National Park Inquiry District, 1900 to 2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc H1), p 11
34. Document D11, pp 9–11, 192
35. *Ibid*, pp 11–12, 14–15; doc H1, p 11
36. Document D11, p 15. The one purchase was of Waimanu 1B (151 acres) in 1982.
37. *Ibid*, pp 29–33
38. T J Hearn, 'Taupo–Kaingaroa Twentieth Century Overview: Land Alienation and Land Administration, 1900–1993' (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2004) (doc A42), p 59
39. *New Zealand Herald*, 25 January 1913, p 8 (as quoted in doc A42, p 61)
40. Document A42, pp 62, 72–74, 78, 86, 104
41. Tony Walzl, 'Maori and Forestry (Taupo–Rotorua–Kaingaroa), 1890–1990' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004), 2 vols (doc A44), vol 1, pp 248–258; doc A42, pp 87–88
42. Document A42, pp 89–91
43. Geoff Park, *Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses concerning the Indigenous Flora and Fauna, 1912–1983* (Wellington: Waitangi Tribunal, 2001) (doc A20), p 325
44. *Ibid*
45. Nicholas Bayley, 'Murimotu and Rangipō–Waiū, 1860–2000' (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc A4), p 192; doc D11, p 148
46. Document A4, p 207
47. *Ibid*, p 211
48. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, pp 671–681; Donald M Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952*, Waitangi Tribunal Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1996) (doc A16), chs 2–4, 7
49. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 681–682
50. Document A16, pp 37, 80
51. Document A42, pp 27, 53–54
52. Document D11, p 20
53. *Ibid*; 'LHAD: Ōkahukura Block History', p 248
54. Document A42, pp 28–35, 38–40, 56–57
55. 'Native Lands and Native-Land Tenure: Interim Report by Native Land Commission on Native Lands in the Counties of Wanganui, Waimarino, Rangitikei, and Waitotara', 12 March 1908, AJHR, 1908, G-1B, p 7. The commissioners recommended that Urewera 1B, 1C1, 1C3, and 2E should be reserved for Māori occupation. The four blocks were all sold in 1955.
56. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 682–684
57. Native Land Act 1909, ss 207, 209, 340, 342, 343, 361
58. *Ibid*, ss 209, 217, 220, 348, 349, 369, 373. Dr Hearn incorrectly states that, under the 1909 Act, Crown purchases of land with more than 10 owners were exempt from the obligation for the Maori Land Board to ensure that the sellers were not rendered landless: doc H1, p 27; T J Hearn, under cross-examination by Kirsten Price, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 43).
59. Document A16, pp 82–86; doc A42, pp 45–52; doc H1, pp 25, 83; Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 685–686, 689
60. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 688–689
61. Document A42, p 57
62. Document H1, p 10; doc A42, pp 219–223, 229–232, 326–327, 539–542
63. Document H1, p 10
64. *Ibid*, p 126
65. *Ibid*, pp 19–20
66. *Ibid*, pp 20–21
67. Paula Berghan, 'Block Research Narratives of the Tongariro National Park District, 1865–2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A5), p 46
68. Document H1, pp 22–23
69. *Ibid*, pp 23–24, 35–36; doc A5, pp 44, 333, 345, 419, 453
70. Under-secretary, Native Department, to under-secretary for lands, 28 March 1918, MA-MLP 1 1913/61, Archives New Zealand, Wellington (T J Hearn, comp, 'Supporting Documents to "Crown Land Purchasing in the National Park Inquiry District, 1900 to 2000"', 6 vols (supporting documents, Wellington: Crown Forestry Rental Trust, 2006) (docs H1(a)–(f)), vol 3 (doc H1(c)), p 88); doc H1, p 35
71. 'Order prohibiting alienation of certain Native Lands', 23 April 1918, *New Zealand Gazette*, 1918, no 57, p 1238
72. Under-secretary, Native Department, to Native Minister, 7 August 1918, MA-MLP 1 1918/44 pt 1, Archives New Zealand, Wellington (T J Hearn, comp, 'Supporting Documents to "Crown Land Purchasing in the National Park Inquiry District, 1900 to 2000"', 6 vols (doc H1(e)), vol 5, p 208); doc H1, p 23
73. Document H1, p 25
74. *Ibid*, p 27
75. *Ibid*, pp 26–27, 61–62, 101–102
76. *Ibid*, pp 31, 58–63, 65–68, 72–73; doc A5, pp 348, 350, 456
77. Document H1, p 28
78. Native land purchase officer to under-secretary, Native Department, 12 May 1919, MA-MLP 1 1918/44 pt 1, Archives New Zealand, Wellington (doc H1(e), p 164); doc H1, p 105
79. Document H1, pp 28–29
80. *Ibid*, p 29
81. *Ibid*, pp 31–34
82. *Ibid*, pp 34–35
83. *Ibid*, pp 47–48
84. *Ibid*, pp 55–57; doc D11, p 169
85. Document H1, pp 58–77
86. *Ibid*, pp 57–58
87. *Ibid*, pp 48–54
88. *Ibid*, pp 77–78

89. 'LHAD: Rangataua Block History', p 12. In 1912, the very small Rangataua North 2B2A block (14 acres) was awarded to the Crown in lieu of survey costs.
90. Document D11, p 165
91. Document H1, pp 83–84
92. *Ibid*, pp 92–95
93. Robyn Anderson, 'Tongariro National Park: An Overview Report on the Relationship between Maori and the Crown in the Establishment of the Tongariro National Park' (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2005) (doc A9), p 161; under-secretary for Māori Affairs to director-general of lands, 13 June 1951, L&S 4/362/1 box 986, Department of Conservation (Robyn Anderson, comp, 'Document Bank for "Tongariro National Park: An Overview Report on the Relationship between Maori and the Crown in the Establishment of the Tongariro National Park"' (document bank, Wellington: Crown Forestry Rental Trust, 2005) (doc A9(a), doc 172)
94. Under-secretary for Māori Affairs to director-general of lands, 9 November 1954, MA-MLP 1 1918/45, Archives New Zealand, Wellington (doc H1(e), p 247); doc H1, pp 93–94
95. Document H1, pp 85–90
96. *Ibid*, p 47. The remaining non-sellers' section, Taurewa 4 West E2B3B2 (225 acres), is still Māori-owned.
97. *Ibid*, pp 90–92
98. Native Minister to Wanikau Hohepa et al, 20 June 1918, MA-MLP 1 1918/6, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 59)
99. *Dominion*, 1 May 1923 (Cecilia Edwards, 'Tongariro National Park: The Legislative Regime and Park Management, 1894–1952' (commissioned research report, Wellington: Crown Law Office, 2005) (doc A53), p 204)
100. Document H1, pp 127–128
101. Paper 3.3.45, ch 10, pp 4, 25–26, 29–30
102. Document H1, p 96
103. *Ibid*, pp 98–99
104. *Ibid*, p 103
105. *Ibid*, pp 43–47; 'LHAD: Taurewa Block History', pp 196–239
106. Document H1, pp 36–37; Native Minister to registrar, Aotea Native Land Court, Whanganui, 14 September 1920, and unsigned file note, MA-MLP 1 1913/61/1, Archives New Zealand, Wellington (doc H1(c), [pp 222, 223]); 'LHAD: Taurewa Block History', pp 19–27
107. Paper 3.3.41, p 32
108. Registrar, Native Land Court, to under-secretary, Native Department, 19 August 1924, WHB/AS (as quoted in doc A4, p 211); 'LHAD: Rangipō Waiū Block History', p 5
109. Philip Cleaver, 'The Taking of Maori Land for Public Works in the Whanganui Inquiry District, 1850–2000' (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc A36), p 123
110. Paper 3.3.20, pp 9, 13–15
111. Document H1, pp 105, 129
112. *Ibid*, pp 104–105
113. 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 15
114. 'Native Lands in the Rohe-Potae (King-Country) District (An Interim Report)', 4 July 1907, AJHR, 1907, G-1B, p 4
115. 'Native Lands and Native Land Tenure', 11 July 1907, AJHR, 1907, G-1C, p 8
116. 'Native Affairs Committee: Report on the Petition of Te Wherowhero Tawhiao and 276 Others', 13 September 1905, AJHR, 1905, I-3B, pp 17, 19, 21
117. Hoani Te Heuheu to Prime Minister, July 1938 (as quoted in Wai 575 Claims Cluster Steering Committee, 'Te Taumarumarutanga o Ngati Tuwharetoa: The Shadow of Ngati Tuwharetoa' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc G17), pp 385–386)
118. Hoani Te Heuheu to Prime Minister, 13 March 1944 (doc G17, p 405)
119. T J Hearn, under cross-examination by Karen Feint, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 61)
120. *Ibid*
121. Document H1, pp 37–38; 'LHAD: Taurewa Block History', pp 30–38
122. Document H1, p 43
123. *Ibid*, p 119
124. Conservator of forests, Palmerston North, to chief surveyor, 5 October 1953, ADSQ W3129 F1 22/3/24, Archives New Zealand, Wellington (as quoted in doc H1, pp 121–122)
125. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 707
126. 'LHAD: Urewera Block History', pp 3, 5
127. *Ibid*, pp 22–24
128. Document A5, p 402; Tony Walzl, 'Ngati Rangi Land Issues, 1840–1970' (commissioned research report, Ōhākune: Ngāti Rangi, 2004) (doc A41), pp 175–176; doc H1, pp 78–79
129. 'LHAD: Rangataua Block History', pp 8, 10; doc A5, p 212
130. 'LHAD: Rangipō North Block History', pp 78, 80, 94, 97–98, 100
131. Document A5, p 405; 'LHAD: Urewera Block History', pp 12, 14, 16, 18, 20
132. 'LHAD: Rangipō Waiū Block History', p 5
133. Whanganui Native Land Court minute book 102, 16 February 1944, fols 370–371 ('Crown documents relied on during cross-examination of P Cleaver', not dated (doc B10), pp 6–7); 'LHAD: Rangipō Waiū Block History', p 6
134. Document A9, pp 146–147
135. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 3, p 967
136. Some examples are Ōkahukura 3, Ōkahukura 4A, Taurewa 4 West A2, Taurewa 4 West A4A, Taurewa 4 West D2A, Taurewa West 4 D2B, Taurewa West 4 D3: see doc A5, pp 154, 157, 335–336.
137. For example, Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, ch 5
138. Document H1, p 101; T J Hearn, under cross-examination by Te Kani Williams, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, pp 74–75)

139. Document A42, pp 323–325
140. *Ibid*, p 553
141. *Ibid*, p 246
142. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 692
143. *Ibid*, p 719
144. *Ibid*, pp 719–720
145. Claimant counsel, generic submissions relating to the ‘gift’ of the peaks and the establishment of Tongariro National Park, 15 May 2007 (paper 3.3.23), p 76; paper 3.3.41, pp 83–86; paper 3.3.40, pp 111, 156–162, 165–169, 226–227; paper 3.3.33, pp 39–50; counsel for Uenuku, closing submissions, 22 May 2007 (paper 3.3.37), p 115
146. Paper 3.3.30, pp 65–66; paper 3.3.41, pp 83–86
147. Paper 3.3.23, pp 76–77
148. *Ibid*, p 42; paper 3.3.43, pp 325–333; paper 3.3.41, pp 56–57; paper 3.3.42, pp 52–53
149. Paper 3.3.43, pp 325, 353–354
150. *Ibid*, pp 331–333; paper 3.3.42, p 53; paper 3.3.41, p 57
151. Paper 3.3.40, pp 120, 178, 186–189, 228, 233
152. Paper 3.3.37, pp 116–118
153. Paper 3.3.40, pp 116–119, 232
154. Paper 3.3.32, pp 6, 8–9, 19, 34, 35
155. *Ibid*, pp 9, 31–33
156. *Ibid*, pp 18, 30
157. Paper 3.3.30, pp 12–14, 174; paper 3.3.42, pp 67–68
158. Paper 3.3.45, ch 6, pp 45–46
159. *Ibid*, pp 49–51
160. *Ibid*, pp 51–52
161. *Ibid*, ch 10, pp 30–31
162. *Ibid*, pp 58–61
163. Counsel for the descendants of Winiata Te Kākahi, submission in reply to Crown counsel closing submissions, 6 July 2007 (paper 3.3.51)
164. Counsel for Tamakana Council of Hapū and others, submission in reply to Crown counsel closing submissions, 6 July 2007 (paper 3.3.55), p 21
165. P Sheridan, native land purchase officer, to Judge Butler, 14 May 1903 (as quoted in doc A41, p 176)
166. ‘Proclamation setting apart land for Tongariro National Park’, 23 August 1907, *New Zealand Gazette*, 1907, no 76, p 2677
167. Document A53, p 18
168. *Ibid*, p 22. The map was not printed, but a copy is in Cecilia Edwards, comp, ‘Document Bank to “Tongariro National Park: The Legislative Regime and Park Management, 1894–1952”’, 6 vols (document bank, Wellington: Crown Law Office, 2005) (docs A53(a)–(f)) (doc A53(a)), vol 1, p 121. The Ōkahukura 1 land is marked as Ōkahukura 1B on the map, but the block was not partitioned until 1949, when it was divided into 1B (still Māori-owned today) and 1A (which includes the land under discussion here): see doc A53, p 34; ‘LHAD: Ōkahukura Block History’, p 20.
169. Document A53, pp 28–29
170. *Ibid*, p 31. A map prepared at this time is reproduced as plate 18 of Crown Forestry Rental Trust, ‘Maps of the National Park Inquiry District’, June 2005 (doc A48). (Figure 8.4 is based on this map.) The issue had arisen when the Lands Department asked for a check to be made; it is not known why, but Edwards speculates that the matter might have been raised by Māori at time of the Chateau opening ceremony in 1929: see doc A53, pp 30, 32.
171. Document A53, pp 32–33
172. *Ibid*, p 34; ‘LHAD: Ōkahukura Block History’, p 20
173. Document A53, pp 49–50
174. Paper 3.3.30, p 66; paper 3.3.45, ch 6, p 52
175. JWA Marchant, ‘Forests – Conservation (Reports Relative to)’, 13 October 1898, AJHR, 1903, sess 1, C-13, pp 2–3
176. L Smith, acting chief surveyor, to surveyor-general, 14 July 1902, AJHR, 1903, sess 1, C-13B, p 11
177. ‘Department of Lands & Survey (Annual Report on)’, 23 June 1902, AJHR, 1902, C-1, p x
178. Document A9, pp 121–122
179. ‘Report of the Scenery Preservation Board’, 27 March 1907, AJHR, 1907, C-6, app 1, p 33
180. ‘Department of Lands: Scenery Preservation’, 29 May 1907, AJHR, 1907, C-6, p 2
181. ‘Royal Commission on Forestry (Report of the)’, 31 May 1913, AJHR, 1913, C-12, p xx
182. ‘Department of Lands (Annual Report on)’, 1 June 1908, AJHR, 1908, C-1, p 13
183. Dr Leonard Cockayne and E Phillips Turner, ‘Report by Dr Cockayne and Mr Turner’, 2 April 1908, AJHR, 1908, C-8, pp 2–6
184. Dr Leonard Cockayne, ‘Report on a Botanical Survey of the Tongariro National Park’, AJHR, 1908, C-11, pp 33, 43
185. Document A9, p 124
186. ‘Royal Commission on Forestry (Report of the)’: doc A53, pp 87–88
187. Document A53, p 26
188. *Ibid*, pp 87–88, 90–93
189. Manawatu Philosophical Society to Minister of Lands, 23 January 1914, L&S 4/362 box 0060 983, Department of Conservation (as quoted in doc A53, p 91)
190. Document A9, p 128
191. Document A53, pp 107–108
192. Document A9, pp 126–127; doc A53, p 84
193. Document A53, pp 75–76, 83–84
194. Document A20, pp 252–258
195. Under-secretary for lands to Minister of Lands, 4 May 1909, L&S 4/362, box 0060 983, Department of Conservation (as quoted in doc A53, p 81)
196. Document A9, pp 126–127; doc A53, pp 76–77
197. Document A9, p 121
198. Document A53, pp 107–108 n 462
199. *Ibid*, p 26
200. ‘Appendix 2: The Scenery Preservation Amendment Act 1906: Report’, AJHR, 1907, C-6, p 35
201. William W Harris, ‘Three Parks: An Analysis of the Origins and Evolution of the New Zealand National Park Movement’ (MA thesis,

- University of Canterbury, 1974), pp 79, 83–84; doc A9, pp 128–130; doc A53, pp 107–108; 'LHAD: Rangataua Block History', pp 11–12
202. Document A53, pp 108–115
203. Ibid, pp 109–110
204. Ibid, pp 250–251
205. Document A9, pp 130, 134; doc A53, pp 142–152
206. Document A9, p 135
207. Harris, 'Three Parks', p 93
208. The area of land taken from Waimarino 4B2 was 1,051 acres, of which 649 acres is within the National Park inquiry district (this figure corrects the information in LHAD that the area is 710 acres, a figure that mistakenly includes the 55 acres of land north-east of State Highway 47 that were taken in 1911 but not incorporated into the national park in 1922 or included in the National Park inquiry district): 'LHAD: Waimarino Block History', p 8; Peter Clayworth, "Located on the Precipices and Pinnacles": A Report on the Waimarino Non-Seller Blocks and Seller Reserves' (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc A35), pp 156–161. The area of the Mahuia land was 826 acres: 'LHAD: Mahuia Block History', p 5. The area of the Tawhai North land was 2,988 acres: 'LHAD: Tawhai North Block History', p 4.
209. Document A9, pp 130–133; doc A35, pp 159–160. The portions of Tawhai North and Mahuia B not taken into the national park in 1922 were declared Crown land in 1940 and State forest land in 1941; later they were included in Landcorp's Taurewa farm and the Tongariro Conservation Area.
210. Document A9, pp 133–134
211. Ibid, p 134
212. Ibid, pp 120–128
213. 'LHAD: Ōkahukura Block History', pp 293, 299, 349, 372; doc A53, pp 186–187; doc A9, pp 162–165; doc H1, pp 53–54. The land added to the park in 1976 came from Ōkahukura 8M2B3A5, 8M2B3B1, and 8M2C2C2C: 'Adding land to Tongariro National Park', 23 August 1976, *New Zealand Gazette*, 1976, no 96, p 2016.
214. Document A9, pp 127–128
215. Document A53, p 178. An addition made in 1936 consisted of 55 acres of Raetihi 5B4 acquired in 1924 by the Crown from a private owner who had purchased it in 1919 (see the section on Rongokaupō): see 'Altering the boundaries of the Tongariro National Park', 26 March 1936, *New Zealand Gazette*, 1936, no 27, p 669; 'LHAD: Raetihi Block History', p 26.
216. Harris, 'Three Parks', pp 100–101; 'Lands declared to be waste lands of the Crown', 15 November 1881, *New Zealand Gazette*, 1881, no 100, p 1520. In 1935, the further addition of 57 acres of education reserve land in 1935 had the effect of joining the two pieces of the enclave together: Harris, 'Three Parks', p 101; 'Altering the boundaries of the Tongariro National Park', 26 July 1935, *New Zealand Gazette*, 1935, no 55, p 2060.
217. Document A9, pp 178–180
218. Document A53, p 230
219. Document A9, pp 180–181
220. Document A53, p 252
221. Rangataua North 2B2A, acquired as a survey award in 1912, was added to the park in 1957, while part of Rangipō–Waiū 1B, taken for military purposes in 1942, was added to the park in 1980: see 'LHAD: Rangataua Block History', p 10; 'Adding land to the Tongariro National Park', 3 July 1957, *New Zealand Gazette*, 1957, no 51, p 1321; 'Land, and leasehold estate or interest in land, taken for public works', 7 July 1942, *New Zealand Gazette*, 1942, no 68, p 1868; 'Adding land to Tongariro National Park', 13 October 1980, *New Zealand Gazette*, 1980, no 133, p 3315.
222. Document A9, p 169
223. Ibid, pp 170–171
224. District officer, Māori Affairs Department, Whanganui, to head office, 10 November 1954, MA-MLP 1903/118 pt 2, Archives New Zealand, Wellington (as quoted in doc A9, p 171)
225. Document A9, p 172; 'LHAD: Urewera Block History', pp 8, 13, 15
226. Document A9, p 172; 'Adding land to the Tongariro National Park', 6 April 1964, *New Zealand Gazette*, 1964, no 23, p 666
227. Document A9, pp 173–174; 'LHAD: Urewera Block History', pp 17, 19, 20
228. Harris, 'Three Parks', pp 107–108; doc A53, p 186
229. 'Adding Land to the Tongariro National Park', 16 August 1961, *New Zealand Gazette*, 1961, no 53, p 1300; 'Adding land to the Tongariro National Park', 31 July 1972, *New Zealand Gazette*, 1972, no 64, p 1643
230. Document A53, p 188
231. Document A9, p 165
232. Secretary, Tongariro National Park Board, to Director of Forestry, 2 September 1948, L&S 4/362, box 0060 984, Department of Conservation (as cited in doc A53, p 188)
233. Document A53, p 188
234. Registrar, Māori Land Court, Whanganui, to conservator of forests, 29 November 1948 (M McGhie, 'Documents Concerning Urewera Block', 17 May 2006 (doc D56), [p 157])
235. Document A9, p 166; doc A53, p 189
236. Harris, 'Three Parks', pp 120–122; doc A9, pp 166–169
237. 'Adding land to Tongariro National Park', 6 June 1962, *New Zealand Gazette*, 1962, no 38, p 920
238. Document A9, pp 160–161
239. Document A5, p 228
240. Document A9, pp 162–163
241. Ibid, p 163
242. Tony Walzl, 'Exotic Forestry Leases' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc E35), pp 90–104; George Asher, brief of evidence on behalf of Ngāti Tūwharetoa, 6 October 2006 (doc G52(a)), pp 25–26
243. Report by boundary alterations committee of Tongariro National Park, 1972, AAZU W3619 14 46/6/72, Archives New Zealand, Wellington, pp 1–2 (as quoted in doc E35, pp 100–101)
244. Document A9, p 204
245. Department of Conservation, *Tongariro National Park: Management Plan*, 2 vols (Tūrangi: Department of Conservation, 1990), vol 1, p 37

246. Counsel for Maria Annette Perigo and descendants of Winiata Te Kākahi, amended statement of claim, 22 July 2005 (claim 1.2.7). Claims concerning the alienation of Urewera 2A2 were made by the Wai 843 claimants also (see counsel for claimants affiliated with Whanganui iwi, generic pleadings, 22 July 2005 (claim 1.2.3)), but they were not pursued in the closing submissions of this group (counsel for Wai 73, 843, 221 claimants, closing submissions, 14 May 2006 (paper 3.3.35)). We note that the loss of this block was important for a number of hapū and whānau with interests in it, not just for the Winiata Te Kākahi descendants: this is pointed out by the Tamakana Council of Hapū (paper 3.3.55, p 2).
247. 'LHAD: Urewera Block History', pp 25–26
248. Document A9, p 171
249. 'LHAD: Urewera Block History', p 26
250. Ibid
251. ES Austin, trust section, Māori Affairs department, to RF Holder, field supervisor, 3 August 1966, 4/4463, Māori Trust Office (counsel for Wai 1181 claimants, supporting documents to memorandum 3.2.65, 4 May 2006, 'Maori Trust Office File: 4/4463 (volume 2: from 24.02.48)', not dated) (doc D23), item B8).
252. Document A9, p 172; Waimarino County Council, application to Māori Land Court, 14 October 1966 (doc D17)
253. A Tatana to JE Cater, 11 October 1966, 4/4463, Māori Trust Office (doc D23, item B11)
254. Matu Alexander Tatana, brief of evidence on behalf of the descendants of Winiata Te Kākahi, 31 May 2006 (doc D16(a)), pp 2–3
255. Ibid, pp 3–4
256. District officer, Whanganui, to A Tatana, 13 February 1967, 4/4463, Māori Trust Office (doc D23, item B20)
257. Document D16(a), p 4
258. Valuation report, 6 June 1967, 12D/16 – 4/4463, Māori Trust Office (counsel for Wai 1181 claimants, supporting documents to memorandum 3.2.65, 4 May 2006, 'Maori Trust Office File: 12D/16 – 4/4463 (was 12B–132)', not dated) (doc D24), item C5)
259. Document D16(a), p 4
260. Alex Tatana, under cross-examination by David Soper and Annette Sykes, Te Puke Marae, 17 May 2006 (transcript 4.1.8, pp 173, 180)
261. Departmental minutes, October–November 1966, 4/4463, Māori Trust Office (doc D23, items B12, B13)
262. R Kerei to registrar, Māori Land Court, Whanganui, 18 October 1966, 4/4463, Māori Trust Office (doc D23, item B14)
263. 'LHAD: Urewera Block History', p 26; record of Māori Land Court hearing, 7 February 1967, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C60)
264. Conservator of forests to Māori trustee, Whanganui, 8 February 1967, 18/0 LTD DG, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C2)
265. District officer, Whanganui, to A Tatana, 13 February 1967, 4/4463, Māori Trust Office (doc D23, item B20)
266. Notice of lease by tender in the *Whanganui Chronicle*, February and March 1968, 12D/16 – 4/4463, Māori Trust Office (doc D24, items C14, C15)
267. Conservator of Forests to Māori trustee, Whanganui, 8 February 1967, 18/0 LTD DG, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C2)
268. Māori trustee to chief surveyor, 3 April 1967, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C3)
269. Commissioner of Crown lands to Māori trustee, Whanganui, 29 February 1968, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C7)
270. Document D16(a), p 4
271. Under cross-examination, Mr Tatana appeared to accept Crown counsel's suggestion to this effect. Later, however, he seemed to be linking Cater's advice with the sale tender: Alex Tatana, under cross-examination by David Soper and Mark McGhie, Te Puke Marae, 17 May 2006 (transcript 4.1.8, pp 177, 179).
272. Document D16(a), p 4
273. Ibid, pp 4–5
274. Alex Tatana, under cross-examination by David Soper, Te Puke Marae, 17 May 2006 (transcript 4.1.8, p 174)
275. Document D16(a), p 5
276. A Tatana to Minister of Māori Affairs, 16 March 1968 (doc D16(a), app A)
277. District officer, Whanganui, to head office, Whanganui, 26 March 1968, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C8)
278. Minister of Māori Affairs to A Tatana, 9 April 1968, 15/84/364, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C13)
279. Trust section, Ministry of Māori Affairs to district officer, 2 April 1968, 12B/132, Māori Trust Office (doc D24, item C10)
280. Māori Trustee to A Tatana and others, 31 May 1968, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C18)
281. Alex Tatana, under cross-examination by David Soper, Te Puke Marae, 17 May 2006 (transcript 4.1.8, p 175)
282. Director-general of lands to commissioner of Crown lands, Wellington, 20 June 1968, L&S 4/362/1 box 986, Department of Conservation (doc A9(a), doc 205)
283. Commissioner of Crown lands, Wellington, to director-general of lands, 24 June 1968, L&S 4/362/1 box 986, Department of Conservation (doc A9(a), doc 204)
284. Commissioner of Crown lands to district officer, Whanganui, 24 June 1968, L&S 20/205, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C22)
285. Horsley, Brown, and Lowe to district officer, Whanganui, 25 June 1968, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C23)
286. Assistant district officer to Horsley, Brown, and Lowe, 28 June 1968 (doc D23, items B32, B33)
287. Assistant district officer, Whanganui, to head office, 1 July 1968, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C29)
288. Departmental minutes, 18 July 1968 (doc D24, item C30); Horsley, Brown, and Lowe to district officer, Whanganui, 19 July 1968, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C32); assistant district officer, Whanganui, to Horsley, Brown, and Lowe, 22 July 1968 (not sent), 12D/16 – 4/4463, Māori Trust Office (doc D24, item C31)



289. District officer, Whanganui, to Horsley, Brown, and Lowe, 23 July 1968 (doc D24, item C33); district officer, Whanganui, to head office, 31 July 1968, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C34)
290. Board of Māori Affairs, 'Proposed Crown Purchase of Maori Land', 7 August 1968, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C35). The alienation was formalised on 19 December 1968.
291. List of 'major owners', 12D/16 – 4/4463, Māori Trust Office (doc D24, item C38); Māori Trustee to Haare Taiwhati and others, 28 February 1969, 12D/16 – 4/4463, Māori Trust Office (doc D24, item C43)
292. 'Adding land to Tongariro National Park', 23 June 1969, *New Zealand Gazette*, no 39, 1969, p 1203
293. Document D16(a), p 5; Alex Tatana, under cross-examination by Mark McGhie, Te Puke Marae, 17 May 2006 (transcript 4.1.8, p 184)
294. Document A9, p 173
295. Paper 3.3.45, ch 6, p 46
296. Document A20, pp 246, 317, 320–321, 330–332, 383–384
297. Document A9, pp 183, 185–186
298. Document A20, p 349; doc A9, pp 203–204
299. Document A20, p 352
300. Acting superintendent of tourist and health resorts to Minister of Tourism and Health, 13 October 1904, TO 1 1904/191/12, Archives New Zealand, Wellington (doc A9(a), doc 109); doc A9, p 136
301. Paper 3.3.20, p 20
302. Paper 3.3.43, pp 301–303, 308
303. Ibid, pp 305–308
304. Ibid, pp 308–309
305. Ibid, pp 326–327, 330, 367–368
306. Ibid, pp 327–328
307. Ibid, pp 309–310
308. Ibid, pp 310–320
309. Ibid, p 322
310. Paper 3.3.42, pp 3, 189–194; paper 3.3.30, pp 149–155
311. Paper 3.3.43, p 309
312. Paper 3.3.30, pp 148–149; paper 3.3.42, pp 3, 193–194
313. Paper 3.3.45, ch 10, p 62
314. Ibid, pp 65–66
315. Ibid, pp 66–69
316. Ibid, pp 73–75, 77
317. Ibid, pp 77–79
318. Ibid, p 84
319. Ibid, p 62
320. Counsel for Ngāti Hikairo, submission in reply to Crown counsel closing submissions, 6 July 2007 (paper 3.3.52), pp 9–10
321. Ibid, p 10
322. Ibid, p 11
323. Michael Roche, *History of New Zealand Forestry* (Wellington: GP Publications, 1990), pp 115–121
324. 'Department of Lands: The Timber Industry in New Zealand in 1907', 20 May 1907, AJHR, 1907, C-4, pp 22–23
325. Document A44, vol 1, pp 252–257
326. Minister of Lands to Wellington Acclimatisation Society, 19 June 1916, F1-1/7, vol 2, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 254)
327. Roche, *History of New Zealand Forestry*, pp 142–143
328. Minister of Lands to Wellington Acclimatisation Society, 19 June 1916 (as quoted in A44, vol 1, p 254)
329. 'Native Affairs Committee: Report on the Maori Land Laws Amendment Bill and the Maori Councils Bill', 27 October 1903, AJHR, 1903, I-3A, pp 1–10; Roche, *History of New Zealand Forestry*, p 121
330. H Heke, 12 November 1903, NZPD, 1903, vol 127, p 531; Roche, *History of New Zealand Forestry*, p 121; Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 1124–1126
331. 'Native Affairs Committee: Report on the Petition of Te Wherowhero Tawhiao and 276 Others', 13 September 1905, AJHR, 1905, I-3B, pp 21–23. See Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 1123, for a brief comment on this.
332. M M Roche, *Forest Policy in New Zealand: An Historical Geography, 1840–1919* (Palmerston North: Dunmore Press, 1987), pp 112–118
333. Record of meeting of commissioner of state forests with conservators of forests, 5 April 1921, F1-1/7, vol 3, Archives New Zealand, Wellington (doc A44, vol 1, p 283)
334. Document A44, vol 1, pp 257–258, vol 2, p 482
335. Ibid, vol 1, pp 279–284
336. Ibid, vol 2, p 482
337. Ibid, vol 1, pp 286–289, vol 2, pp 481–486
338. Roche, *History of New Zealand Forestry*, pp 184–185, 188
339. Secretary, Forest Service, to under-secretary, Native Department, 7 January 1925, MA-MLP 1 1928/19, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 293)
340. Document A44, vol 2, pp 483, 485
341. Ibid, vol 1, pp 110–112, 231
342. Secretary, Forest Service, to commissioner of state forests, 7 March 1924, F-1 15/3, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 112)
343. Document A44, vol 2, p 485
344. Ibid, vol 1, pp 369–370
345. Timber sales officer, report, 29 January 1954 (as quoted in doc A44, vol 2, p 472)
346. Hampson and Davys to Native Minister, 8 September 1931, MA1 5/10 pt 1, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 371)
347. Document A44, vol 1, pp 373–383, vol 2, pp 497–500
348. W C Ward, *Fifty Years: A History* (Wellington: Dominion Sawmillers' Federation, 1967), pp 41–42, 57–59
349. President, Aotea Maori Land Board, to director of forestry, 21 May 1935, F1 15/3, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 377)
350. Commissioner of state forests to A F Moncur, 14 February 1936, F1 15/3, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 380)
351. Document A44, vol 2, p 507
352. Ibid, vol 1, pp 411–416

353. Document A44, vol 1, pp 417–428
354. *Ibid*, pp 458–462
355. Registrar, Waiariki Maori Land Board, to under-secretary, Māori Affairs, 28 July 1949, MA1 92–5/10 pt 2, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 458)
356. Document A44, vol 2, p 466
357. *Ibid*, vol 1, pp 462–465, vol 2, pp 466–476
358. *Ibid*, vol 2, p 476
359. Notes of meeting, 23 September 1943, MA1 5/10/95 pt 1, Archives New Zealand, Wellington (as quoted in Tony Walzl, ‘Maori and Forestry (Taupo-Rotorua-Kaingaroa) (1890–1990): Supplementary Report’ (doc A60), p 29)
360. Ngāti Tūwharetoa hapū to under-secretary, Native Affairs, 12 April 1906, MA1 5/15/1 pt, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, pp 18–19)
361. Travers, Russell & Campbell to under-secretary, Native Department, 25 April 1906, MA1 5/15/1 pt 1, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, pp 19–20)
362. Skerrett & Wylie to Premier, 22 January 1907, MA1 5/15/1 pt 1, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, pp 20–23)
363. Registrar, Native Land Court, Auckland to under-secretary, Native Department, 21 February 1907 (as quoted in doc A44, vol 1, p 23)
364. ‘Order exempting land from the Native Land Court Act and removing restrictions’, 22 January 1908, *New Zealand Gazette*, 1908, no 8, pp 363–365
365. Findlay to President, Maniapoto–Tūwharetoa Maori Land Board, 12 March 1908, MA 1 5/15/1 pt 1, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, pp 27–28)
366. In the presentation summary he made during the hearings, Mr Walzl stated that there was only one Tongariro Timber Company block, Waimanu, situated within the National Park inquiry district (Tony Walzl, ‘Presentation Summary of Maori and Forestry’, August 2006 (doc A44(a), para 3). The closing submissions of the Crown, on the basis of this summary, made the same assertion (paper 3.3.45, ch 10, p 66). Under cross-examination by counsel for Ngāti Tūwharetoa, however, Mr Walzl agreed that he should also have listed Ōkahukura 3, 4, and 6: Tony Walzl, under cross-examination by Karen Feint, Pāpakai Marae, 21 September 2006 (transcript 4.1.10, pp 76–77).
367. ‘Native Lands and Native-Land Tenure’, 11 September 1908, AJHR, 1908, G-1T, pp 1, 4
368. *Ibid*, pp 16–17, map
369. Document A44, vol 1, p 38
370. *Ibid*, pp 17–246
371. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 1129–1145
372. *Ibid*, p 1131
373. Document A44, vol 1, p 218
374. *Ibid*
375. *Ibid*, pp 124–206, 229–246
376. M Wright and MM Roche, *The Egmont Box Company: A Study of Company Evolution in the Context of the White Pine Trade*, New Zealand Forestry Service working paper 87/3 (Wellington: New Zealand Forest Service, 1987), pp 25–26; ‘LHAD: Taurewa Block History’, pp 18, 28, 48
377. Wright and Roche, *Egmont Box Company*, pp 19, 31, 46
378. ‘LHAD: Taurewa Block History’, p 96. In 1922, a further 4 acres in this block were purchased by the Tongariro Timber Company for its railway (‘LHAD: Taurewa Block History’, pp 119, 189). In 1978, these strips of land were included in the Taurewa development scheme (‘LHAD: Taurewa Block History’, pp 190, 194). In 1923, a further six acres in the block were set aside for a roadway, one chain wide, from the Whakapapa River crossing to the Box Company’s mill site at Te Rena (‘LHAD: Taurewa Block History’, p 125). Another small purchase in 1923 (two acres acquired by the Tongariro Timber Company in Taurewa 4 West E2B1) is noted by Berghan: see doc A5, p 335.
379. Document A44, vol 1, pp 50–51; Wright and Roche, *Egmont Box Company*, pp 27–28. The agreement was validated by section 5 of the Native Land Claims Adjustment Act 1914.
380. ‘LHAD: Taurewa Block History’, p 98
381. Wright and Roche, *Egmont Box Company*, pp 33–34
382. *Ibid*, p 36; doc A44, vol 1, pp 74, 76–77
383. Wright and Roche, *Egmont Box Company*, p 46
384. *Ibid*, pp 46–48
385. *Ibid*, p 51. After finishing at Te Rena, the company began to operate on State forest land in the southern part of the Taurewa block, with a large mill beside the present State Highway 47.
386. Te Wharurangi (Sonny) Te Ahuru, brief of evidence on behalf of Ngāti Hikairo, 4 September 2006 (doc F5), p 4. See also the memories of Te Peau Timu (doc G17, pp 119–121).
387. John Manunui, brief of evidence on behalf of Ngāti Manunui, undated (doc G27), pp 13–14
388. *Ibid*, p 15
389. *Ibid*, p 14
390. Document A5, pp 333–334; doc H1, pp 35–36, 41–42; ‘LHAD: Taurewa Block History’, pp 71, 75
391. Document H1, pp 42–43, 91–92
392. *Ibid*, pp 40–41
393. Document D11, pp 154–155
394. Document A44, vol 1, pp 39, 41, 49–50
395. Document A5, pp 139–140
396. *Ibid*, p 144
397. Under-secretary, Native Department, to Native Minister, 7 August 1918, MA-MLP 1 1918/37, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 60). The list is in doc H1, p 23
398. Document A44, vol 1, p 61
399. Document A5, pp 153, 420; ‘LHAD: Waimanu Block History’, p 22; ‘LHAD: Okahukura Block History’, p 103
400. Document A44, vol 1, p 218
401. *Ibid*, pp 61–62
402. *Ibid*, pp 63–64, 67–68
403. Paper 3.3.45, ch 10, pp 82–83
404. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 1138
405. Document A44, vol 1, pp 64–66

406. Acheson to under-secretary, Native Department, 12 May 1919, MA-MLP 1 18/44, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 67)
407. Document A5, p 146
408. *Ibid.*, pp 147, 149, 160, 161, 171, 173; 'LHAD: Ōkahukura Block History', p 214
409. Document A5, pp 147–148; 'LHAD: Ōkahukura Block History', pp 107, 109, 116. The remaining portion is Ōkahukura 3A (about 34 acres).
410. Document A5, pp 144–145, 147, 149, 159; 'LHAD: Ōkahukura Block History', p 130
411. Document A5, p 420
412. *Ibid.*, pp 424–425, 436
413. Apirana Ngata, 'Statement regarding the Tongariro Timber Co and the West Taupo Forest Lands', AJHR, 1929, I-3A, p 4
414. Document A44, vol 1, p 220
415. Document A5, p 419
416. Document H1, p 111
417. Document A44, vol 1, p 231
418. Hoani Te Heuheu Tūkino and others to the Prime Minister, July 1938 (as quoted in doc G17, pp 385–386)
419. Hoani Te Heuheu to Prime Minister, 13 March 1944 (as quoted in doc G17, p 405)
420. Document A44, vol 1, pp 75–96, 221–223
421. *Ibid.*, pp 109, 112–115
422. Document A5, pp 154–158, 160–165; doc A53, pp 186–187
423. Waaka Reupena to Prime Minister, 27 November 1934, MA-MLP 1 1911/26 pt 2, Archives New Zealand, Wellington (as quoted in doc H1, p 53)
424. Document H1, pp 51–53; Leanne Boulton, 'Contextual Material on Maori and Socio-Economic Issues in the National Park Inquiry District, 1890–1990: A Scoping Report' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc A57), pp 74–75. In 1949, the Crown's interests in this area were partitioned out. The resultant Crown blocks Ōkahukura 8M2B3A5, 8M2B3B1, and 8M2C2C2C were added to the Tongariro National Park in 1976 ('Order adding land to the Tongariro National Park', 23 August 1976, *New Zealand Gazette*, 1976, no 96, p 2016). The Ōkahukura 8M2C2C incorporation was wound up in 1949.
425. 'LHAD: Ōkahukura Block History', p 325. This land was privately purchased in 1982.
426. Document A44, vol 1, p 304
427. *Ibid.*, pp 304–306
428. *Ibid.*, pp 126–127
429. *Ibid.*, p 149
430. Ranginui to Native Minister, 14 August 1929, MA1 5/15/1 pt 3, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 149)
431. Document A44, vol 1, pp 170, 307–310
432. Native Affairs Committee, 'Tongariro Timber Company and West Taupo Forest Lands', 1 November 1929, AJHR, 1929, I-3A, p 1
433. Document A44, vol 1, pp 167–181
434. *Ibid.*, pp 322–335, vol 2, pp 489–491
435. *Ibid.*, vol 1, p 181; doc A5, pp 435–436
436. Prime Minister to Governor-General, 6 November 1934, MA1 5/15/1 pt 6, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 186)
437. Document A44, vol 1, pp 335–337, vol 2, p 492; 'LHAD: Waimanu Block History', p 49
438. Document A44, vol 1, p 337
439. *Ibid.*, pp 345–347
440. Under-secretary for lands to Minister of Lands, 8 March 1940, F1 9/3/5 pt 5, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 352)
441. Document A44, vol 1, p 353
442. *Ibid.*, pp 353–361
443. Director of forestry to Minister of Lands, 1 February 1943, F1 9/3/5 pt 6, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p 362)
444. Document A60, pp 26–30
445. *Ibid.*, p 11
446. *Ibid.*, pp 31–89
447. *Ibid.*, p 108
448. *Ibid.*, p 48. In 1949, a portion (103 acres) of Ōkahukura 6A was partitioned out as 6A1, after being awarded to the Crown in an exchange; it was later removed from the control of the incorporation ('LHAD: Ōkahukura Block History', pp 207, 209).
449. Document A5, pp 169, 173, 175
450. *Ibid.*, pp 441–442
451. *Ibid.*, pp 49, 53, 455
452. *Ibid.*, p 67
453. *Ibid.*, pp 91, 93
454. Raniera Hoani and others to under-secretary, Native Department, 8 July 1952, MA-MLP 1 1921/71, Archives New Zealand, Wellington (Paula Berghan, comp, 'Supporting Papers to "Block Research Narratives of the Tongariro National Park District, 1865–2000"', 15 vols (supporting papers, Wellington: Crown Forestry Rental Trust, 2004) (docs A5(a), vols 1–15) (doc A5(a)), vol 7, p 3275); doc A5, p 91
455. Elizabeth C Allen, *In the Hills of the Waimarino: The Human Story of the Development of the District* (Wanganui: Wanganui Newspapers, 1984), pp 120–121, 149–154; Merrilyn George, *Ohakune: Opening to a New World* (Ōhakune: Kapai Enterprises, 1990), pp 72–117
456. Evidence of H Lundius, 'Report of the Commission on the Timber and Timber Building Industries', minutes of evidence, 28 April 1909, AJHR, 1909, session II, H-24, p 415; Roche, *History of New Zealand Forestry*, p 120
457. 'LHAD: Urewera Block History', pp 10–28; doc H1, p 80
458. 'LHAD: Urewera Block History', pp 17, 19–20
459. 'LHAD: Raetihi Block History', pp 18–19
460. Tony Walzl, 'Whanganui Land, 1900–1970' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A40), pp 191–193; 'LHAD: Raetihi Block History', pp 22–23, 26
461. 'LHAD: Urewera Block History', pp 11, 29

462. Document A9, p135
463. Ibid, pp 120–121, 134, 164. See also Harris, ‘Three Parks’, p93.
464. Document A9, p169
465. Ibid, p172; ‘LHAD: Urewera Block History’, pp13, 15
466. Document A9, pp143–144; doc H1, pp121–122
467. A L Poole, *Forestry in New Zealand: The Shaping of Policy* (Auckland, London: Hodder & Stoughton and English Universities Press, 1969), p4
468. Paper 3.3.45, ch10, pp73–74
469. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp1146–1150
470. Ibid, p1148
471. Paper 3.3.43, p309
472. Document G17, pp121–122
473. Ibid, p122
474. Paper 3.3.30, pp148–149; paper 3.3.42, pp3, 193–194; paper 3.3.52, p10
475. Paper 3.3.43, p309
476. Paper 3.3.45, ch10, p62
477. President, Aotea Maori Land Board, to under-secretary, Native Department, 15 October 1934, F1 15/3, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, p374)
478. President, Aotea Maori Land Board, to Director of Forestry, 21 May 1935, F1 15/3, Archives New Zealand, Wellington (as quoted in doc A44, vol 1, pp376–377)
479. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp1144–1145
480. Ibid, p1145
481. Ibid, p1146
482. ‘LHAD: Raetihi Block History’, pp5–6, 12
483. Ibid, pp5–6, 12, 14–15
484. Document A9, pp137–139
485. Document A40, pp62–65
486. John Chase to Maui Pomare, 20 February 1911, Native Land Court Wellington, 1915/88, W1645, Archives New Zealand, Wellington (as quoted in doc A40, p65)
487. Heather Bassett and Richard Kay, ‘Whanganui Leased Vested Lands, c1951–2000’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (Wai 903 ROI, doc A62), p10; doc A40, pp250, 252
488. ‘Native Affairs Committee: Report on the Maori Land Laws Amendment Bill and the Maori Councils Bill’, AJHR, 1903, I-3A, pp2, 5–6; doc A41, pp262–263; doc A9, p139
489. Evidence of J Mackenzie, ‘Commission on the Timber and Timber-Building Industries’, 26 May 1909, AJHR, 1909, session II, H-24, p755
490. Evidence of H Lundius, ‘Commission on the Timber and Timber-Building Industries’, 28 April 1909, AJHR, 1909, session II, H-24, p415
491. Document A36, pp84–85
492. Ell to Minister of Public Works, 16 May 1906, ABWN 7610 W5021/813 189 pt 1, Archives New Zealand, Wellington (as quoted in doc A36, p86)
493. Document A36, p87
494. ‘Appendix 2: The Scenery Preservation Amendment Act 1906: Report’, p36
495. Ibid, p37
496. Document A36, p89
497. ‘Appendix 2: The Scenery Preservation Amendment Act 1906: Report’, pp35–36
498. Document A36, pp91–92
499. Ibid, p92
500. Document A9, p140
501. Ibid, pp140–141
502. Under-secretary, Native Department, to under-secretary for lands, 12 August 1910, L&S 4/183 box 959, Department of Conservation (as quoted in doc A9, p141)
503. Document A9, pp141–142; doc H1, pp117–119
504. Document H1, p119
505. President, Aotea Maori Land Board, to under-secretary, Native Department, 13 October 1910, W1465 3/1910/211, Archives New Zealand, Wellington (T J Hearn, comp, ‘Supporting Papers to “Crown Land Purchasing in the National Park Inquiry District, 1900 to 2000”’, 6 vols (doc H1(f), vol 6, [p 312]); doc H1, p119. The former Raetihi 4B owners, who became owners in 3A, are now shareholders in the Atihau Whanganui Incorporation, which holds lands outside the inquiry district. See Aiden Gilbert, brief of evidence on behalf of Uenuku hapū and whānau and Ngāti Tara, 5 May 2006 (doc D34), pp12–13, for grievances concerned with the Incorporation.
506. Document A9, p142; doc H1, p117
507. ‘LHAD: Raetihi Block History’, pp6–7, 10
508. Document A9, p142
509. ‘LHAD: Raetihi Block History’, p17
510. Ibid, pp18–19
511. Document A40, pp191–192; doc H1, pp119–121; doc D11, p136; T J Hearn, under cross-examination by Jason Pou, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p64). The transfer of the land to the scenic reserve occurred in 1937, and in 1960 it was added to the Tongariro National Park: ‘Adding land to the Tongariro National Park’, 21 November 1960, *New Zealand Gazette*, 1960, no 79, p1877.
512. Document A40, pp192–193; ‘LHAD: Raetihi Block History’, pp22–23
513. ‘LHAD: Raetihi Block History’, p26
514. Harris, ‘Three Parks’, pp99–100. No references are supplied in this source, but the information appears to be drawn from government files.
515. Ibid, pp101–102
516. Ibid, p102
517. Certificate of Title 271/63, CT 268/131, CT 327/274, CT 244/215
518. Harris, ‘Three Parks’, p104
519. Document A9, pp144–145; Harris, ‘Three Parks’, p124; ‘Adding land to the Tongariro National Park’, 21 November 1960, *New Zealand Gazette*, 1960, no 79, p1877
520. Document A9, pp143–144; doc H1, pp121–122
521. Document A9, p144; doc H1, p122

522. 'LHAD: Raetihi Block History', p 21; Harris, 'Three Parks', p 124; doc A9, pp 144-145
523. 'Adding land to the Tongariro National Park', 31 July 1972, *New Zealand Gazette*, 1972, no 64, p 1643
524. According to 'LHAD: Ohuanga Block History', pp 13, 84: 'A partition into Ohuanga North 1-5 [and South 2A-J] on 26/10/1916 was never perfected, and was cancelled on 15/3/1921, but was used as the basis for Crown purchasing activity during the 1919-1921 period.'
525. Document A5, pp 345-346, 348; doc H1, p 61
526. Document A5, pp 346-350
527. Crown Lands Ranger to Commissioner of Crown Lands, 23 April 1919, MA-MLP 1 1921/71, Archives New Zealand, Wellington, p 2 (doc A5(a), vol 7, p 3006); doc A5, p 47
528. Document A5, p 49
529. Secretary of Forests to under-secretary, Native Department, 15 September 1920, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, p 2989); doc A5, p 50
530. Document A5, p 46
531. Ibid, pp 47-49; doc H1, pp 62-63
532. Document A5, p 51
533. 'LHAD: Waipapa Block History', p 14
534. Document H1, pp 66-67
535. Shepherd to under-secretary, Native Department, 11 March 1921, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, p 2979); doc A5, p 51
536. Tokaanu Native Land Court minute book 14, 15 March 1921, fols 127-132, 169-171 (as quoted in doc H1, pp 74-75)
537. Shepherd to under-secretary, Native Department, March 1921, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, p 2978); doc A5, p 51
538. The area of Ohuanga North 4 was 245 acres; the area of Ohuanga North 6 (not in the National Park inquiry district) was 90 acres: doc A5, p 51.
539. Document H1, pp 67-68. In November 1921 the Tokaanu B2 partitions were also restored, and the Crown was awarded Tokaanu B2N, with an area of 50 acres (doc A5, pp 354-355).
540. Tuatea Smallman, brief of evidence on behalf of Ngāti Tūwharetoa, 12 October 2006 (doc G44(a)), para 24
541. Paper 3.3.43, pp 331-332
542. Ibid, pp 322-333
543. Paper 3.3.42, p 53; paper 3.3.41, p 57
544. Paper 3.3.45, ch 10, pp 30-31
545. Paper 3.3.43, p 333; doc G44(a), para 30
546. Document A5, p 53
547. Ibid, p 54
548. Under-secretary, Native Department, to Native Minister, 1 December 1922, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, p 2958); doc A5, p 54
549. Secretary of Forests to under-secretary, Native Department, 14 March 1923, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, p 2957); doc A5, p 55
550. Rangikamutua Henry Downs, brief of evidence on behalf of Ngāti Tūwharetoa, 2 October 2006 (doc G40), pp 4-5
551. Document A5, pp 56-57
552. M Downs to Native Minister, 24 June 1924, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, p 3117); doc A5, p 58. The survey lien against Ohuanga South 2B2 had been released in March 1924 on payment of the sum owing (doc A5, p 57).
553. Document A5, p 58
554. Ibid, pp 59-60, 65. Land was also taken for the hatchery from Ohuanga South 1 (2 acres) and Ohuanga North 1 (8 acres). Compensation was paid in 1927, at £6 an acre.
555. Document A9, pp 154-155
556. Downs to Native Minister, 26 January 1926, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, p 3108); doc A5, pp 60-61
557. Under-secretary, Native Department, to Native Minister, 27 February 1926, MA-MLP 1 1921/71, Archives New Zealand, Wellington, and Native Minister to Downs, January 1926, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, pp 3106, 3107); doc A5, p 61
558. Downs to Native Minister, 18 July 1927, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, p 3089); doc A5, p 63
559. Shepherd to under-secretary, Native Department, 2 August 1927, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, p 3085); doc A5, p 63
560. Document A53, pp 184-185
561. James Cowan, *The Tongariro National Park, New Zealand: Its Topography, Geology, Alpine and Volcanic Features, History and Maori Folk-lore* (Wellington: Tongariro National Park Board, 1927), p 89
562. Document A5, pp 69-70
563. Ibid, pp 74-75, 462-463
564. 'LHAD: Tokaanu Block History', p 6
565. Document A5, pp 371-375
566. Ibid, pp 375-377
567. Ibid, pp 377-378
568. Ibid, p 379; 'LHAD: Tokaanu Block History', p 7
569. Document A5, pp 75-77
570. Director-general of forestry to under-secretary, Native Department, 16 May 1940, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, p 3163); doc A5, p 77
571. Document A5, p 78
572. Ibid, p 79
573. Under-secretary, Native Department, to director-general of forestry, 12 August 1941, MA-MLP 1 1921/71, Archives New Zealand, Wellington (doc A5(a), vol 7, p 3150); doc A5, p 79
574. Document A5, pp 80-82
575. Paper 3.3.45, ch 10, pp 29-30
576. Document A5, pp 84-87, 89-90, 92-93; 'LHAD: Ohuanga Block History', p 96
577. Document H1, pp 114-115

578. 'LHAD: Ohuanga Block History', p 96; 'LHAD: Waimanu Block History', p 58
579. The exchanges, partitions, and awards are recorded in the relevant sections of LHAD. In addition to the blocks listed above, Tokaanu B2M1A was acquired partly by exchange (arranged in 1944) and partly by purchase (completed in 1964): doc H1, pp 115–116; doc A42, p 535.
580. Document A5, pp 440–441; 'LHAD: Tokaanu Block History', pp 19, 23
581. 'Reservation of land and declaration that land be the Pihanga Scenic Reserve', 18 November 1965, *New Zealand Gazette*, 1965, no 71, pp 2087–2088
582. Document A5, pp 97–98, 100; 'LHAD: Ohuanga Block History', p 28; 'Reservation of land and declaration that land be part of Pihanga Scenic Reserve', 1 April 1968, *New Zealand Gazette*, 1968, no 18, p 546
583. 'Adding the Pihanga Scenic Reserve to the Tongariro National Park', 30 June 1975, *New Zealand Gazette*, 1975, no 58, pp 1519–1520. Ohuanga North 1B2 had been added to the reserve since it was first formed, as we have noted, and Waimanu 2E had been in the reserve but was now omitted from the national park.

#### Page 554: Table 8.1

Source: Document H1, p 11. The figures have been converted into acres, and the survey award column has been adjusted to include Urewera 2A1.

#### Page 639: John Atirau Asher

Document G37(a), p 1; Ringakapo Asher Payne, 'John Atirau Asher', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/4a21/1>, last modified 4 June 2013; 'Obituary: David Asher', *Bay of Plenty Times*, 23 July 1919, p 3; 'John Atirau Asher', *Te Ao Hou*, no 58, March 1967, p 2

CHAPTER 9

## TWENTIETH-CENTURY DEVELOPMENT ISSUES

### 9.1 INTRODUCTION

Indigenous forestry, farming, and exotic forestry together offered the main land-based development opportunities for ngā iwi o te kāhui maunga in the twentieth century. In the previous chapter, we have already seen how Crown policies and practices circumscribed Māori retention and use of land covered by indigenous forest. In the present chapter, we focus particularly on Māori-retained land on which a farm development scheme was established and on other Māori-owned areas that were eventually planted in exotic forest. (A further development opportunity – tourism – was less directly dependent on land retention and will be examined separately in chapter 11.) In investigating claims relating to these activities, we ask:

*How did Crown policies and practices affect the ability of ngā iwi o te kāhui maunga to develop the lands they managed to retain?*

### 9.2 LAND DEVELOPMENT

As part of its efforts to assist Māori to turn their remaining lands to productive account, which also involved dealing with the difficult legacy of the nineteenth century land tenure system, the Crown established a programme of state-assisted Māori land development in 1929. In the words of the enabling legislation, the objective was ‘the better settlement and more effective utilisation of Native land’.<sup>1</sup> In the years following, a considerable number of Māori land development schemes were established in the Taupō area by the Native Department (later the Department of Māori Affairs). Within the bounds of the National Park inquiry district, however, this kind of initiative was not prominent. The population was small, and not much land was suitable for farming. Nevertheless, in 1937 a small area of land within our inquiry district – in three of the Ohuanga North blocks – was included in the Tokaanu development scheme that had been established in 1930.<sup>2</sup> Most of the land in this scheme was located within the Taupō inquiry district. Since no claims were made in respect of the Tokaanu scheme, and no evidence was presented, we will not give it any further attention here. The only other land development scheme in the National Park inquiry district was Taurewa, situated in the extreme north-west corner of our district, near the confluence of the Whanganui and Whakapapa Rivers (see map 9.1). This scheme was commenced in 1939, and in 1991 the land was returned to the control of its owners

(who in 1982 had been formed into the Taurewa 5 West A–F Trust). It is the subject of a number of claims.

The blocks taken up in the Taurewa development scheme were practically the only remaining Māori-owned land in the original Taurewa block. All of the Taurewa land had been alienated before 1900 (mostly to the Crown), except in one of its divisions, Taurewa 4, which was further partitioned in the early decades of the twentieth century.<sup>3</sup> Crown purchasing in Taurewa 4 West, the section where the development scheme was later established, began in 1919 and continued until 1942, by which time 11 blocks, with a total area of more than 10,000 acres, had been alienated to the Crown.<sup>4</sup> Only the contiguous blocks in the north-western part of Taurewa 4 West remained in Māori ownership. One of these blocks (Taurewa 4 West A2, consisting of 235 acres) was gazetted in November 1939 as the Taurewa Development Scheme. In 1941 more than 20 other blocks were added, bringing the area of the scheme up to 2,064 acres.<sup>5</sup>

In contrast to the Central North Island inquiry, which closely examined the generic issues arising from land development schemes and did not make a detailed investigation of any of the many schemes that operated in that district, we have a single scheme to consider and will focus on that. In doing so, we are able to benefit from the framework developed in *He Maunga Rongo* for assessing Crown policies for Māori land development, while evaluating what claimants and the Crown have submitted concerning the Taurewa scheme. Much of our information comes from a report commissioned by the Tribunal and written by Ann Beaglehole.

### 9.2.1 Claimant submissions

#### (1) Other options

It was submitted that although evidence is lacking, there is a strong probability that the Crown did not consider alternative models of Māori land management when the Taurewa scheme was set up, as it saw development schemes as the only real solution, at the time, to the problems of utilising multiply owned Māori land.<sup>6</sup> Only later, long after the scheme had commenced, did the Crown promote an alternative land management model, in the

form of title amalgamation and the formation of a trust, and these measures were not implemented for many years.<sup>7</sup>

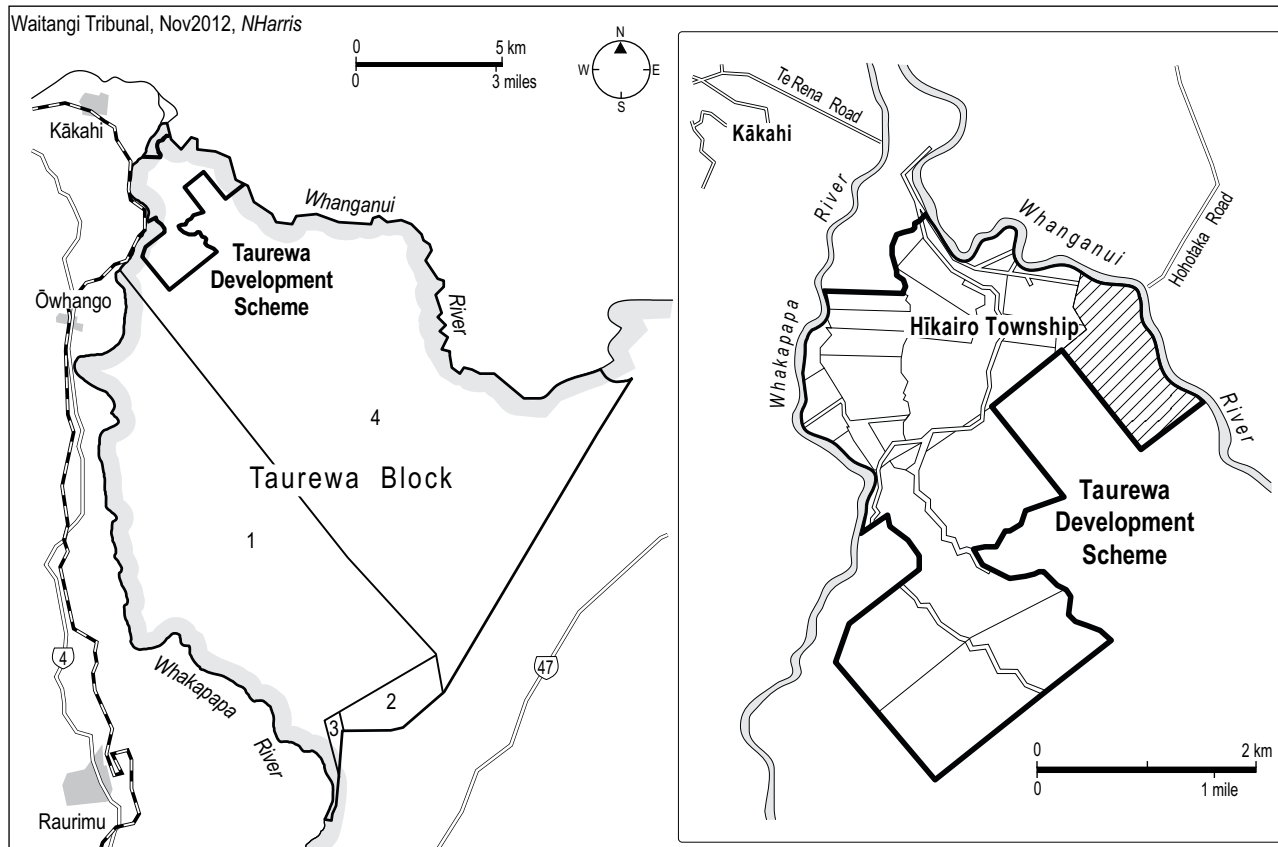
#### (2) Benefit to the owners

Submissions made in support of Ngāti Tūwharetoa's comprehensive claim referred to land development in general terms. Counsel argued that the Crown, by imposing obstacles and failing to give assistance, had denied the iwi its right to development. The schemes that were eventually established, including Taurewa, were well meaning attempts to assist Māori by promoting land utilisation, but ultimately failed to sustain the owners on their lands. In particular, they were 'too little, too late'.<sup>8</sup> Ngāti Tūwharetoa acknowledged that the land development schemes initiated by the Crown in 1929 were a genuine attempt to promote the utilisation of Māori lands by their owners, but asserted that ultimately they failed to achieve their purpose.<sup>9</sup>

More specific submissions on the Taurewa land development scheme were made by the hapū particularly affected by it. The most extensive submissions about the Taurewa scheme were made by Ngāti Hinewai and Ngāti Hikairo, with the latter submissions being adopted also by Ngāti Waewae. Counsel for Ngāti Hinewai submitted that the claims relating to Taurewa were very important to the claimants because the scheme used 'most if not all' of the remaining interests of Ngāti Hinewai in the Taurewa block.<sup>10</sup>

While accepting that there is little evidence about what was promised to the owners at the time of the inception of the scheme, the claimants saw it as reasonable to assume that in entering into an arrangement with the Crown, the owners had high expectations of beneficial results from government funding and management expertise. They would have been aware of the stated objectives of the land development legislation, and officials no doubt commended the scheme as a means of creating economic assets for future generations. The owners would have assumed, said counsel, that their hopes for profitable development of the land would be fulfilled. They would also have expected that the scheme, by drawing on Crown





Map 9.1: The Taurewa development scheme

know-how, would improve their living standards, provide employment opportunities, offer them training as farmers of their own land, and promote title improvement in order to attract finance.<sup>11</sup>

Such potential benefits, the claimants asserted, were not received. The reasonable expectations of the owners – for retaining, utilising, developing, settling, and profiting from their lands – were not met. The scheme provided no financial returns to the owners, since all income was ploughed back into the operation. Even then, the farm never achieved profitability, and was not a viable business when it was returned to the owners.<sup>12</sup> It provided very little employment (except for one of the owners) or training

(except for incidental on-the-job training for this one person).<sup>13</sup> It did not lift the owners' standard of living, or open up opportunities for them to settle on the land.<sup>14</sup> Title amalgamation was slow to begin, and the process was not completed before the scheme came to an end.<sup>15</sup>

The claimants did acknowledge, however, that the property was in the end returned to them in a developed state, with its debt written off. Certainly, too, the land had been retained in Māori ownership, but Ngāti Hinewai questioned the assumption that the owners would have sold it if they had not been involved in the scheme. They pointed out that the owners had been non-sellers before the scheme was initiated. They also submitted that the debt on



The Whakapapa River emerges from the gorge below Owhango. Taurewa, the site of the land development scheme, is to the left above the river.

the property had accumulated as a result of government mismanagement and was thus properly not the responsibility of the owners.<sup>16</sup> Ngāti Hikairo, too, described the debt write-off as ‘only fair’, and pointed out that although the land had remained in Māori ownership, its lack of viability when it was returned meant that it had to be leased out to a non-owner; this amounted to a case of ‘practical alienation.’<sup>17</sup>

Counsel for Ngāti Hinewai submitted that on balance the scheme’s outcome had been severely disadvantageous for the owners. Due to insufficient skills and a lack of capital, they had been left unable to farm their ancestral lands themselves, and had found it necessary to lease them out in return for an income that did not match the expectations they had held when the scheme was initiated.<sup>18</sup>

In the claimants’ view, responsibility for the failure of

the Taurewa scheme lies with the Crown. Since the Crown controlled the operation of the farm, it had a duty to ensure its success. In a number of ways, it mismanaged the scheme and thus contributed to its failure. It could have invested more funds in equipment, bush and scrub clearance, better access across the rivers, higher quality stock, and more fertiliser. This undercapitalisation reduced the potential for profitability, leading to doubts whether the Crown ever intended the scheme to be a success, or had any real commitment to the creation of a profitable farm to return to the owners: the scheme was ‘doomed from the start’ and ‘an operation destined to failure’.<sup>19</sup>

### (3) *The implications of Crown management*

Throughout the life of the Taurewa scheme, said the claimants, there was a lack of proper consultation with the owners on decisions affecting the operation of the property. Even though mechanisms were finally set up for this purpose in the 1960s, they did not succeed in ensuring the participation of all the owners, and did not result in much more than ‘mere reporting’. The extent of Crown control was more than was needed to provide security for the funds advanced by the state. The owners were not made fully aware of how much control they would lose. The effect of this loss of normal ownership rights was a ‘distancing’ of the owners from their land. Not only are faults in the management of the scheme therefore the responsibility of the Crown rather than the owners, who had very little input, but the exclusion of the owners from management of their own lands was inconsistent with the Treaty.<sup>20</sup>

### (4) *Amalgamation*

Ngāti Hinewai claimed that the law relating to succession brought about an extreme fragmentation of title, with the consequence that their land interests were small and uneconomic. The Crown’s response to the problems arising from fragmentation – the Taurewa Development Scheme of 1939 and then title amalgamation (under the legislation of 1953) – served only to aggravate them.<sup>21</sup> According to the claimants, title unification was an objective of the land development legislation and was presented as a benefit of the scheme.<sup>22</sup> Amalgamation was an integral part of the

scheme, in that it was intended to facilitate the financing of development.<sup>23</sup>

The process of amalgamating titles was not begun at Taurewa until 1959, however, and was not finally completed until after the development scheme was brought to a close; this delay and the Crown’s ultimate failure to implement such an important aspect of the scheme deprived the owners of the capital investment promised by amalgamation.<sup>24</sup> The claimants alleged that the benefits of amalgamation, including the ability to farm their own lands once the process was completed, were misrepresented to the owners by the Department of Māori Affairs in order to obtain their agreement to the amalgamation of their titles.<sup>25</sup> There was also coercion, in that they were told that there would be no more funding for development, which was necessary to clear debt, if they did not accept the proposal.<sup>26</sup> They alleged that they were not properly informed about the amalgamation proposal, or about specific amalgamation proceedings, and that the legislation did not require them to be informed.<sup>27</sup> For them, the outcome of the amalgamation process was disastrous, in that Taurewa 4 West E2B1 (containing their papakāinga, urupā and farmlands) was included in the amalgamated title without their knowledge, they were denied access to these sites, some of their urupā were desecrated, and their relations with other owners were strained.<sup>28</sup>

## 9.2.2 Crown submissions

### (1) *Other options*

The Crown noted that Dr Beaglehole, in her report on the Taurewa scheme, did not find any information about whether alternative modes of Māori land management were considered at the time when the scheme was being established. Counsel acknowledged that trusts and incorporations were available as legal mechanisms at that time, and argued that lack of evidence does not necessarily mean that no consideration was given to these alternatives. In any case, development schemes were considered at that time to be the most viable option for addressing the need, and, as it turned out, title problems did not prevent development from commencing or the Crown from financing it.<sup>29</sup>

**(2) Benefit to the owners**

The Crown submitted that the implementation of government land development policy from 1929 was undertaken in good faith, with the goal of assisting Māori to develop their remaining land base for economic benefit. The policy was intended to address problems associated with the utilisation of Māori land held in multiple ownership, and to avoid the problem of accessing development finance from private sources. ‘Genuine and substantial’ assistance was given. Counsel acknowledged that with the benefit of hindsight it might be possible to identify better ways in which development could have been implemented, but did not see this as meaning that the schemes themselves were in breach of the Treaty or its principles.<sup>30</sup>

Although there is little evidence to show what discussions were held between officials and owners when the Taurewa scheme was proposed, the Crown considers it clear that the owners were involved in the decision to establish the scheme. There is no evidence about whether the implications of Crown management were fully explained to them, but it cannot be assumed that they were not. There is no evidence that proper process was not followed in establishing the scheme.<sup>31</sup>

Regarding the level of success attained by the Crown in managing the scheme, counsel drew attention to relevant factors such as land quality and the economic context. There is no evidence about whether the suitability of the land for development was assessed at the time of the scheme’s inception. It is unlikely, however, that the Crown would have embarked on the project if there had been significant concerns about its viability, and there is evidence that officials remained confident of its eventual success.<sup>32</sup> The kind of development attempted on the property and the length of time needed for this development was determined by the nature of the land concerned. Counsel quoted Dr Terry Hearn’s view that the time required to develop relatively poor land into a productive farming operation was often underestimated, and that schemes often had to follow a station model (rather than a unit occupancy model) for a long time until debt was reduced; this was particularly true of pre-1949 schemes such as Taurewa.<sup>33</sup> The progress of the farm was of course

also affected by the broader economic forces operating at the time, although the available evidence did not examine these external factors. Counsel submitted that without such analysis, an assessment of the Crown’s discharge of its Treaty responsibilities in relation to the scheme is not possible.<sup>34</sup>

Concerning the benefits of the scheme to its owners, counsel submitted that it was not surprising that the Crown made the business decision to plough the income earned by the farm back into the scheme, rather than release it as dividends to the owners, since the long-term objective was to develop the land as an economic enterprise for its owners in the future. In the end, the farm was indeed returned in a developed state, with its debt written off. The Crown acknowledged evidence indicating that both the Department of Māori Affairs and the owners expected the Taurewa scheme to be more successful than it was. Counsel referred to the various explanations that have been put forward for this under-performance, including low land quality, isolation and poor access, owner disunity, and government mismanagement. Noting the assertion of the claimants that the Crown was responsible for the failure of the scheme, counsel particularly rejected their view that a greater capital investment in the scheme should have been made by the Crown. He also pointed out that Dr Beaglehole had been unable to arrive at a conclusive explanation for the scheme’s under-performance. Furthermore, in the Crown’s view, the scheme did provide benefit for the owners. This included employment opportunities, although they were admittedly few because of the small size of the scheme. Although the scheme did not prove to be profitable and did not realise its potential while under Māori Affairs management, the ‘crucial’ benefit was retention of the land in Māori ownership, as well as its return in a developed state, debt-free. The Crown submitted that without intervention by means of the development schemes, it is likely that such an outcome would not have been achieved.<sup>35</sup>

**(3) The implications of Crown management**

Regarding owner involvement in the management of the scheme, counsel noted that one of the owners was the

appointed manager of the farm for a number of years. He acknowledged that there is little evidence of any other involvement before the 1960s. After that time there were annual meetings, which he admitted were largely for the imparting of information.<sup>36</sup> Counsel submitted that restriction of the owners' rights of control were necessary to safeguard the investment, and would also have been needed if the financing had been private.<sup>37</sup>

#### (4) *Amalgamation*

The Crown agreed that Māori land title reform, driven mainly by the problem of fragmentation, was the subject of various Crown initiatives during the twentieth century, but submitted that little evidence about this had been presented in this inquiry.<sup>38</sup> Crown counsel made no submissions in respect of the claims concerning the Taurewa amalgamation.

#### 9.2.3 *Submissions in reply*

Ngāti Hinewai rejected the Crown's interpretation of their claim as an argument that funding for the scheme should have been without limit; rather, the allegation is that financial support was inadequate, and contributed to failure and massive debt.<sup>39</sup> They said that employment on the scheme was so low that it should not be referred to as a benefit.<sup>40</sup> In their view, it is a fallacy to cite retention as a benefit of and justification for the scheme, since the hapū has always been firm in not selling the land. Furthermore, despite retention, amalgamation has effectively alienated the claimants from the control and use of their lands.<sup>41</sup> Nor was the wiping of debt a benefit, since the Crown's 'gross mismanagement' was responsible for the accumulated debt in the first place.<sup>42</sup> The debt was used to compel or coerce owners to accept amalgamation, although the owners refused to amalgamate unless the debt was written off. So 'there were no heroics here on the Crown's part, as is inferred'.<sup>43</sup> Noting that the Crown did not address their amalgamation claim, Ngāti Hinewai rejected the Crown's stance that not responding does not mean the claim is unchallenged.<sup>44</sup>

Ngāti Hikairo similarly rejected the Crown's argument that retention of the land was a benefit and absolved it

from any Treaty breach; they also reiterated that despite being retained, the land was 'practically alienated' by being leased out.<sup>45</sup> With regard to the Crown's references to the wider national context, the claimants emphasised that it is nevertheless the case that in Taurewa the owners were inadequately informed about the parameters of the scheme, so that their expectations concerning employment and better living standards were not realised.<sup>46</sup>

#### 9.2.4 *Tribunal analysis*

##### (1) *Alternatives to development schemes*

The Taurewa scheme was established by the Crown in response to a call for assistance from owners in the area, and the question, therefore, arises of what other form this help might have taken. It was suggested by Ngāti Tūwharetoa in their statement of claim that a trust or incorporation might have provided a better mechanism for collective management and development of the land.<sup>47</sup> Apart from the option of vesting land in a Māori Land Board, however, trust opportunities were very little developed until they were opened up by the Māori Affairs Act 1953. As we have seen, only two National Park blocks were vested in the Aotea Māori Land Board, in 1907 and 1911. Neither arrangement lasted more than a few years, or resulted in any development. The ability of Māori landowners to set up incorporations dated from the Native Land Court Act 1894, and the Native Land Act 1909 included specific provisions for the management of incorporations as farms.<sup>48</sup> Earlier we mentioned the only incorporation set up in the inquiry district before this option became more common after the Second World War – Ōkahukura 8M2C2C, which lasted from 1928 until 1949. Trusts and incorporations were studied by the CNI Tribunal, which concluded that the models available in the first half of the century were not adequate as ways of assisting owners in that district to solve their title and management problems.<sup>49</sup>

The evidence concerning the inception of the Taurewa scheme is incomplete, but although it is possible that alternative models of Māori land management were contemplated, it is more likely that they did not receive much consideration. The focus at that time was on development



Taurewa land

schemes as the solution to the problems of utilising multiply owned Māori land, and only much later did the Crown promote an alternative model for Taurewa, in the form of title amalgamation and the formation of a trust. There is no evidence about whether the implications for the owners of a land development scheme were explained at the time it was being set up, but (as Crown counsel pointed out) it cannot be assumed that they were not.

**(2) Taurewa owners and the land development agreement**

To understand what might have led the owners of the Taurewa blocks to agree to the establishment of a

development scheme on their land, it is helpful to review what is known of the history of land utilisation in this area. We have already mentioned the development of bushfelling and milling, including, in 1928, the granting of timber rights on the particular block (Taurewa 4 West A2) where the development scheme was later initiated. In addition, there is evidence that some of the Taurewa 4 West land was farmed in a small way from the early years of the twentieth century. A government report in 1913 noted that the occupants of the northern part of the block had grassed about 400 acres adjacent to a larger clearing that already existed.<sup>50</sup> One of the most prominent early



An old swing bridge over the Whanganui River. Many local Kākahi landowners, who wanted better access to their lands, petitioned the government asking that old bridges across the Whanganui and Whakapapa Rivers be replaced. Their petition was declined, apparently because there was no land development scheme in place and because of doubts regarding the viability of any in the future.

farmers was the entrepreneurial Tohi Raukura, one of the landowners who in 1910 wanted to be excluded from the Tongariro Timber Company (TTC) agreement so that they could use their land themselves.<sup>51</sup> His descendants recall that he felled bush and ran cattle, and later milked dairy cows, sending the cream over the Whakapapa River to Kākahi and by rail to a nearby dairy factory. He incurred some criticism from other owners for bringing in Pākehā helpers and advisors as he set up the farm, some of the owners being suspicious that he intended to try acquiring additional interests in the block.<sup>52</sup>

Tohi Raukura was not the only farmer in this part

of Taurewa 4 West, however, as we see from a petition received in 1932 from 149 owners who asked the Native Minister for bridges across the Whanganui and Whakapapa Rivers. They stated that there had been a recent switch to sheepfarming in the area, but they wanted better access so that dairying could be resumed. It seems that the Minister, Apirana Ngata, discussed the matter with two of the applicants in person; notes on the file indicate that development of the land in question had started in 1909 and that dairying had commenced in 1914 but that transport problems had brought discouragement by about 1928. Although the applicants reduced their

request to only one bridge, their appeal for assistance was declined. The approach for help was not for development as such, but the Minister's comment on the file is noteworthy: 'These lands are not under development and it is doubtful that any scheme can be undertaken there. No action.'<sup>53</sup> Although the reason for declining the request is not stated in the document, it is clear that assistance with access was seen as part of possible development in a wider sense and that the Minister was not convinced that a land development scheme was feasible in the area.

Within a few years, however, the picture changed. We do not know why the Crown, after declining assistance in 1932, went ahead in 1939. We have ascertained, however, that the new approach came from the owners. Discussion of land development in the area would have been common during the 1930s, since several schemes had been established in the vicinity of Lake Taupō. Ngāti Tūwharetoa had observed the success of land development accomplished in the 1920s by the Prisons Department at Hautu, near Tokaanu, and had expressed interest in government assistance for developing Māori land in the area.<sup>54</sup> A letter from Te Pau Mariu to Native Minister Gordon Coates in 1926 asked for assistance with the development of lands extending from Kākahi to the lake, an area that included or was adjacent to the northern Taurewa blocks. The writer stated that most of this large area was 'fit and suitable for farming purposes' and indeed had already seen the beginnings of development in a small way. The owners were faced with serious problems, however:

Whatever money of our own we invest in the land often goes to waste through our inability from want of capital to have the land fenced and noxious weeds and undergrowth kept down. We are severely handicapped from want of money for development purposes. Lack of roads and heavy rates in the near future are likely to be very detrimental to us. Unless something is done very soon to remedy the position so far as we are concerned, we can picture ourselves being deprived of our lands very gradually but slowly and surely every year by the impositions which are being made upon us.

The letter went on to give details of the rates burden,

argue the need for a road from Taumarunui to Tokaanu, and appeal for development finance. Fencing and grassing were required to develop the land, but

We are unable to do this without money. We can supply the fencing material and much of the labour, but we require money to purchase wire and erect buildings, and stocking and farming the land. For this purpose we would like the benefit of advances on similar terms to those granted to Europeans by the Advances to Settlers Office. . . . When the country is properly opened up, it should be capable of carrying a fairly large population, as the land is all good grazing land.<sup>55</sup>

The first development scheme in the region, at Tokaanu, began in 1930 and, as we have seen, owners in Taurewa 4 West were clearly interested in developing their land in 1932, though the Native Minister doubted the feasibility of setting up a scheme there at that time. There were other proposals in the region, too, including one within the National Park inquiry district: as part of the government's response to requests from Ngāti Tūwharetoa that more land be developed, the investigation in 1935 of Ōtūkou (in the Ōkahukura block) as one of several potential sites for land development schemes resulted in a recommendation to go ahead there. At a meeting of owners at Ōtūkou, mention was made of previous opposition to handing over land to government control, but these objections, which were said to have arisen out of allegiance to Rātana, were now removed. Officials reported that the natural tussock grasslands around Ōtūkou had run sheep before 1911, and could do so again. The owners were in need of work and could start by preparing posts and battens for fencing. Despite the initial interest of the Native Department, however, the proposal was dropped in 1936 on the grounds that the development would be mainly for sheepfarming and would thus be unlikely to absorb many workers.<sup>56</sup>

The large Manunui scheme, situated to the north of Taurewa and consisting of more than 20,000 acres (but lying outside our inquiry area), was gazetted in July 1937.<sup>57</sup> Just before this, at a meeting at Kākahi in June 1937, Hoani Te Heuheu on behalf of Ngāti Tūwharetoa had offered the acting Native Minister eight blocks of land for





Hoani Te Heuheu. Hoani inherited title and status from his father, Tūreiti Te Heuheu, and in 1937, as chairman of the Ngāti Tūwharetoa Trust Board, he offered some Taurewa land blocks to the government for development.

development. The Minister commented that his department favoured large blocks for development. He declared that 'by coming under the Native development scheme, and with this assistance and effort, the Maoris will become independent in the years to come'. He made a plea:

'I ask that you agree so that we may be able to say that we are still carrying into effect the spirit of the Treaty of Waitangi.<sup>58</sup> No official account of this meeting was found, but the *Taumarunui Press* and Wellington's *Evening Post* both carried reports, the latter mentioning that the meeting had drawn 'a large gathering' of Māori. The *Evening Post's* article also spoke glowingly of how

The great virtue of this method of development [that is, development schemes] is that it gives full occupation not only to the Maoris in the immediate vicinity, but also to many others less favourably situated as to land.

It went on: 'In this way the Maori tends to solve his own problems by becoming ultimately an independent settler on the land or an associate in co-operative farming.'<sup>59</sup>

The meeting was also mentioned in a Native Department letter the following year, when it was proposed to investigate Taurewa 4 West and, in particular, to make a start on the development of Taurewa 4 West A2.<sup>60</sup> Documentary evidence about discussions with the owners of Taurewa 4 West A2 is fragmentary. Memories in the family connected with this first development block, however, indicate that the decision to call for Native Department development assistance was in fact made by the successors of Tohi Raukura (who had died in the 1920s). They are said to have felt the need for outside farming expertise to develop the land.<sup>61</sup> Another family recollection is that severe drought, which led the struggling farm to sell stock, was a factor in the decision.<sup>62</sup>

The records indicate that the land was inspected by a Native Department land development supervisor in June 1938. He expressed the opinion that the Whakapapa River would indeed need to be bridged eventually if the scheme went ahead.<sup>63</sup> His assessment of the land was that it was of good quality, with potential for sheep and cattle farming. Harry Te Ahuru, described by the supervisor as 'a keen and industrious worker', had been nominated by the owners as the occupier. They were 'very desirous' of seeing the land developed 'as soon as possible'.<sup>64</sup> A further report, however, brought an evaluation of the block as 'marginal land' and not able to bear the necessary labour



The area of the Taurewa development scheme, with the Whakapapa River in the foreground. In 1938, conveying the impression of being fertile and productive, Taurewa was assessed as high-quality land that had the potential to support sheep or cattle.

costs. For the time being, the department now declined to recommend it for development.<sup>65</sup> The owners pressed for a review of the decision, and further investigations were made in 1939. The report this time expressed confidence that when fully developed, the land would support two self-contained dairy farms.<sup>66</sup> The project was approved in September 1939, along with authority to expend £3,151 from development funds.<sup>67</sup>

We were not supplied with official documentary evidence about how the development scheme was extended,

in 1941, from the 235-acre Taurewa 4 West A2 block to take in a large number of other blocks as well (namely, all of the Taurewa 4 West blocks listed at Kākahi in 1937, along with several others). One of the claimants interviewed by Dr Beaglehole suggested that officials had exerted pressure on the other owners: the Native Department was reluctant to set up a scheme based just on the original small block – ‘they had to have the whole block.’<sup>68</sup>

It is evident that, in the wider area targeted for inclusion, there was considerable opposition to the proposal

for involving the Native Department in land development. Tohi Raukura's granddaughter recalled that her father,

who was fully responsible for starting the scheme in these areas was almost shot at by the owners of the surrounding blocks. They believed that Dad was all for the Pakeha and he was letting the Pakeha into too many lands. [They feared that] the Pakeha may take full control of our lands. My father-in-law who strangely [*sic* – strongly?] opposed the scheme said he preferred his ferns and tea trees left alone and not disturbed, at least he'd still have his land.<sup>69</sup>

Another descendant told us that although the family could see the long-term benefits of a scheme, there was 'some conflict and confusion' between them and the other owners, 'because the developments restricted access to the land in the way it was used before'. The owners eventually accepted the proposal, but 'there was a strong minority group of objectors', who 'continued to exhibit their disapproval of the development by rustling cattle and cutting the fences, well into the late 1950s'.<sup>70</sup> This same witness provided extracts from an account her mother had written about the history of Taurewa. The mother wrote that her family's land was the first block to be put forward for development. She recalled that 'the scheme was not accepted by the owners but after having many meetings with them they finally agreed for the rest of the Taurewa blocks to be developed'. She remembered

the days when the owners used to hold meetings after meetings to discuss the use of the land and with the intention of stopping the scheme from spreading on to the other Blocks.

In the case of her family's own land, she recalled, her parents 'were not financial enough to be able to develop their own land', so 'decided to let the scheme develop it for them'. However, she wrote, it was the scheme proposal that 'forced the development onto the rest of the Taurewa Blocks'.<sup>71</sup> Sonny Te Ahuru (grandson of Tohi Raukura) told Dr Beaglehole that 'the Hemopo family at the next block' did not want anything to do with the scheme.<sup>72</sup> In his evidence before the Tribunal, Mr Te Ahuru recalled the time

when the owners agreed to let the Native Department take over the land as a development scheme. 'Not all owners wanted this to happen,' he said, 'but it did get signed over.'<sup>73</sup> According to Dr Beaglehole, arguments still continue today over whether or not the original participants 'made the right decision'.<sup>74</sup>

From this, it appears that the decision to have a development scheme at Taurewa was driven by particular owners who were strongly motivated to utilise their land profitably for farming purposes. There is evidence that they were willing to seek outside advice and financial assistance. Other owners were less interested in development, or even opposed to it on the grounds that it interfered with their traditional use of the land or carried with it the threat of Pākehā takeover. In the end, the scheme did take in more lands than those of its original participants, but it continued to be affected by owner disunity. Additionally, the evidence indicates that lack of development finance was widely recognised as an obstacle to Māori farming in the district. It was also clear at this time that farming progress in the north-western Taurewa lands was hindered by access problems, since the area was cut off from the settled districts of Kākahi and Taumarunui by unbridged rivers.

In the Native Land Amendment Act 1936, under which the Taurewa scheme was established, it was stated that the Board of Native Affairs could declare any Māori land to be subject to the development provisions. It was also stated that the assembled owners could pass a resolution allowing land to be subject to the provisions.<sup>75</sup> As we have said, there is not a great deal of evidence to show how the scheme came about in the late 1930s or what took place during the discussions held at that time between owners and Crown officials. That the evidence is fragmentary was accepted by both claimants and the Crown. What we can see is that the original development decision was made by the owners of Taurewa 4 West A2. We do not know, however, what level of approval was later obtained from the owners of the additional blocks put under development in 1941. The *Evening Post* article already cited suggests that the initial 1938 meeting with the Minister, when the idea of a scheme was first discussed with local Māori, had been well attended. Presumably later meetings with officials

were also held, to discuss the expectations of the owners and the part that would be played by the Crown in fulfilling those hopes, but we have no record of these meetings.

With the history of the Taurewa lands since the early century in mind, and the owners' likely awareness of other schemes in the region, we agree with the claimants that it is reasonable to assume that their forebears, the owners of the land in the 1930s and 1940s, had expectations along the following lines:

- ▶ the Crown would supply finance for developing the land (something the owners were unlikely to find themselves) and the management expertise that the owners lacked;
- ▶ more profitable farming activity on the scheme would produce some income for the owners and enable them to improve their standard of living; and
- ▶ there would be employment opportunities and training in farming methods, making it possible for at least some of the owners to live and work on the scheme and eventually farm it themselves.

We learned that not all the owners wanted a development scheme – entailing, as it did, the involvement of government officials and others doubtless perceived as 'outsiders' – but it is possible that even those who were unenthusiastic or opposed were interested in at least some of these hopes for their land.

### (3) *The benefits of the development scheme*

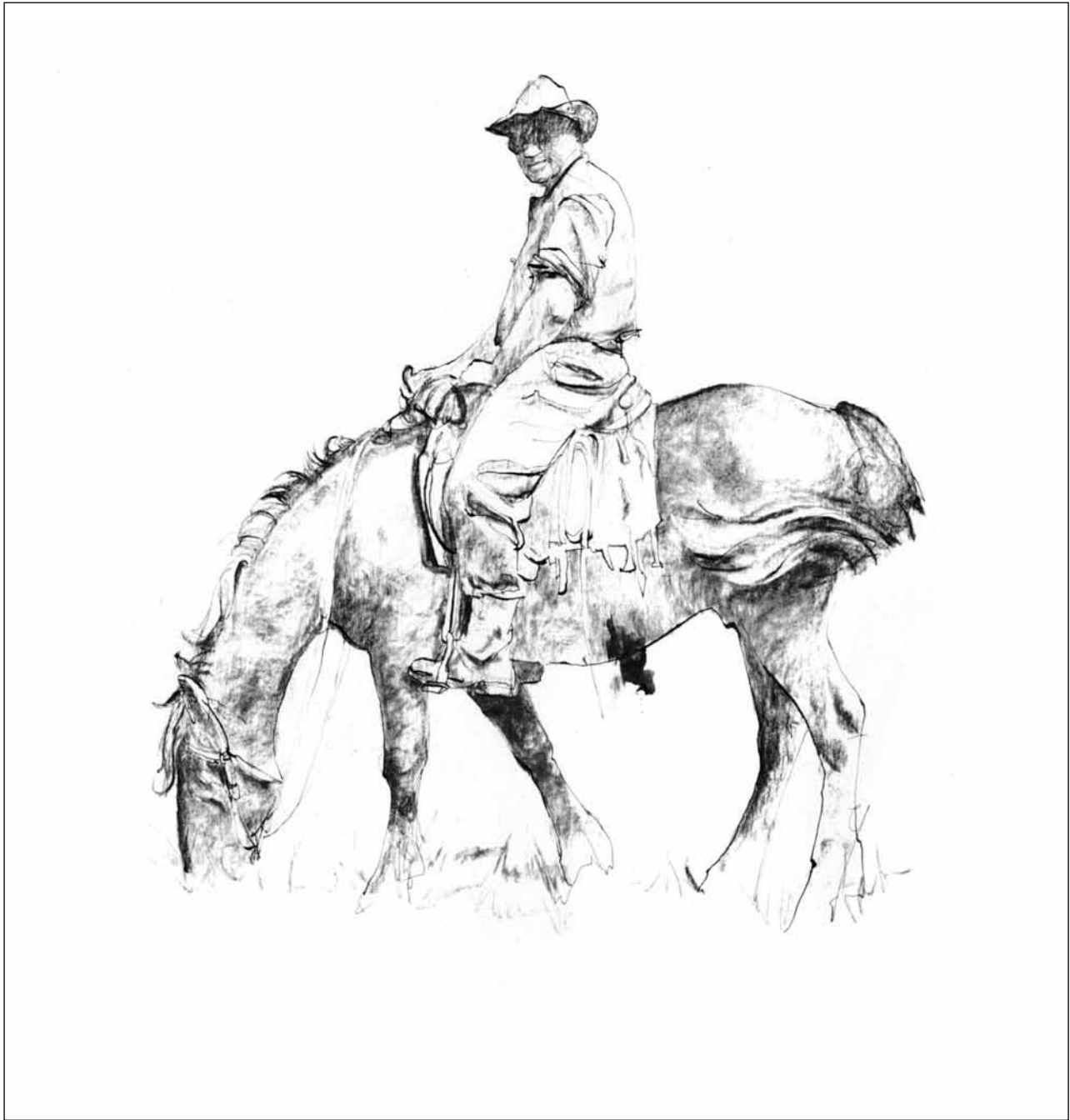
The claimants asserted that in a number of ways the scheme did not produce the benefits expected by the owners when they made the land available for development. They claim that it provided no returns to the owners during its lifetime, and did not benefit them in the other ways they had anticipated; it accumulated a very large debt, and was not a viable business when it was returned to them.

(a) *Income and profitability*: It is true that production on the Taurewa scheme did not result in an income for its owners during the time it was under the control of the Crown. Development of the land for farming was slow to get under way after the gazetting in 1939, although some sheep and cattle were run (stock numbers of more than

350 were recorded soon after the war).<sup>76</sup> Of course, the progress of the scheme was delayed during the wartime years, when the policy was to restrict development of all new lands except those of first class quality.<sup>77</sup> Even after the war, and until the early 1950s, the work at Taurewa was largely confined to scrub and bush clearance and fencing. Sonny Te Ahuru, who worked on the scheme from its beginning, told us about this early phase:

My work here involved splitting posts, making strainers, battens, fences, as well as work with my team of five Clydesdales, doing the ploughing and cropping for the farm. Everything in those days was manpower or animal power. Splitting the posts, making the strainers – I had to do it all myself. Later we also used to have sheep and cattle on the farm. We mostly used horses to get around.<sup>78</sup>

By 1958, the farm was carrying more than 1,200 sheep and 200 cattle, but the Department of Māori Affairs admitted that development was still proceeding slowly.<sup>79</sup> The level of debt grew as development continued and losses were incurred. In that same year the debt reached £47,000. Concern about debt and losses was expressed, at this time and also in later years, by both the department and the owners, although the latter were assured that debt was normal during development and should reduce when profitability increased.<sup>80</sup> During the 1960s and 1970s, the farm continued to struggle, and at one point the department acknowledged that the performance of the scheme was 'far from satisfactory'. In 1964, when about 4,500 sheep and 500 cattle were being carried, the debt was £155,368 (£95,383 to the Crown and £59,985 to other creditors). Ten years later, in 1974 – one of only a few years in which a small operating profit was recorded – the debt to the Crown alone was \$226,030.<sup>81</sup> At the end of the 1970s, there was an intensification of development, financed by increased borrowing from the Rural Bank.<sup>82</sup> By 1982, the debt to the Crown was \$229,000, rising to \$332,363 in 1984 to 1985 and \$359,911 in 1989 to 1990. This level of indebtedness necessitated high interest payments and inhibited development expenditure.<sup>83</sup> It is not surprising that when the Taurewa 5 West Trust, which by then represented the



Sonny Te Ahuru. Mr Te Ahuru and his team of horses worked on the Taurewa land development scheme from its earliest days.

owners, was told in 1990 that the land would be handed back, it requested that the debt be written off. According to Kepa Pātēna, who was the trust's chairman at the time, the trustees refused to take the property back when it was offered, because the farm was not a viable proposition and 'it wasn't our debt'. A debt write-off (of \$403,305) was eventually agreed to. Mr Pātēna stated that the trust was liable for only \$90,000, 'for administration', which it paid off in one year.<sup>84</sup> Throughout the years of the scheme's existence, all the farm income had been ploughed back into the operation to further the development and try to reduce the debt. This was in keeping with the Crown's long-term objective to develop the land as an economic enterprise for the owners to take up again in future, but it meant that in the interim, the owners did not receive any income (apart from wages in some cases) that could be used to raise their living standards.

The debt write-off was not regarded by the claimants as a benefit. In their view, the debt on the property was an outcome of government mismanagement, and, therefore, it was only right that it should not be passed on to them when the land was released from the scheme. They therefore rejected the Crown's implication that they should be grateful for the write-off.

Furthermore, even though the large debt was written off when the scheme ended, and the land came back to them much more developed than it had been, the farm was not regarded by the owners as a viable business when it was returned. They had never received any income from it and had not been able to accumulate any capital to use for the further development that was still necessary. In 1996, having incurred further debts, they found themselves obliged to lease the property out to a non-owner, who was able to inject funds and achieve profitability.<sup>85</sup> He was still operating it at the time of our inquiry. The owners now at least receive an annual rental payment, but viewed over the lifetime of the scheme, the total income derived cannot be said to have anywhere near met the expectations they may have held when first agreeing to the setting up of the development scheme. We do not know, however, the extent to which it was explained to the owners at the outset that production income would need to be ploughed

back into the scheme for some years in order to achieve profitability.

(b) *Employment and training*: One of the benefits of the development scheme anticipated by the owners was employment. Detailed evidence for the amount of employment that did eventuate was not available to us. An early record (from 1941), however, states that 12 labourers were working on the scheme.<sup>86</sup> Later the bulk of the work was done by one man, Sonny Te Ahuru. The decision was made in 1951 to revoke Te Ahuru's original status as unit occupier, due to a lack of progress on the block (he had been in poor health and it was apparently hard to get labour), and to put Taurewa 4 West A2 in with the other blocks as part of the wider Taurewa scheme.<sup>87</sup> Later in the 1950s, however, he was the appointed manager of both Taurewa and the nearby Whangaipeke scheme (across the Whanganui River, and commenced after the war).<sup>88</sup> After outside managers were appointed, from 1959, Te Ahuru was employed as a shepherd. From time to time he was acting manager. Other casual and contract work was available to local people from time to time, but the employment opportunities on the scheme were limited.<sup>89</sup> Te Ahuru was the only owner who had long-term paid work on the farm. That said, the location was difficult to access and the wages offered were fairly low, so that it was sometimes hard to find workers even for the jobs that were available. Mr Te Ahuru recalled that 'it was hard to get anyone to help on the farm – apart from family'.<sup>90</sup> It must be remembered of course that the farm was comparatively small, and a large workforce may have been too much to hope for, especially after the fading of the early development scheme policy of responding to unemployment.

An acknowledged lack of farming knowledge had been one of the reasons for turning to the Native Department for development assistance at the outset, but it is evident that only a limited amount of training was offered on the scheme. Under the development legislation, the Crown accepted, as one of its responsibilities to owners, the task of teaching Māori to be farmers of their own land. The Act stated that as part of the schemes the Crown 'may train and educate' Māori in improving and farming the land.<sup>91</sup>

It is not known whether such training would have become another charge against the scheme concerned. In any case, Te Ahuru was left to work largely on his own until an outside manager was appointed in 1959, and even then the on-the-job training he received from successive managers was usually only incidental. Despite being entrusted with technical and management responsibilities, he was not given the opportunity to undertake any formal training programme, although a number of such courses were available through the Department of Māori Affairs. It appears that none of the younger men were sent for this kind of training, either.<sup>92</sup> Later when the owners regained control of the farm, they felt hampered by the lack of farming and management expertise and, in the end, transferred much of this task to an outside person.

(c) *Settlement*: The original land development legislation specifically mentioned the objective of settling owners as farmers on the land, and officials continued to refer to this as one of the aims of the schemes. The Minister of Māori Affairs declared in 1950, for instance, that the most important purpose of the programme was ‘the establishment of the owners on their lands as independent self-supporting occupiers.’<sup>93</sup> The Māori Affairs Act 1953, which replaced the earlier development legislation, stated that the ‘main purpose’ of the development provisions was ‘to promote the occupation of Maori freehold land by Maori and the use of such land by Maori for farming purposes.’<sup>94</sup> The Taurewa scheme did not bring the benefit of settlement, however, except to one person and his immediate family, and then only for a time. A number of owners had lived on the land and worked it before the scheme began, but only one of them was ever designated as a settler. Published details in the 1940s referred to a single settler. Clearly this was Sonny Te Ahuru, who was again described as a ‘nominated settler’ in the 1960s.<sup>95</sup> We did not receive precise evidence about his changes in his status as a settler or occupier.

Evidence is lacking that settlement was promised at the time the scheme commenced, apart from an early internal departmental comment that two dairy farms could be expected. In 1958, however, a few years after development

began in earnest, the owners were certainly told that five unit farms were proposed. This number of farms was again mentioned in departmental documents dated 1962 and 1966. Settlement on allocated farm units was evidently expected by the owners, who often asked about it at meetings in the 1960s. They were always told that it would eventually come, but only when development was further advanced.<sup>96</sup> By the 1970s, however, the aim of creating viable individual farms was acknowledged to be unrealistic, and the settlement of owners had still not taken place by the time the Department of Māori Affairs relinquished control in 1991. By then the land had been out of the owners’ hands for a very long time, and could not be settled even after it was returned. Although it remained in the possession of the owners, they subsequently found it hard to make it economically viable, and the occupant and operator of the farm is now a non-owner to whom it has been leased.

(d) *Retention*: Another issue in our inquiry was whether the retention of the Taurewa lands in Māori ownership could be described as a ‘benefit’ of the development scheme. It is true that the blocks taken into the scheme between 1939 and 1941, and returned to owner control half a century later, were still Māori-owned when the scheme ended. Viewing this as an outcome of the Crown’s development programme, however, depends on assuming that the owners of the land would have sold it if they had not been involved in the scheme. The Crown submitted that the retention of the land was a ‘crucially’ important benefit to the owners, one that is unlikely to have come to them had the scheme not been established. This was described by two groups of claimants as a mere assumption. Ngāti Hinewai pointed out that the Taurewa owners had been non-sellers before the scheme began, and that there is no evidence that they would have changed their stance. Ngāti Hikairo reminded us that although the land was not alienated during the years of the development scheme, it had to be leased out later, which was a ‘practical alienation’ in that the owners are not using it in any direct way today. What would have happened if the scheme had not existed cannot of course be known. We accept the claimants’ view



A log bridge across the river to Whakapapa Island. This bridge was indicative of the poor access in the area, which contributed to the Taurewa development scheme's slow progress in getting underway.

that they were most unlikely ever to have wished to sell their land. Nevertheless, as we have seen earlier, alienation sometimes took place despite the wishes of owners.

#### **(4) *The Crown's management of the Taurewa scheme***

The Crown described the land development policy as a genuine attempt to resolve the difficulties experienced by Māori wanting to utilise their land productively, and the claimants did not disagree. Some of them, however, in view of the lack of success of the Taurewa scheme (and their belief that Crown mismanagement was an important

factor in this), questioned whether the Crown had been truly committed to success in this particular case.

Dr Beaglehole's historical review of the scheme draws attention to a number of ways in which the Crown's management of the project might be questioned. Too little modern equipment was provided, for instance. The clearing of bush and scrub in the early years progressed very slowly, partly because of the lack of mechanical equipment. Even as late as 1990, spending on equipment was restrained because of concerns that debt was mounting.<sup>97</sup> In 1988, and again in 1990, the Department of Māori Affairs



admitted that it had been skimping on the topdressing needed to improve pasture quality: expenditure on fertiliser had been cut because of the falling profitability of the farm.<sup>98</sup> Clearly, it was difficult to steer a successful course between cautious spending (to avoid excessive debt) and confident investment (to speed up development).

Another important brake on the progress of the scheme was the difficulty of access. The farm's location was not particularly isolated in the sense of being far from other populated districts, but it was cut off from those settled areas by rivers. The need for bridges had been brought to the government's notice as early as 1932, before the scheme even began, and was discussed when the decision was being made to commence it. The need for better access was often mentioned during the years when the land was put under development. Furthermore, the area to the north, across the Whanganui River, was still unroaded when the scheme began. Even when the Taumarunui to Tokaanu road was completed during the war, Taurewa could not be accessed from that direction until the Hohotaka road was taken as far south as Whangaiepeke, on the Whanganui River opposite Taurewa.

In 1947, there was mention of a proposed road from Kākahi that would go across the Taurewa scheme and the Whanganui River to Whangaiepeke.<sup>99</sup> This road did not eventuate, however, and for many years the only existing bridges across the Whakapapa and Whanganui Rivers, some built by timber millers, were rudimentary structures, flimsy and vulnerable to floods. Poor access affected the transportation of farm production and supplies and made the location of the scheme unattractive to managers with school-age children. Departmental officials acknowledged several times in the late 1950s that operating the farm was made difficult by the lack of access. Despite this awareness of the problem, a proper bridge was still not built. Evidently, it was not regarded as a priority until the late 1960s, when the Ministry of Works finally allocated funds for it. The bridge across the Whanganui to the Hohotaka road was completed in 1970, with the Taurewa owners themselves contributing \$14,000 (half of the cost).<sup>100</sup> The town of Taumarunui was now only about 25 kilometres away by road.

It is the view of the claimants that the scheme was undercapitalised: the Crown did not put enough financial resources into the farm, thus restricting its productivity and profitability. Of course, the department did invest substantial funds in the scheme, burdening it with such a large debt that the owners were unable to contemplate taking over the farm when it was offered back in 1990. An appropriate level of capital expenditure is always a difficult management decision in farming, and it is possible that the scheme's administrators did not always get it right. The charge laid by the claimants is that the Crown's investment in the scheme was insufficient to lift its productivity and bring profits large enough to reduce the debt. The Crown commented that, when the history of the scheme is studied, it is easy for observers to point, 'in hindsight', to instances when better decisions could have been made. It did not deny that the implementation of the development policy could on occasions have been better, but it rejected the charge of undercapitalisation, arguing that there were limits to the extent of the financial investment that it could be expected to make in the scheme.

Were there other factors at play? Ngāti Hikairo's submission did say that the farm's lack of success was 'partly' attributable to faults in Crown management; other claimants emphasise mismanagement as the main reason why the scheme fell short of the mark. It is necessary, therefore, for us to consider what else may have contributed to the scheme's acknowledged failure to achieve profitability.

It is sometimes suggested, for instance, that farm development came 'too late' for Māori, since their best land had already been alienated and what was left was marginal or otherwise unsuitable. In the National Park inquiry district, however, very little land had good farming potential. The farm that emerged from the Taurewa scheme is a mixture of flats and hill country. The land was described as marginal in a report written in 1938, but at other times more positive assessments were made. In 1990 its soils were described as 'medium fertility pumice and loams', requiring regular fertilisation to sustain pasture growth.<sup>101</sup> We saw that the suitability of the land for development was assessed at the time of the scheme's inception. As Crown counsel suggested, it was unlikely that the government

would have embarked on the scheme if it had had significant concerns about its viability, and the evidence shows that from time to time officials expressed confidence in the eventual success of the project. We were given no detailed evidence about the quality of the land, however.

It is important to ascertain why the scheme did not do better than it did. Dr Beaglehole tells us that the Department of Māori Affairs itself ‘remained mystified’ by Taurewa’s failure to fulfil its potential despite all the effort put into development.<sup>102</sup> She writes that the role played by the department’s management is hard to assess, since the scheme had a complex history over five decades. Her conclusion is that

the Taurewa Development Scheme may have performed as well as possible in the circumstances and that a combination of factors best accounts for the scheme’s financial and other difficulties.<sup>103</sup>

Dr Beaglehole does put some blame on those who managed the scheme, stating that ‘energetic and imaginative management was not consistently provided’ (but also pointing out that capable staff were hard to attract and even harder to retain because of the isolation of the farm).<sup>104</sup> One might also point to the lack of training already discussed. The delay in providing good access to the scheme is also emphasised as an important fault in management. Overall, however, Dr Beaglehole concludes that ‘it is not at all clear, even with hindsight, what the Crown/Māori Affairs should have done to ensure the scheme’s economic success.’<sup>105</sup> Crown counsel contrasted this cautious assessment with the confident assertion of the claimants that the Crown was to blame for the failure of the scheme to achieve profitability or to realise its potential.

Land development by its very nature is a long term process, and, as Crown counsel pointed out, management strategies on the various schemes were determined by the particularities of each case. Dr Terry Hearn’s comments on land development in the Taupō region are relevant here. He pointed out that schemes established before 1949 were effectively at a disadvantage because they were ‘never conceived as solely economic propositions’; nevertheless,

they were subsequently ‘expected to meet the same performance criteria as later schemes, an expectation that almost certainly added to their levels of debt.’<sup>106</sup> In Taurewa’s case, its long history under a ‘station’ regime, during which debt accumulated for years, may be explained by the many obstacles that stood in the way of rapid development. In a wider perspective, changing economic circumstances threw doubt on whether the property could ever be divided into viable small family farms, for unit occupation, rather than being run as a station basis.

This takes us to an important point. Like all other farms – of whatever nature – Taurewa was affected by prevailing economic conditions as they affected agriculture. This wider economic context was not covered in evidence, and the Crown says this lack of analysis of external factors, including the Crown’s ability to influence, control or caution against them, means that it is not possible to assess whether the Crown discharged its Treaty responsibilities in relation to the scheme. It is well known that with a fall in the pastoral terms of trade in the late 1960s, farm profitability in New Zealand declined markedly. For a time, extensive government subsidisation shielded the agricultural sector from this, but when supports were withdrawn from 1984 onwards, farm incomes dropped sharply.<sup>107</sup> The pastoral industry was now fully exposed to international market forces, and the effect on land development schemes was declining stock numbers, a fall in fertiliser application, reversion to scrub, and production decreases. In 1986, Māori Affairs officials discussed some of these matters with the Taurewa owners, describing them as being beyond their control.<sup>108</sup> In her report on Taurewa, Dr Beaglehole explains that her task was not to assess the role of these broader economic influences, and she notes them only briefly. In our view the economic context is certainly part of the explanation of the problems of Taurewa, and we emphasise the necessity of taking it into account when evaluating the scheme and deciding the level of Crown responsibility for its success or failure.

#### **(5) Crown management of the land and owners’ rights**

As we have said, the evidence concerning what took place when the proposed scheme was being discussed is scanty.

We do not know whether the implications of putting the land under development scheme management were fully explained to the owners before their agreement was secured (but as the Crown says, it cannot be assumed that they were not). Whether or not their forbears understood how much control over the land they would lose to the Crown, the owners now claim that the level of consultation between Crown and owners was unacceptably low during the years of the scheme's operation.

The legislation governing development schemes laid down a regime restricting the rights normally enjoyed by landowners. In the words of the Native Land Amendment Act 1936,

except with the consent of the Board of Native Affairs, no person shall be entitled to exercise any rights of ownership in respect of any land that is subject to this part of the Act.

Specific mention was made of trespassing on the land, and of obstructing or interfering with the development work.<sup>109</sup> The Maori Affairs Act 1953 repeated these restrictions.<sup>110</sup> It also stated that legal ownership of the land was not affected, but

the rights of the owners shall be subject to the special provisions of this Part [of the Act] and to the right of the Board to exclusive occupation of the land, subject to any rights conferred by it on lessees, nominated occupiers, or other persons.<sup>111</sup>

Further,

On any land that is for the time being subject to this Part of this Act, the Board may cause to be carried out or may undertake such works for the improvement or development of the land as it thinks fit . . .

The board may also do 'anything which in its opinion is necessary or expedient for the proper development, management, or utilisation' of the land.<sup>112</sup> These paternalistic provisions left little room for owners to express their views on how the development could be carried out.

It is true that one of the owners, Sonny Te Ahuru, was involved in the operation of the farm for many years, including several years as manager. But as a group, the owners of the blocks making up the scheme lands were, as far as we know, effectively excluded from the making of decisions concerning their land during the early decades. In light of this, the claimants not only argue that their property rights were infringed, but also put the blame for the scheme's lack of success largely on the Crown.

Provision for consultation was not strong in the original legislation, and became weaker as time passed. Dr Ashley Gould comments that in the 1930s, the department was disposed to reduce consultation in order to increase efficiency.<sup>113</sup> Not until the 1960s did the Crown set up mechanisms for consultation. From then on, regular meetings of the owners were called. However, some owners lived in distant places, and not all addresses were known. Owners who did attend the meetings had the opportunity to be informed about the financial situation of the scheme and what was being done on the farm, and to ask questions. Some advisory groups of owners were also formed, for special purposes. For example, one was set up in Taurewa in 1965 to help with amalgamation, and there was a 'development committee' in the 1970s.<sup>114</sup> When the Taurewa owners' trust was set up in 1982, there were regular meetings of the trustees, but control of the farm was still with the Department of Māori Affairs until it was handed back to the owners in 1991. It cannot be denied that the meetings held in the last three decades of the scheme's life were an advance on what had been the case earlier, but the claimants pointed to several ways in which these procedures were still unsatisfactory: the methods used for calling meetings did not achieve a full representation of the owners, the meetings themselves were for information only, and advice given by the owners (for example pleas for better access) was disregarded. Ngāti Hinewai described the methods used for conferring as 'mainly superficial, and not the kind of consultation envisaged under the Treaty'.<sup>115</sup> The Crown acknowledged that that these meetings did not transfer any significant degree of control and were largely for information sharing.

The claimants argue that the extent of Crown control

was more than was needed to provide security for the funds advanced by the state. To this the Crown responded that to safeguard the investment of public money it was necessary to restrict the owners' rights during the development phase, and suggested that such restrictions would also have been imposed if the finance had come from private sources. The claimants regard the exclusion of owners from management, however, as a Treaty breach. Overall, we agree that the owners were provided with an inadequate structure for continuing consultation and input into decision-making about their land. A closer involvement of the owners would probably have led to a shared understanding of the economic difficulties and dilemmas in running the farm, and a shared responsibility for tough decisions. Instead, the limited input allowed to owners infringed Treaty obligations to respect rangatiratanga and partnership.

**(6) *The amalgamation of Māori land and the ability of owners to develop their interests***

By the 1930s, fragmentation of Māori land title was very far advanced. Land had become divided into smaller and smaller blocks, which represented a big obstacle to owners wishing to utilise and develop their land resources. At the same time, the laws governing succession had given rise to an ever-greater fractionation of interests, meaning that in extreme cases an owner might hold as little as a few thousandths of a share in a block.

'Title improvement', as a way of dealing with land tenure problems, was part of the Crown's efforts to assist Māori to turn their remaining lands to productive account. After the Native Land Act 1909 passed, the Crown focused on consolidation of interests as one way of addressing title problems. This was a slow and difficult process, however, and it was eventually overshadowed by the land development schemes that began in the 1930s. Essentially, the development schemes were a way of countering title difficulties by bypassing them rather than addressing them. There is in fact no mention of title improvement in the land development legislation that was in effect in 1939 when the Taurewa scheme was established. Title improvement cannot, therefore, be considered an objective of the

development schemes, and it is not surprising that there is no record of any discussion of it at the time of Taurewa's commencement.

Later, however, title reform was again specifically addressed, in the provisions of the Maori Affairs Act 1953 that related to conversion and amalgamation. The Act also recast the law relating to Māori trusts and incorporations, which now emerged as effective mechanisms for enabling owners to manage their lands collectively. It was from this legislation that the connection between land development and title improvement arose in the case of the Taurewa scheme.

Amalgamation is what concerns us here. Section 435 of the Maori Affairs Act 1953, which governed amalgamation, stated that:

Where the [Māori Land] Court is satisfied that any continuous area of Maori freehold land comprising two or more areas held under separate titles could be more conveniently or economically worked or dealt with if it were held in common ownership under one title, the Court may make an order cancelling the several titles under which the land is held and substituting therefor one title to the whole of the land.

Any order made under this section would 'set out the relative interests of the several owners of the land, calculated by reference to the relative values of the interests to which they were entitled under the cancelled titles'.<sup>116</sup> Ian Kawharu noted in his book *Maori Land Tenure* that 'a particular use' for amalgamation was in development schemes, 'where all the blocks are amalgamated into one title, as a prerequisite for raising finance and for efficient administration'.<sup>117</sup>

We received little evidence about title fragmentation itself, but the Crown's response to title problems was the subject of submissions by Ngāti Hinewai. The claimants alleged that the owners of land included in the Taurewa development scheme had been misled and coerced into accepting the amalgamation of their titles. In respect of their own particular lands the Ngāti Hinewai claimants alleged that they were not informed that amalgamation was proposed and proceeding, and that the legislation

did not require them to be informed. Far from benefiting from the amalgamation of the Taurewa titles, as promised by the Department of Māori Affairs, they said they had been negatively affected by it. In our inquiry, the Crown did not address any of these claims, but we received sufficient evidence to enable us to arrive at some conclusions about their validity.

(a) *The proposal to amalgamate Taurewa titles:* According to the *Evening Post* article that reported the June 1938 meeting at Kākahi, the Minister proposed at that time that any lands to be incorporated into a scheme should be ‘developed . . . on a large scale’. The article then went on: ‘The point the Minister made was that tenures should not be considered first but that the land should be prepared, grassed, and fenced in a wholesale manner.’<sup>118</sup> Not till 20 years later does there seem to have been any proposal to amalgamate title in Taurewa. By that time, title improvement had been specifically linked with development schemes, and the Department of Māori Affairs in Whanganui was instructed by its head office to bring it about in the Taurewa scheme:

To facilitate eventual settlement the owners of the many blocks should be asked to agree to a cancellation of all the present partitions and an amalgamation of all their interests in the present partitions into one new title for the whole scheme.

The letter from Wellington pointed out that such an agreement was ‘a prerequisite in all new schemes started since 1950’, and stated that it was ‘very desirable and necessary that the same should apply in Taurewa.’<sup>119</sup>

Clearly, the initiative for amalgamation came from the Crown. The Taurewa owners were informed of the plan more than a year later, at a meeting on 25 November 1959. The record indicates that officials told the 45 owners present that before the Board of Māori Affairs would agree to bring in more of the scheme land for development, the existing partitions would have to be cancelled. This announcement brought various responses, with some owners fearing the consequences of not doing what the department wanted, and some having difficulty in

understanding the advantages of cancelling partitions. In the end the owners resolved to accept amalgamation ‘in principle’. This acceptance was

subject to the reallocation of areas on Consolidation, along the original partitions as far as it is practicable to do so consistent with the utilisation[,] and that graves be strictly reserved from agricultural farming.<sup>120</sup>

The amalgamation proposal did not proceed any further for some years. The next recorded step was on 28 July 1965, when a meeting of 22 owners at Taumarunui confirmed the agreement made in 1959. A Māori Affairs official, JE Cater, referred to this earlier resolution and ‘traversed the main reasons for amalgamation’. He stated that the Crown’s policy was now

not to advance further money for capital improvements unless titles are first amalgamated, mainly because of administration difficulties in apportioning equity amongst a number of titles.

Amalgamation would also make it easier to divide the land into economic farms when the settlement stage was reached. In response to a comment about the debt carried by the scheme, Cater said that it could not be reduced unless further capital development occurred, which the board would not agree to finance unless amalgamation took place first. Later in the meeting, he again said that the scheme was running at a loss and that this ‘could not be turned into a profit until more area was put into grass and other improvements carried out’. He stated that the Board of Maori Affairs would ‘not provide the necessary money for this unless the titles were amalgamated’. The owners were then told that it was necessary to get their agreement in a more specific form than the resolution ‘in principle’ of 1959. Cater said that he wanted to ensure that, in giving their approval to the proposal, they were ‘aware of the processes involved and full implications of amalgamation and its results’. He explained the procedure for determining the value of shares in the new title, the task of identifying urupā sites for exclusion, and the allocation of

timber proceeds. A map was used to assist the explanation of these matters.

One of the important matters discussed was how amalgamation would affect the eventual settlement of individual owners or families on the land they now held. In answer to a question from Rāwiri Hemopo, for instance, Cater stated that, while it was not yet possible to say how many farms there would be, or where they would be situated, efforts would be made to locate a family in the area where its interests lay, 'if and when settlement is decided on.' Another official present emphasised to the owners that the old titles would completely disappear and no family would be able to claim ownership of any particular area. He reminded them that until the original partitioning of Taurewa 4 West, more than 50 years earlier, all the land had been in one title, and that the partition had been done without regard to future economic use. 'These subdivisions are impractical from a utilisation point of view', he said, 'and the Department is now asking that this particular area should go back into one title.' Rāwiri Hemopo again voiced his anxiety that the rights of owners to specific areas would disappear. In response to Bill Paraku's concern that it would be the department that decided where the settlers were located, Cater said that it would be the owners' decision whether incorporation or individual settlement would occur, and that attempts would be made to settle families where they were now. Paraku again said he was apprehensive that families would lose their link with their own land, and he asked for a promise that they would be placed in their own areas. Cater replied that he could make no promise but certainly 'an endeavour would be made to follow people's wishes in the matter.'

Although Paraku wanted the decision to be postponed for two weeks so that it could be discussed further, Cater 'stressed the need for an early decision so that development could proceed.' Cater said that he was not in favour of an adjournment to allow one family to make up its mind, since other families might not be prepared to return to make the final decision. One of the owners moved that the amalgamation be proceeded with, and this was seconded. Cater assured those present that all families would have the chance to put their case when the matter came

before the Māori Land Court. The motion was put and carried without dissent.<sup>121</sup>

(b) *The implementation of the amalgamation proposal:* An advisory committee had been formed at the owners' meeting to help implement the decision to go ahead with amalgamation.<sup>122</sup> When it met shortly afterwards, on 29 August 1965, decisions were made on a number of matters, including the valuation of interests and the process for identifying urupā sites. A complaint was made – one that would complicate the process for some years – that 'certain land' had been mistakenly included in the development scheme. The advisory committee was clearly a promising vehicle for consultation, but Dr Beaglehole found no evidence that it held any subsequent meeting.<sup>123</sup>

In Ngāti Hinewai's submission, the vital question of family rights to their own areas was unclear from the beginning. These claimants say that the resolution of 1959 was 'extremely ambiguous', in that it could be understood to mean that existing partition areas would be maintained even if the partitions themselves were cancelled. They also say that the resolution of 1965 meeting was 'improperly arrived at' and, therefore, invalid, because the Department of Māori Affairs misrepresented to the owners what would happen when individual farming areas were allocated and because the owners were 'coerced' into accepting amalgamation by being told that continued development could not occur otherwise.<sup>124</sup> We will discuss these claims shortly.

The owners met again on 15 September 1965 and were told by officials that it was important to support the advisory committee, since (they were informed yet again) amalgamation was 'a prerequisite to any new development'.<sup>125</sup> Implementation of the proposal made very slow progress, however. There were several complicated matters to sort out, including the identification of urupā sites and whether the use of 1952 values in apportioning the owners' shares was appropriate.<sup>126</sup> There was also the problem of opposition from owners who argued that their lands should not have been included in the development scheme in the first place and should be excluded from the amalgamation. Arthur Smallman, who was later a trustee for the Taurewa lands, spoke of this in his evidence:

At the time of the amalgamation there was discomfort by some of the owners, as they preferred that their lands remain in separate title to maintain their connection to the land. Many of these owners were not present at the hui that Maori Affairs called regarding the amalgamation, so they didn't get the opportunity to express their opposition. In fact not too many owners turned up to the meeting at all, and the amalgamation went through.<sup>127</sup>

Rāwiri Hemopo had been present at the July 1965 meeting and had been an active participant. It is his case, however, that was the first example of the 'discomfort' mentioned by Mr Smallman. At the advisory committee meeting in August 1965, Hemopo claimed that he occupied and farmed 30 or 40 acres of Taurewa 4 West D13, and that this portion should not have been included in the development scheme. He said it should be returned to him and that if it was not he would not consent to amalgamation. Hemopo's family continued his stand after he died in 1978, and the Taurewa owners resolved in November that year to have 40 acres of the block released from the development scheme. Hemopo was also opposed to the inclusion of another block, Taurewa 4 West A4A1 (40 acres), and in 1978 the owners voted to exclude this land too.<sup>128</sup>

It was not until 1979 that the Māori Land Board made the Taurewa amalgamation applications. Keith Morrill, the district officer in Whanganui, later gave a rather imprecise explanation for the long delay: it was 'principally because the development division in this office was not able to get certain matters respecting the applications into order'. When head office had urged him to finalise the matter, an officer had been given specific instructions to complete the task.<sup>129</sup> The applications were heard in the Māori Land Court by Judge Kevin Cull in May 1979. The case was adjourned, however, in part because the judge saw insufficient evidence that the owners had given their consent to amalgamation.<sup>130</sup>

In a letter to Judge Edward Durie before the case was heard again, Morrill made comments in support of the applications and in particular addressed the issue of consent. He mentioned the many discussions that had been held at owners' meetings, where there had been no

objections except those of the late Rāwiri Hemopo (whose opposition to the inclusion of Taurewa 4 West D13 as an entirety was being accommodated by having it subdivided). He explained to the judge that the owners who objected at the May hearing had not been attending owners' meetings and did not really have 'any understanding of what the proceedings were about'. The Māori Land Court had been told by a departmental officer at the hearing that 'it was not reasonable that some four or five owners, who had not bothered to attend scheme meetings, could thwart the clearly expressed resolution of the majority of owners which had been repeatedly expressed over the past ten years'. Judge Cull's opinion had been that the notice of proceedings gave the owners insufficient information about the applications, but Morrill argued that technical details would have obscured 'the main point of the proceedings which was to amalgamate numerous titles into one title, and the benefits which would accrue from that measure'. He also questioned the consideration given by Judge Cull to the future use of the land: this should not have been made a precedent condition to the making of an amalgamation order, since utilisation was a matter for the owners after receiving expert advice from the department. In regard to maintaining the link between settlers and their family-owned land, a matter to which the judge had attached great importance, Morrill explained that the practice was to determine settlement by means of proper criteria of land use and economic viability. Families were always consulted, but settlers could find themselves on uneconomic holdings if 'family title considerations' prevailed over 'farming economics'. The letter ended with an assurance that the owners had been 'fully and properly consulted in all aspects of the scheme of amalgamation.'<sup>131</sup>

In reply to Morrill, Judge Durie expressed agreement with the emphasis laid by Judge Cull on the question of how farming units would be allocated if amalgamation went ahead. In his opinion, the matter was rightfully one for the consideration of the court. He suggested that 'amalgamation and subsequent partitioning of interests can infringe upon the existing rights of individuals, and that in general law it is unusual for people to be compelled to join a common venture, and that therefore, such full

information as will enable the owners to make a decision should be made available to them.<sup>132</sup>

Morrill subsequently made further lengthy submissions in support of the amalgamation applications. He reviewed the three objections made at the May hearing, commenting that one objector had not been to the meetings in which the proposal had been discussed and voted upon; another had only recently succeeded to her interests and would not have heard the comprehensive explanations at meetings (and might not understand the way in which settlement would be allocated if the owners decided to choose that option rather than an incorporation or trust); and the third was objecting because a successor to her parents had not yet been decided. He argued that these objections were not valid, as the objectors ‘clearly did not understand what is involved in developing Maori land’, and it was ‘wrong in principle that the views of three objectors should prevail against the wishes of a majority of owners recorded at properly constituted meetings’. He then addressed the question of whether amalgamation impinged on the existing rights of individuals, noting that the court was ‘very rightly . . . concerned that people should not be compelled to join a common venture which could negate their rights as owners of particular parcels of land’. He assured the court that the Māori Land Board adhered to the principle that individual owners must be fully advised of what was involved and must give consent. ‘That being said’, he added, ‘it is respectfully submitted that certain practical matters should be taken into consideration’. One of these was the difficulty of tracing all owners, some of whom did not want to attend meetings anyway; it was, therefore, always only a small proportion that could be assembled. In any case, he argued, the court had the power to make an amalgamation order even without the formal consent of a majority of owners. He pointed to the relevant section of the current legislation (the original section in the Māori Affairs Act 1953 had been replaced by section 141 of the Māori Affairs Amendment Act 1967, in part XXVIII, ‘Special Powers of the Court’), which made no specific provision for owners to be given notice of an amalgamation application. He also referred to a Supreme Court case, *Albert v Nicholson*,<sup>133</sup> establishing that the

Māori Land Court had jurisdiction to make an amalgamation order regardless of whether or not a majority of owners formally consented to the making of an application.

In Morrill’s view it was in the best long-term interests of the owners if amalgamation went ahead, since even the largest of the titles was very doubtfully viable as an economic farming unit on its own if individual settlement was later decided on by the owners. He argued that ‘the title situation with the Taurewa Development Scheme is such that settlement by individual families on the basis of the titles they own is not feasible’. The apportionment of debt between all the separate titles posed potential financial difficulties for the owners of these lands, and it would be much better to amalgamate the titles before the land was handed over to a trust. The owners had agreed to amalgamation in 1965, when they were told that funds would not be advanced unless they agreed, and while this was not an enforceable contract it was ‘vitaly important’ that the owners who agreed ‘should not be impeded from giving effect to their agreement’.

Morrill’s statement reiterated that ‘the owners more than once, and at properly constituted meetings, have freely agreed’ and ‘consented to the titles of their lands being amalgamated’. Long and complicated investigations on many matters had been made after the owners’ agreement was secured and before the applications came to court.<sup>134</sup>

In the end, the objective of the Department of Māori Affairs was achieved. The amalgamation order was made by the Māori Land Court on 25 March 1982 (it was provisional only at this stage, but, after procedural delays, was registered finally in May 1994).<sup>135</sup> The new title (2,195 acres) was identified as Taurewa 5 West A to F; it excluded the two portions of land that had been the subject of objections – 43 acres of Taurewa 4 West D13 (partitioned off from that block in 1980), and the whole of Taurewa 4 West A4A1 – and both portions were released from the development scheme.<sup>136</sup> Shortly afterwards, the newly created title was gazetted into the Taurewa Development Scheme.<sup>137</sup>

When the owners met on 15 November 1982 to discuss the setting up of a trust or incorporation to which the scheme could be handed back, they decided unanimously



to opt for a trust under section 438 of the Māori Affairs Act.<sup>138</sup> The Māori Land Court vested the land in the new trust on 24 March 1983.<sup>139</sup> The Department of Māori Affairs expressed its hope at this time that the farm would be handed back to its owners by 1988.<sup>140</sup> In fact release of the land from the scheme did not come until February 1991.<sup>141</sup>

(c) *The case of Taurewa 4 West E2B1*: Among the problems faced by the Taurewa 5 West A to F Trust since its inception in 1983 has been the feeling of some owners that despite the amalgamation, they still had the right to occupy the land they formerly held under their own title. Arthur Smallman told Dr Beaglehole that such people say: 'It is our land and we want to go back on it'; they then 'move back on the land and it becomes one big headache for the trustees'.<sup>142</sup> The allegations of the principal Ngāti Hinewai claimant, Monica Matamua, centre on a situation of this kind. No other instances were made known to us. Counsel for Ngāti Hinewai submitted that the claimants were not informed that amalgamation was proposed and proceeding, and that the papakāinga, urupā, and farmlands on their ancestral land (Taurewa 4 West E2B1) were included in the amalgamated title without their knowledge. Some of their urupā were desecrated, they say, and they were denied access to the land, and their relations with other owners were strained.

When Taurewa 4 West E2B1 was created in 1921, it was awarded to a single owner, Te Oti Mihi Te Rina, who before she passed away in 1939 farmed the land with her husband. She was the grandmother of Monica Matamua, whose parents also occupied the block.<sup>143</sup> The land was included in the development scheme in 1941 and the title was amalgamated with the others in 1982. Mrs Matamua told us that when the amalgamation passed through the courts 'we didn't even know about it'; nor did the law require the owners to be informed. As supportive evidence she referred to the records we have discussed above, pointing out that they show the concern of the Māori Land Court judges about the giving of proper notice and obtaining the agreement of the owners. She noted that the Department of Māori Affairs had correctly argued that

agreement was not legally required and that in due course the amalgamation order was made.<sup>144</sup>

Mrs Matamua told us that Whakahou marae was burned down in 1967, perhaps maliciously. In 1987, the descendants of Mihi Te Rina decided to rebuild the marae (a task that is still incomplete).<sup>145</sup> Mrs Matamua's son Arin told us that in 1991 his parents returned to their land, the former Taurewa 4 West E2B1, 'after a lifetime away living and working in the city'. After getting permission from the trust, they built the Whakahou Lodge on the block. Set in a large garden and orchard planted by the family, the lodge was designed as a tourist venture to complement the planned Whakahou marae.<sup>146</sup> Before long, however, the trustees asked them to vacate the land. When Mrs Matamua made a partition application in 1993, the Māori Land Court decided that if the parties could not reach an agreement over her occupancy, the Matamua family would be prohibited from entering the land.<sup>147</sup> By March 1994 their occupancy had not been regularised, and the court issued an injunction barring them from the property, pending determination of the partition application. Other legal action was taken in later years.<sup>148</sup> In her evidence Mrs Matamua summed up the troubles affecting her family as they sought to occupy and utilise the land to which they had title until 1982:

As a result of the amalgamation, we have effectively lost control of E2B1. We have tried to re-enter the land and set up a tourism and small-scale farming venture. At first the Taurewa 5 West trustees supported us and then they didn't. By the time they pulled their support out, we had sunk huge amounts of money, time and other resources into developing the whenua . . . For 14 years we have tried to work our land into something that would sustain us and allow us to live on our papakainga. This has always been our dream. Part of this dream was the building of Whakahou Marae on the E2B1 block. In the end however we have been forced off our whenua. The trustees took us to court and now there is a court order preventing me from ever returning to the Tieketahi papakainga. I am heartbroken about this. My kids and my mokos are devastated. They can't believe that we aren't allowed back on our land anymore.<sup>149</sup>

Arin Matamua gave evidence similarly describing the family's endeavours on the block and the distress caused by their situation: 'It's hard for us to accept that we can no longer go on to our own whenua, our papakainga'.<sup>150</sup> Another family member, Barbara Cain, said that the land was very important to her:

For one thing, it is where all of my tipunas are buried . . . The E2B1 block which was solely owned by Te Oti Mihi Te Rina, my grandmother, should be returned to the rightful owners. It is important to us all. It is important for our tamariki so they can learn their culture, their history, their reo and where they came from. Being without our marae, we are a lost hapu and forgotten.<sup>151</sup>

(d) *Amalgamation issues – conclusion*: We have not inquired into the causes or effects of title fragmentation, but we accept that the Crown's land development programmes and title improvement initiatives were an effort to counter the adverse effects of fragmentation on the utilisation of Māori lands by their owners. In the 1950s, the Department of Māori Affairs had a high regard for title amalgamation as a means of improving the financial prospects of its land development schemes.

We did not receive specific evidence about the extent to which it was an official department policy to require amalgamation before proceeding with further development on a scheme. However, it is clear that Taurewa owners were told in 1959 and 1965 that the Crown's continued financial investment in their lands was dependent on their acceptance of the department's amalgamation proposal. We note that owners in the Tokaanu development scheme (partly within our district) were also told that it was departmental policy to require amalgamation before further development could occur but that they refused to agree to it.<sup>152</sup> In the case of Taurewa, the owners who attended the meetings did agree, for the most part. It is evident that the owners were put under pressure to give their approval quickly. We agree with the claimants that, in view of the owners' wishes to see their lands developed and made available for settlement by their own family members, they saw little alternative but to accept what the department wanted.

We do not, however, fully accept the claim that when the owners were presented with the amalgamation proposal they were misled to believe that individual owners and families would still have the right to occupy their own lands when the titles were amalgamated. Rather than being promised or guaranteed, this outcome was presented as a possibility if it could be reconciled with the criteria for establishing economically viable family farms. Over the years, a good deal of information on this point was made available to the owners, and while it was not surprising that they held on to the hope of retaining their links with ancestral land, and perhaps placed too much confidence in the department's assurances, it is too much to say that the position was misrepresented to them. We note that the owners of two of the blocks, having attended meetings with officials and discussed the proposals, were not prepared to accept amalgamation, and that the department agreed to have them excluded from the proposal. The other owners who were present at the meetings agreed to go ahead, although, as we have pointed out, they were subject to some pressure and may have misunderstood what was said about future settlement. Despite not accepting the claim of misrepresentation, however, we do not deny the importance and validity of the owners' wish to maintain the connection with their own land – an aspiration acknowledged by the Māori Land Court judges in 1979 when they insisted on discussing it with the departmental officers who were seemingly giving it insufficient attention.

In regard to the extent to which information was available to the totality of owners, and the degree to which their consent was given, it should be noted that only a small number attended the meetings held at this time. It is significant that information and consent were the other main issues raised by the two Māori Land Court judges when they considered the amalgamation applications in 1979. Māori Affairs officials maintained that the proposal had been much discussed over a long period, that consent had been properly obtained at public meetings, and that objections had been accommodated. They also said that the three objections made at the court hearing in 1979 were not valid, and that it was extremely difficult if not

impossible to gather together more than a minority of owners when decisions were to be made. Above all, they explained correctly that the legislation relating to amalgamation orders did not require formal consent from a majority of owners.

In the case of the Ngāti Hinewai claimants who alleged that they were not informed about the proposal to include their Taurewa 4 West E2B1 title in the amalgamation, specific evidence is lacking. Some members of the family were living on the block throughout these years, but we were told that the principal claimant and her husband returned from the city in 1991, after the amalgamation, and found that their title had gone. They were understandably upset that this had happened without their knowledge and that the law did not require them to give their consent. We took note of the unpleasant and disadvantageous situation facing them as they tried to occupy and utilise the land of their forebears.

We acknowledge the difficulty of keeping the totality of owners informed of issues affecting their land and gathering them for meetings. We also observe that there is a conflict between ‘consent’ and ‘efficiency’ in trying to manage multiply owned land. The correct proportion or degree of consent is not specified in the Act and section 435 of the Māori Affairs Amendment Act 1953 is silent on the matter of notice to owners. Notwithstanding, there was a wide discretion conferred upon the Māori Land Court to uphold the principles of natural justice, including adequate notice and opportunity for owners affected to be heard on such applications. We also note that section 288 of the Te Ture Whenua Māori (Māori Land Act) 1993 sets out, among the ‘matters to be considered’ in title reconstruction and improvement, a requirement that, in deciding whether or not to make any partition, amalgamation or aggregation order, the court shall have regard to:

- ▶ the opinion of the owners or shareholders as a whole;
- ▶ the effect of the proposal on the interests of the owners of the land or the shareholders of the incorporation; and
- ▶ the best overall use and development of the land.

No order is to be made unless the court is satisfied, first, that the owners have had sufficient notice and sufficient

opportunity to discuss and consider the application and, secondly, that there is a sufficient degree of support for it.<sup>153</sup> The amalgamation of the Taurewa titles predated this legislation, and may have proceeded differently if these requirements had been in effect then.

Amalgamation of titles is in some ways a drastic way of improving land tenure. It is not surprising that the Taurewa owners queried it and in some cases rejected it. Furthermore, the trust structure eventually adopted for the Taurewa land development project (and many other Māori enterprises around the country) does not depend on amalgamation. Historian Aroha Harris comments that,

ironically, the preferred methods for managing Maori land – trusts and incorporations – actually allow multiple ownership to proliferate while at the same time letting the owners get on with the core business of profitable land utilization.<sup>154</sup>

### **(7) Conclusion and findings**

The outcome of more than 50 years of effort under the government’s land development scheme was that the Taurewa lands concerned were handed back to their owners as a developed and debt-free farm in 1991. The claimants allege, however, that the expectations of the owners had not been met: during its life the scheme had failed to benefit them to any extent, and when the farm was returned it was not viable and had to be leased out to a non-owner. Their claim is that the Crown was responsible for the failure of the scheme, and that they had been excluded from meaningful participation in its operation.

The land development programme set up from 1929 onwards was a genuine attempt by the Crown to benefit Māori landowners. In the case of Taurewa, we found it unlikely that any serious consideration was given in 1939 to alternative arrangements that might have brought about a more collective mode of land management, such as the already existing provision for trusts and incorporations. We noted that until the 1950s there was not really any other effective means of assisting Māori land development. In this particular case, the Crown initially hesitated to set up a scheme, and some problems – including poor access, difficult land, and opposition from some owners

– were evident from the start. The decision was taken to go ahead, however, beginning with one block that the owners were already farming and for which they were asking for assistance. It is clear that these owners, and others who later agreed to join the scheme, expected to benefit in a number of ways. They anticipated that the development work would be boosted by government financial input and farm expertise, and that they would obtain an income, employment, and training opportunities, and ultimately the chance to occupy and manage the blocks themselves as farmers of their own land.

It is true that the scheme did not produce an income for the owners during its lifetime, and in fact was burdened with a large debt by the time it came to an end. To plough income back into the farm was not in itself an unusual strategy in a long-term development project, however, and it should not be forgotten that the debt was written off by the Crown before the land was handed back to its owners. The farm was returned as a going concern, although the owners soon experienced difficulty in operating it profitably and made the decision to lease it out. It is disappointing to the owners that operation of the farm is still not in their hands and that they receive only a rental income. The land is still in their ownership, however. It is not possible to know what would have happened if the land had not been protected from alienation by its inclusion in the development programme. The owners had been non-sellers in the years before the scheme began, but pressures to sell were often strong and it is not impossible that the land would have slipped from their grasp if there had been no scheme. Although these last remaining Taurewa blocks brought little or no financial benefit to their owners while under development, their retention was ensured and their potential for future profitability remains.

As a relatively small scheme, Taurewa never provided much employment for its owners. Nor did training opportunities eventuate to any extent, and here we agree that the Crown should have found ways of building the capacity of the owners to operate and manage the farm. Although the creation of viable owner-operated farms was an aim of the project and was mentioned as an objective until the 1960s, it never eventuated. In hindsight, however, we

suggest that this was never a realistic possibility for this land at this time. In the circumstances, the development of the scheme land as a station rather than as small family farms was the most likely outcome. This was disappointing for the owners but was an outcome of factors beyond the Crown's control.

As far as management is concerned, we noted a number of areas in which the officials responsible for the scheme over the years could have made better operational decisions and so produced better results. Our attention was drawn to the need for better equipment, more fertiliser, an earlier provision of access across the rivers, and so on, and the Crown has acknowledged the role that these deficiencies probably played in hindering the progress of the scheme. Despite the funds invested in Taurewa by the Crown over a 50-year period, the scheme still did not prosper, and we can see that better management policies at various times might have made a degree of difference. Overall, however, it is our view that better management could not have ensured the success of the scheme in the circumstances of the time and on land that was probably marginal. The limited potential of the land and, even more importantly, the wider economic context, were not explored in the evidence we were given, but to us it is not altogether surprising that in the end it was not possible to surmount the underlying problems of the land and to defy the economic changes that threatened successful farming from the 1970s. Lastly, we note that right from the beginning there were deep divisions among the owners and we are of the view that these, too, played a role in the scheme's disappointing results, given that they affected both its operation and the proposal to amalgamate the titles.

The other grievance expressed by the claimants is that after allowing their lands to be included in the scheme, the owners suffered a loss of control over their property. They also say there was a lack of proper consultation with the owners on the management of the scheme. We agree that the owners' rights were reduced when their land was put under development, although to some extent this was an inevitable outcome of turning the blocks over to a programme in which significant Crown investment was involved. In our view, the amount of consultation that

officials provided for was insufficient, leading to a situation in which the owners had only a limited right to participate in decisions affecting their land. This breached the Treaty obligation to respect the Māori right to exercise responsibility over their own affairs.

Some years into its life, the progress of the scheme became entwined with the question of title amalgamation, and after a long period of discussion and planning the Crown succeeded in implementing its amalgamation proposal. We reviewed the allegations of one group of claimants, and partly accepted that the Taurewa owners were pressured into accepting the proposal and did not fully understand that they would not necessarily be able to continue occupying the lands to which they held title before amalgamation. For the particular Ngāti Hinewai owners who made the claim, the outcome of amalgamation was disappointing in the extreme, and we accepted their point that the legislation in effect at the time did not fully protect their right to give informed consent to the cancellation of their title.

Our examination of the Taurewa scheme was made in sufficient detail to enable us to assess the claims in wide perspective. Overall, we find that the Crown breached the Treaty rights of the Taurewa owners by failing to take reasonable steps to allow for adequate consultation with them in decisions affecting their land. The Crown also failed to facilitate their participation in the working of the farm, and to build their capacity to operate and manage it themselves. This was a breach of the Crown's obligations to actively protect the Treaty development right of owners, to act in partnership with the owners, to consult them on matters affecting their interests, and to respect their rangatiratanga over land. These breaches, however, were not what prevented the scheme from prospering. External conditions were the main reason for its failure to thrive. While the Treaty requires that the Crown give Māori access to development opportunities – that access being at least on a par with non-Māori – economic success is not guaranteed. In the circumstances of time and place, the mixed success of the Taurewa scheme was, in retrospect, probably to be expected.

In respect of the claims concerning amalgamation, we

are only partly persuaded that the owners were coerced into accepting the proposal and misled into a belief that they would be settled on their own land under the amalgamated title. To the extent that the Crown pressured them into amalgamation and did not ensure that the settlement procedure was fully understood, the level of consultation was less than the principles of the Treaty required. We find also, in respect of the claimants whose land (Taurewa 4 West E2B1) was amalgamated without their knowledge or consent, that although the Crown met the statutory obligations of the time, and although the task of ensuring that all owners were kept informed was difficult, the Treaty rights of these particular owners were infringed.

### 9.3 EXOTIC FORESTRY

Following the earlier emergence of native timber milling and pastoral farming, a third form of land use as a development opportunity for Māori landowners in the National Park inquiry district was the planting and harvesting of exotic forests. This did not occur until the 1970s, when a large area of Māori land south of Lake Taupō, including a considerable quantity in our inquiry district, was leased to the Crown, and the Lake Rotoaira Forest Trust was created (see map 9.2). This is the only exotic forestry in the National Park district, apart from two areas that had been planted before the war – namely, the Taurewa forest, which is not on Māori land, and the Karioi forest (south-east of Ruapehu), which lies mostly outside the boundaries of our inquiry district and is similarly not Māori-owned.

In this section, we review the history of exotic forestry in the district, examining the part played by the Crown in the establishment of this new kind of economic activity and land use, and inquiring whether the industry was a development opportunity that was beneficial to the owners who made land available for this purpose. Some claimants allege that the Crown, strongly motivated to begin afforestation in this area, exerted undue pressure on the landowners to accept this form of land use. There are also claims that the benefits of exotic forestry were fewer than the owners had been led to expect.

### Lake Rotoaira Forest Trust

The land blocks of LRFT are divided into three categories:

#### First Schedule Blocks

These blocks were included in the trust for afforestation. Most of them were suitable for afforestation and were leased to the Crown and planted. They are now gradually being released from that lease. While some blocks and parts of blocks proved to be unsuitable for afforestation, together they contributed to the viability and environmental management of Rotoaira Forest. All these blocks share in the distribution of forestry income.

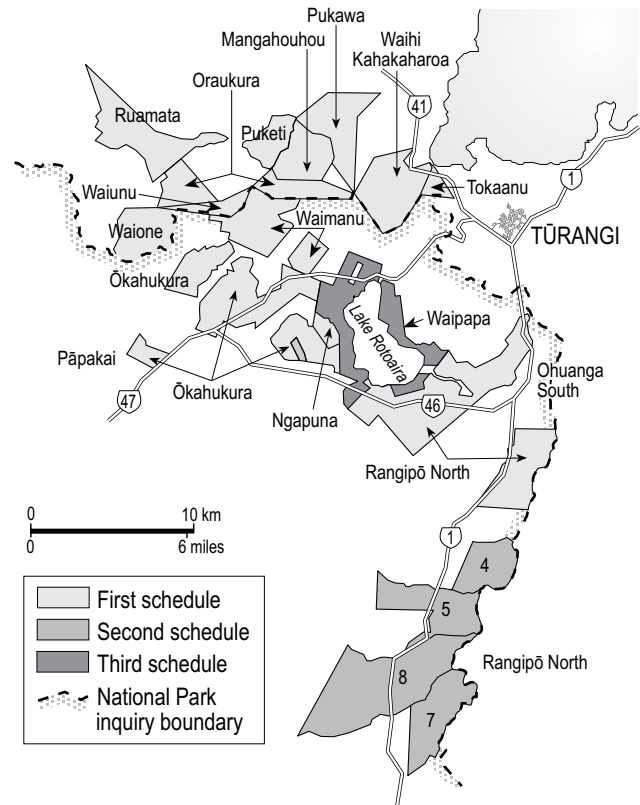
#### Second Schedule Blocks

These blocks are situated on the shores of Lake Rotoaira. They are in their natural state and are not part of the lease or developed in forest.

#### Third Schedule Blocks

These blocks are referred to as the Desert Road Blocks, owing to their location – to the east of Mounts Tongariro, Ngāuruhoe, and Ruapehu. The high altitude proved unsuitable for afforestation – the trust continually looks for other uses for these lands.

The Māori Land Court maintains all Māori land ownership records.



#### First Schedule

Mangahouhou 2A  
Mangahouhou 2B  
Mangahouhou 3A  
Mangahouhou 3B  
Mangahouhou 3C  
Mangahouhou 3D  
Ngāpuna  
Ohuanga South 2D1A1  
Ohuanga South 2D2B  
Ohuanga South 2F1  
Ohuanga South 2G1  
Ohuanga South 2H1A  
Ohuanga South 2J2  
Ōkahukura 2A  
Ōkahukura Part 2B2A  
Ōkahukura 2B2B  
Ōkahukura 2B2C  
Ōkahukura 2B2D

Ōkahukura 3A  
Ōkahukura 4A  
Ōkahukura 4B1  
Ōkahukura 4B2  
Ōkahukura 5A  
Ōkahukura 5B  
Ōkahukura 6A2  
Ōkahukura 8M2B2A  
Ōkahukura 8M2B3A1  
Ōkahukura 8M2B3A3  
Ōkahukura part 8M2B3B2  
Ōkahukura 8M2C2B2  
Oraukura 2  
Oraukura 4  
Pāpakai 1  
Pūkawa 2F  
Pūkawa 2G1  
Pūkawa 2G2  
Puketi 2A2

Puketi 2B2  
Rangipō North 2D1  
Rangipō North 2D2  
Rangipō North 2D3  
Rangipō North 3C  
Ruamata  
Section 1 Block V Pihanga SD  
Tokaanu B2M8  
Tokaanu B2M9  
Tokaanu B2M10  
Waihi Kahakaharao 4B  
Waihi Kahakaharao 5  
Waihi Kahakaharao 6A  
Waihi Kahakaharao 6B  
Waihi Kahakaharao 7  
Waihi Kahakaharao Part 9C (Southern Severance)  
Waimanu 1A  
Waimanu 2C

Waimanu 2F1  
Waimanu 2F2  
Waimanu 2G1  
Waimanu 2G2  
Waimanu 2G3A  
Waimanu Part 2G3B  
Northern Severance  
Waiunu

#### Second Schedule

Ōkahukura 1B  
Ōkahukura 8M2B3A2  
Ōkahukura 8M2B3B  
Balance  
Puketi 1  
Rangipō North 1C1A  
Rangipō North 2C1B  
Rangipō North 2C1C1  
Rangipō North 2C3A1

Rangipō North 2C3A2  
Waimanu 2A  
Waipapa 2C2B  
Waipapa Part 2B2C  
Rangipō North 1C2  
Rangipō North 1C3  
Rangipō North 2C1C2  
Rangipō North 2C1D  
Rangipō North 2C2B2  
Rangipō North 2C3B  
Rangipō North 2C3C  
Balance

#### Third Schedule

Rangipō North 4C  
Rangipō North 5C  
Rangipō North 6C  
Rangipō North 7C

Map 9.2: Lake Rotoaira Forest Trust land blocks

### 9.3.1 Claimant submissions

Ngāti Tūwharetoa submitted that in deciding to establish exotic afforestation on Māori land around Lake Rotoaira, the Crown's primary objective was to protect its investment in the Tongariro Power Development (TPD) by preventing farming development and consequent adverse effects on waterways and lakes.<sup>155</sup> Counsel recognised that the iwi and landowners were attracted to the proposal too, but for rather different reasons: given their difficulty in raising capital for development, forestry would enable them to put their lands to use, thus producing an income, providing employment, and lifting the rates burden that was making the land vulnerable to acquisition.<sup>156</sup> The submission described the project as 'a joint venture' and as a demonstration that the Crown and Ngāti Tūwharetoa 'were capable of coming to innovative solutions when the situation called for it'.<sup>157</sup> At another point in the submissions, however, the suggestion was made that Ngāti Tūwharetoa were 'railroaded' into exotic forestry. Although the iwi did enter into an agreement with the Crown to establish forestry, counsel suggested that there might have been other land uses that would have secured a better return.<sup>158</sup>

Ngāti Hikairo also made submissions on the origins of the scheme. Counsel asserted strongly that the Crown was motivated less by a desire to promote the interests of the landowners than by the pursuit of its own objectives. Protecting the power scheme was an especially important aim, but objectives pursued by the Crown also included the prevention of nutrient run-off to lakes and waterways, the preservation of scenery and amenities, possible land exchanges for the Tongariro National Park, the need to address the national timber shortage, and the putting of under-utilised Māori land to productive use.<sup>159</sup>

Ngāti Hikairo's submissions focused on why the owners agreed to afforestation, and claimed that the decision was made under pressure: the owners feared that rates arrears would result in the loss of their land if it was not put to productive use, and they lacked development finance for anything else. The evidence, said counsel, showed no significant discussion of alternatives to forestry as a development option, and if the owners had been fully informed

of all the advantages and disadvantages of the proposal and been free of pressure, they probably would not have opted for the forestry scheme.<sup>160</sup> Counsel also emphasised the importance of the claimants' own evidence, saying that the owners' perspective was not well captured in the research report, which was based on official sources. According to counsel, the report mainly represented the views of the Crown and the Tūwharetoa Trust Board leaders who were proponents of the scheme.<sup>161</sup> The submission emphasised that the owners felt pressured by the Crown and tribal leaders to agree to have their lands included in the scheme, and had only a limited ability to make a free and fully informed choice. Also, because of the fractionation of interests, there were thousands of owners, and only a small proportion of them could attend the meeting at which the decision was made to accept the proposal. Those owners who were not in favour had little chance of having their land removed from the scheme, since this required 50 per cent of the owners of a block to object to its inclusion. Pressure also came from the understanding that the scheme would not go ahead if too many blocks were left out.<sup>162</sup> All in all, the decision-making context made it possible for a small percentage of owners to decide the outcome. The claimants alleged that the Crown had failed to look after the interests of the owners as a whole. By giving priority to its own interests and not permitting the entire body of owners to make a free and fully informed decision, it had not fully honoured the Treaty principle of equal partnership.<sup>163</sup>

Having entered into the afforestation scheme in 1973, the owners have now experienced several decades of its operation by the Crown and the Lake Rotoaira Forest Trust. Submissions by Ngāti Tūwharetoa assert that, while some of the forest income is available for community purposes, such as grants for marae upgrading and kaumātua assistance, and while there are some employment opportunities, the benefit to the owners of having the land in forest has been 'negligible'. The owners had to wait 30 years for a return, and even since distributions of the income began, most of the individual beneficiaries have received very little – a point also made by Ngāti Hikairo. Despite the efforts of the trust, the majority of owners – of



Clearing pine trees in the Lake Rotoaira area. Establishing exotic forestry on Māori land near the lake was a joint venture between the Crown and Ngāti Tūwharetoa.

whom there are nearly 10,000 – are not registered with it and, therefore, do not receive their entitlement. In Ngāti Hikairo’s submission, this is because the succession system makes it difficult and expensive to keep up the ownership lists needed for making the payments.<sup>164</sup> Counsel for Ngāti Hikairo mentioned a level of dissatisfaction about trusts in general, and asked the Tribunal to investigate how well trusts are currently operating.<sup>165</sup>

In terms of profitability, the cold climate and poor

soils of the area mean that it is marginal for planting, said claimants, and there is a need to protect the lake edge for hydro purposes (and to leave some land clear for electricity transmission lines), so that forestry covers only 57 per cent of the trust lands. All this limits the productivity of the forest.<sup>166</sup> Ngāti Hikairo said that the fact that the land was not optimally suitable for afforestation was not made clear to the owners when they were asked to make a decision on the proposal. Ngāti Hikairo accepted that exotic



forestry has brought a degree of economic benefit to the landowners. The benefits have been less than were promised, however, especially as far as employment is concerned, since only a few of the many owners have found work in the forest.<sup>167</sup> Counsel for Ngāti Tūwharetoa submitted that, overall, exotic forestry on this land has not been a sound investment for its owners, and has not been sufficient in itself to meet the needs of the iwi.<sup>168</sup>

In addition, Ngāti Hikairo submitted that any benefits of afforestation are outweighed by its negative environmental and aesthetic effects. This is a cost that is paid on a daily basis, and includes excessive summer pollen production, with adverse effects on health and the environment, and the dramatic alteration of a familiar landscape.<sup>169</sup> Counsel again pointed out that the research report did not consider this aspect, which is an important theme in the claimant evidence. The claimants accepted that in this area forestry was much better for the environment than farming would have been, but they asked for recognition of these negative effects, which were unlikely to have been mentioned when the proposal was presented.<sup>170</sup> Taken as a whole, said counsel, the forestry project is another example of the reaping of large benefits by the Crown by means of resource exploitation, at a significant cost to the Māori landowners but bringing them very little benefit.<sup>171</sup>

### 9.3.2 Crown submissions

Counsel acknowledged that the Crown was actively involved in the creation of the Lake Rotoaira Forest. Its objectives in promoting this project included protecting the TPD, protecting lakes and waterways, preserving scenery, facilitating land exchanges for the Tongariro National Park, increasing forestry production, and promoting general economic development.<sup>172</sup> The Crown accepted that, on Ngāti Tūwharetoa's side, the objectives included preventing land loss from rating problems, identifying the best available land use to ensure retention of tribal lands, obtaining employment and environmental benefits, and using a trust structure as an opportunity to use multiply owned land.<sup>173</sup> In the Crown's submission, therefore, forestry seemed, to both the Crown and Ngāti Tūwharetoa, to be the best practicable option for utilising the land in

question.<sup>174</sup> Counsel noted that private interests were not prepared to enter into joint ventures for forestry in the district, and further stated that after agreeing to a limited area for afforestation the Crown acceded to Ngāti Tūwharetoa's insistent requests for a larger area to be included in the scheme.<sup>175</sup>

In counsel's submission, while the Crown had certainly benefited from the forestry scheme (by securing protection for the TPD, lowering the nutrient run-off into lakes and waterways, and achieving wider regional and national economic progress), the owners, too, had benefited. In fact, their objectives had been 'substantially achieved or surpassed'. Drawing on the evidence of the trust manager, counsel spelled out some of the financial, cultural, and environmental benefits of the scheme, including the arrangements that enabled the owners to retain their individual titles so as to maintain hapū and whānau relationships with the land. He also mentioned the lease variation that facilitated an earlier return of land that had been harvested. The Crown's submission was thus that the Lake Rotoaira Forest Trust had produced good outcomes for both the Crown and Ngāti Tūwharetoa.<sup>176</sup> Counsel asserted that the Rotoaira forest was certainly not an example of the Crown pursuing the national interest at the expense of Ngāti Tūwharetoa.<sup>177</sup> He submitted that despite the difficulties arising from the system of land tenure and from the current and likely future constraints on land use in the district, exotic forestry still appeared to be the best and most economic land use available for this locality.<sup>178</sup>

### 9.3.3 Submissions in reply

In the view of Ngāti Hikairo, the Crown had not addressed their claims that it had disregarded the interests of the owners of the Rotoaira land proposed for afforestation, that it had failed to fully inform them when seeking a decision about the proposal, and that it had permitted a minority to make the decision.<sup>179</sup> They also disagreed with the Crown's assertion that the Rotoaira owners benefited from exotic afforestation, and they submitted that the Crown had not addressed the negative impacts of the scheme, namely the environmental effects, the pollen problem, and landscape change.<sup>180</sup>

### 9.3.4 Tribunal analysis

#### (1) *The nature and extent of the Crown's involvement in the establishment of the Lake Rotoaira Forest*

As we have seen, the cutting and milling of timber from the extensive indigenous forests in the central North Island, including large parts of the National Park district, was an important economic activity for Māori landowners in the region, beginning in the late nineteenth century. Exotic forestry – the planting and harvesting of introduced tree species – began in the region before 1900 also, but it did not rival the native timber industry in importance until the 1960s.

#### (a) *The proposal to introduce exotic forestry to Rotoaira:*

From its beginnings in the 1890s, the government's exotic planting activity on Crown land near Rotorua and later on the Kaingaroa Plains increased slowly at first but then expanded in the 1920s. By that time radiata pine was the favoured species. State forestry was in the hands of the New Zealand Forest Service, and by the 1940s hopes were held that a major national industry could be developed. In the 1950s and 1960s there was a further expansion of the planting programme, the government having recognised the desirability of forestalling a predicted timber famine arising from the imminent end of indigenous timber production, and also of supplying the overseas market for exotic timber products. By 1970 the New Zealand timber industry was dominated by exotic production and processing, and the expansion of exotic forestry continued.<sup>181</sup>

The desirability of extending the area devoted to exotic afforestation in the central North Island led forestry officials to consider the possibility of using Māori land for this purpose. In the 1960s, land was purchased from Māori owners for afforestation at Tarawera in the Rotorua district. Hopes were expressed that owners of other suitable Māori land would consider making it available for exotic forestry. This would increase the forested area and at the same time enable the landowners to reap the benefits of a fast growing industry. As the Department of Māori Affairs put it in 1963, planting trees was 'another profitable way of utilising idle Maori land and providing congenial work for the Maori people in rural areas where

they live.'<sup>182</sup> It came to be realised that obtaining Māori land for forestry did not necessarily involve purchase, and soon there were active efforts in the Taupō area to identify land that could be leased for planting. In 1968 negotiations were completed with the Māori owners of more than 30,000 hectares on the eastern side of Lake Taupō, and from this emerged the Lake Taupō Forest Trust and an extensive area of land leased to the Forest Service for planting in exotic trees.<sup>183</sup>

As pointed out by Tony Walzl (whose research on the history of exotic forestry in this region provided much of the evidence at our disposal), Ngāti Tūwharetoa's east Taupō forestry venture 'paved the way' for the later scheme around Lake Rotoaira.<sup>184</sup> Afforestation in areas within the National Park district was first mooted during the east Taupō negotiations, when Ngāti Tūwharetoa representatives asked officials, at a meeting in August 1968, whether similar proposals could be considered for the western and southern parts of the Taupō region.<sup>185</sup> The iwi continued to press forestry officials to extend afforestation to these other areas, and gained the support of the Taumarunui and Taupō County Councils. The beginnings of official investigation of the proposal occurred between 1969 and 1970.<sup>186</sup>

The initial impetus for exotic afforestation in the National Park district sprang not only from the Forest Service's quest for new forest planting land, and the state's desire to see 'idle' Māori land put to productive use, but also from environmental concerns. The prospect of farming development on Māori land bordering Lake Taupō had given rise to fears of environmental damage to the lake. There was a desire to protect the lake waters from nutrient enrichment caused by fertiliser run-off; amongst other effects, the growth of lake weed would endanger the trout fishery and thus the tourist reputation of the region. In the 1960s, there was recognition that, while it was desirable to develop the large areas of 'unproductive' land around the lake, forestry would be less damaging to the lake than farming. Ngāti Tūwharetoa were involved in discussions of reserves that could be created to protect the lake and perhaps be put to productive use as planted forest. It was in this context that the afforestation of the east



Exotic forest near the Tongariro power development lakes. Pine trees planted near Lake Rotoaira were hugely important in preventing soil erosion and protecting the government's investment in the power scheme. Exotic forestry was also promoted as being financially beneficial.

Taupō and Lake Rotoaira lands found favour with officials concerned with environmental issues.<sup>187</sup>

In the case of Lake Rotoaira, a specific manifestation of this environmental concern, and one that was powerfully driven by a wish to protect the state's financial investment in its national infrastructure, was the belief that afforestation in the vicinity of the lake would directly benefit the TPD. Construction had already begun, and the lake was essential for the storage of diverted waters. In his evidence for Ngāti Tūwharetoa, at both the Central North Island and National Park hearings, George Asher asserted that the Crown's main objective in establishing the Rotoaira Forest was to protect its investment in the TPD.<sup>188</sup> In presenting evidence for Ngāti Hikairo, Edwyna Moana remembered that officials would not only tell the owners that 'we need those lands to be productive', but that afforestation would prevent soil erosion that would be damaging to the power scheme.<sup>189</sup> Assertions that this strong Crown motivation

was important are borne out by Mr Walzl's research. They are also consistent with official public statements such as the declaration of the director-general of forests in 1971 that it was 'particularly desirable that the land draining into Lake Rotoaira should be planted as protection for the Tongariro power development.'<sup>190</sup> Specifically, the desire was to prevent any lakeside land use that would promote soil erosion, flash flooding, and run-off leading to enrichment and weed growth.

An interdepartmental meeting was held in June 1970 to discuss these environmental concerns. If the land was not to be left in its natural state, forestry was favoured as the best alternative, and urgent action was recommended. Informed of these developments, Cabinet authorised officials to hold discussions with the landowners.<sup>191</sup> The first round of discussion with representatives of the owners took place at Tokaanu on 19 October 1970. The meeting was intended mainly to give information about

the proposal to establish a forest on 29,000 acres in the Rotoaira catchment area. Afforestation was explained as a means of reducing enrichment and siltation in the lakes, and also as a profitable venture for the owners. An additional aspect was introduced – the possibility that the Crown would take the opportunity to exchange Crown land for Māori land. The purpose of this was to improve the boundaries of the Tongariro National Park, but the implication was that the exchanges would be of advantage to the Māori owners too. The employment potential of the forestry scheme was also mentioned.<sup>192</sup> Although the owners at the meeting were told of the benefits they themselves would receive from the scheme, the importance to the Crown of its hydro protection objective was also made plain. After reporting that there was ‘general support amongst the Maori people for the afforestation of Maori land right around the Lake’, Ngāti Tūwharetoa’s solicitor noted: ‘there is considerable pressure at government level to afforest the land at the South of the Lake in the Rotoaira watershed so as to preserve the hydro works.’<sup>193</sup>

The case for the afforestation scheme, put to Cabinet by the Minister of Works in 1971, emphasised the necessity of safeguarding the power project.<sup>194</sup> After further information was received from the Forest Service in April 1972, Cabinet approved the forestry proposal. Two of its objectives (protecting the hydro scheme and expanding employment opportunities) were recorded in the Cabinet document. The approval related only to the 29,000 acres needed to protect the power scheme, although it was known that the owners were interested in leasing and planting a greater area.<sup>195</sup>

Analysis of these discussions shows that protection of the TPD had become an increasingly important part of the government’s interest in the forestry scheme. Forest planting was a way of achieving such protection, but in itself the expansion of the forest industry was not the main concern of the Crown’s decision makers. It is worth noting that at the same time as officials were considering the afforestation project, the Ministry of Works was taking steps to purchase Lake Rotoaira, also in the context of protecting the hydro environment. As we discuss in detail in chapter 14, these moves were strongly resisted by the owners of the

lake, who were eventually assured that it would remain in their possession.<sup>196</sup> Another discussion in 1972 centred on how the proposed forest would affect the national park, which, as we have noted, led to a consideration of how land exchanges might be carried out to benefit both the forest and the park.<sup>197</sup> Overall, however, the principal factor in obtaining support for afforestation from the various government departments was the need to protect the power scheme and the huge financial investment involved. The consequence of this was that the Crown was mainly interested only in the immediate surrounds of Lake Rotoaira, and Ngāti Tūwharetoa had to keep pressing for the achievement of their wider objectives.<sup>198</sup>

After the government had made its decision, in 1972, to go ahead with the forestry scheme, it fell mainly to the Forest Service to find ways of meeting Ngāti Tūwharetoa’s desire to put a larger area under forestry development. It became apparent that a smaller scheme would not be accepted by the iwi, so an expansion to about 44,000 acres was proposed. Not all of this area would necessarily be planted in forest, however: some would be used for conservation and exchanged for Crown land more suited to afforestation.<sup>199</sup> About 400 owners (of land both within and outside the National Park inquiry district) came to a meeting at Waihi on 28 October 1972, called by Pāteriki Hura, chairman of the Lake Taupō Forest Trust, to consider detailed proposals for appointing trustees, leasing the land, and distributing income. In information distributed beforehand, emphasis was laid on the economic benefits of a productive forest, although positive environmental effects were also mentioned. At the meeting, the leaders of Ngāti Tūwharetoa invited officials to explain what the government was offering. The proposals were discussed, and the meeting decided to approve them. At this stage, the plan to widen the scope of the project beyond the 29,000 acres had not yet been formally approved, but officials at the meeting did not exclude expansion from consideration. In the understanding of Ngāti Tūwharetoa’s solicitor, negotiations with the government were now to proceed on the basis of the greater area desired by the iwi.<sup>200</sup>

In the months following the owners’ meeting, the Forest Service went ahead with securing the support of

other departments for extending the scope of the lease proposal.<sup>201</sup> It was ascertained that the Department of Māori Affairs favoured the afforestation of a wider area. In their view, this would benefit the owners, as well as the general public and the Crown, and should be pushed ahead quickly while the opportunity still existed – that is before the land was put to other use and became unavailable.<sup>202</sup> The Department of Trade and Industry supported an extension so as to encourage regional development.<sup>203</sup> Endorsement by the Ministry of Works (MOW) emphasised the protection of Lake Rotoaira and its associated catchments from unsuitable land use, the promotion of regional development, and the provision of employment opportunities that would make the town of Tūrangi more viable. The MOW noted that the owners might not conclude the lease arrangements if the extension was not approved, and, like Māori Affairs, urged that the opportunity to forestall other uses of the land should not be lost.<sup>204</sup> The Department of Lands and Survey was not yet ready to comment fully, but in general had no objection to extended afforestation provided certain conditions concerning Crown land, scenic reserves, and the national park were met.<sup>205</sup> Support came also from the Taupō and Taumarunui County Councils.<sup>206</sup>

Encouraged by this level of agreement, and believing that the owners were anxious to proceed, the Forest Service recommended that it be permitted to go ahead as soon as possible with leasing an extended area (48,000 acres, of which about 37,000 acres would be planted).<sup>207</sup> Treasury demurred for a time and requested economic costings in order to ensure that the extra outlay was justified by an increased protection for the hydro infrastructure. The response of the Forest Service was that protecting the power scheme was not the only aim, since there would also be economic benefit for the Māori owners and an opportunity to make important additions to the national park. Again it was pointed out that action was necessary while the owners were still interested and before they turned to other options. Treasury was satisfied by the extra information provided, and eventually gave its approval. By March 1973, then, the way was clear to negotiate the exchanges and the details of the leasing

agreement.<sup>208</sup> The Minister of Forests noted that there was ‘a very good accord’ between the Lake Rotoaira trustees and the staff of the Forest Service; he expected that the arrangements could be ‘finalised expeditiously and harmoniously.’<sup>209</sup>

Some of the Crown’s motivations and intentions were also mentioned during the Māori Land Court hearing, held in November 1972, that resulted in the naming of trustees who would negotiate the leases and exchanges. (One of the precedents established in the earlier east Taupō discussions was the use of a trust structure, following the iwi’s successful resistance to the desire of the Department of Māori Affairs to amalgamate the land titles and set up an incorporation.<sup>210</sup>) The solicitor appearing for the applicants stated their view: although they are

conscious of the fact that the Crown’s willingness to negotiate for afforestation here is very closely tied to the need to protect the power scheme . . . [they] are concerned that afforestation should not stop there, and they insist that afforestation take in the whole of the area south of the Lake.<sup>211</sup>

He went on to express his understanding that if it had not been for the need to protect the power scheme, the government might not have entered into discussions about establishing a forest in the Rotoaira area. From what he could ascertain, there had been a reluctance in Treasury to commit funds to afforestation there, but pressure from the Forest Service, MOW, and other departments had brought about the recent offer to commence a scheme.<sup>212</sup> Asked why the Crown was anxious to conclude an agreement, a Forest Service official responded that the main reason was to meet the wishes of the MOW for the protection of the hydro scheme. The same official confirmed that the owners’ meeting had insisted on a larger area for afforestation.<sup>213</sup>

With the 14 trustees named and the leasing conditions set out, 91 blocks were listed for inclusion in the scheme. The total area was nearly 60,000 acres, including some land lying outside the boundaries of the National Park inquiry district; the land within our inquiry district was situated mainly in the Rangipō North, Ohuanga South,

Ōkahukura, and Waimanu blocks. The Māori Land Court's next step was to hear applications for having lands excluded from the scheme. Some applications for exclusion were successful, and the process was completed in March 1973, coinciding with the government's decision to go ahead with the expanded forestry project.<sup>214</sup> The lease could now be negotiated and the forest established. At the inauguration ceremony at Poutū on 9 June 1973, the Minister of Māori Affairs, Matiu Rata, referred to the various objectives of the scheme. According to a press report of his speech, he said that from the owners' point of view the main purpose of the project was to put the land into production and thus secure the future of their descendants. From the government's perspective, he explained, this multiple use of the land would achieve government aims of preserving natural lake and river conditions while still using the land productively. He noted that an important feature of the afforestation was its role in protecting the TPD.<sup>215</sup>

(b) *The establishment of the Lake Rotoaira Forest:* The Lake Rotoaira lease came into effect from 1 April 1973, covering 19,420 hectares (47,987 acres). This area was leased to the Crown for 70 years, with a token annual rental of \$2,500 to be paid to the trustees until the first sale of marketable thinnings. From then onwards, the amount payable was to be 15 per cent of the stumpage amount that was received by the Minister. Rates, taxes, and other charges were to be paid by the Crown as lessee.<sup>216</sup> The Lake Rotoaira Forest Trust has continued to administer the lease on behalf of the landowners, right up to the present time.

In examining the nature and extent of the Crown's involvement in the establishment of the new industry, our primary focus is on the years up to 1973 when the forest was inaugurated. We were not in fact given detailed evidence about its subsequent history. Mr Walzl notes that information about later developments, including important and lengthy negotiations between the trust and the government about stumpage and varying the lease, was not readily available to him.<sup>217</sup> His report does, however, provide some documentation of the progress made in roading, planting, and thinning between 1973 and 1985,

and also a brief overview of the effects on the scheme of government restructuring in the latter part of the 1980s, when corporatisation and asset sales saw the Crown's withdrawal from almost all direct involvement in the forest industry.<sup>218</sup> Although the government did continue its participation in forestry ventures on land leased from Māori, its policy was to exit from commercial forestry where there was no reason for continued involvement. Withdrawal was also seen as likely to promote Māori economic development. In the case of the Rotoaira forest, the Crown pulled back by means of an arrangement (finalised in 2002) for progressively transferring forest ownership back to the owners of the leased land.

Today the Lake Rotoaira Forest Trust represents the interests of nearly 9,000 owners of 85 separate Māori land titles covering almost 23,000 hectares of land (nearly 57,000 acres), scattered across terrain centred on Lake Rotoaira and beside the Desert Road. Of that area, 16,447 hectares were leased to the Crown, although only 9,306 hectares (57 per cent) were actually planted in pine, much of the rest being left untouched to meet environmental and conservation objectives. Harvesting began in 1999 and, under a variation of the original agreement, harvested areas are now gradually being removed from the Crown's lease and brought back under the direct control of the trust. Replanting on that land is being financed from the trust's share of the proceeds of the harvest, thus avoiding the need to borrow money. The replanting is producing a 'second rotation', and by 2026 the whole of the Lake Rotoaira Forest will be under Māori ownership. Management is contracted to a privately owned company based in Tūrangi.

The leased land that is not planted (over 40 per cent) contributes, as noted above, to environmental and conservation objectives in the area. Similarly, another 12 blocks, administered by the trust but not part of the lease, have also been left in their natural state: they are situated on the shores of Lake Rotoaira and almost completely surround it. Four other trust-administered blocks are located on the Desert Road to the east of the mountains. These are considered unsuitable for afforestation. These trust-administered non-leased lands, with a total area of 7600



Lake Rotoaira Forest. The forest was established in 1973 and is administered by the Lake Rotoaira Trust.

hectares, do not contribute to the trust's forestry business, but being under the trust protects them from rates and unwanted alienations or developments.<sup>219</sup> An area of 162 hectares was also left unplanted beneath the numerous electricity transmission lines that cross the forest (a small allowance being made for this in the stumpage arrangements of the original lease, although the compensation will cease when the lease expires).<sup>220</sup>

(c) *The Crown's role:* Our review of the history of exotic afforestation in the National Park inquiry district shows plainly that the Crown was actively involved in the establishment of the Lake Rotoaira Forest. In particular, the forestry proposal was driven by a strong belief that afforestation of the land near Lake Rotoaira was essential for protecting the huge national investment in the TPD. Alongside that, environmental objectives also played an important part, as did a desire to expand the

forest industry for national and regional economic benefit. Forestry goals in New Zealand have long been multifaceted – they have included protecting soils and water, advancing scenic and recreational values, promoting economic and community development, supplying domestic timber needs, and providing timber for export. The Rotoaira forest clearly fits into this pattern.

In this particular case, however, forestry also fitted Māori interests and aspirations and it was not an example of imposition by the Crown of its own programme on an unwilling iwi. Indeed, at different times Ngāti Tūwharetoa could be seen pushing the government to make plans for commencing afforestation in this area and pressing officials to extend the scope of the project beyond the boundaries originally proposed. In the end, Crown objectives and Māori aspirations in the district came together and the Crown assisted Ngāti Tūwharetoa to implement a development option strongly favoured by the iwi. That

the afforestation project can be called a ‘joint venture’ by both claimants and Crown is significant. The owners made the land available, and the Crown’s role was to facilitate a desired development by providing the capital and expertise needed for establishing and managing the forest. The Crown was also instrumental in setting up a trust structure that enabled the owners to put their multiply-owned land to effective use and to manage it in a culturally appropriate way. This was acknowledged in a paper written by the manager of the Lake Rotoaira Forest Trust, George Asher. In his words, the trust and the landowners ‘appreciate the Crown’s role in establishing the forests and assisting them to become involved in the industry.’<sup>221</sup>

Mr Asher told the CNI Tribunal that the Crown’s interest in the forestry scheme arose more from its commitment to national projects than from a concern for local Māori welfare. We agree with him that the Crown has frequently used various Ngāti Tūwharetoa resources in ‘the national interest’. The use of tribal land for afforestation was a further example of this, alongside railway construction, the creation and expansion of the national park, the protection of indigenous forests, the TPD, and so on.<sup>222</sup> Also, with regard to the Rotoaira forest, we cannot disagree with Mr Asher’s statement to us that among Ngāti Tūwharetoa’s many ‘gifts to the nation’ (intentional or not) can be counted the large amount of land reserved from planting for environmental and protection purposes.<sup>223</sup> It does not appear to us, however, that the need to protect the power scheme entirely pushed aside the Crown’s other motivations – environmental and social – in establishing the scheme. The Crown’s objectives and those of Ngāti Tūwharetoa overlapped to a considerable extent; certainly they were not fundamentally different. Indeed, in any kind of partnership, the parties involved are likely to be motivated by different kinds of needs, aims, and objectives; the point is to find a workable arrangement that is mutually beneficial. The various motivations of the Crown and the iwi were known to both sides at the time the forest was established, and were acknowledged by both Crown and claimants during our inquiry. Moreover, despite the importance of hydro protection in the Crown’s plans and intentions at this time, Maori economic

development and the potential for employment were significant factors in the Crown’s decision to proceed with afforestation. Ultimately, the objectives of the Crown and Ngāti Tūwharetoa were far from incompatible.

Our assessment here relates to the period in which exotic forestry was being discussed and agreed upon and then, in 1973, implemented. Mr Walzl, who has studied the sources more closely than anyone else, agreed under cross-examination with the suggestion that up to 1973 both partners, the Crown and Ngāti Tūwharetoa, were largely satisfied that their various objectives were being met.<sup>224</sup> We will not comment on the Crown’s role after this time. Not having been supplied with detailed information about the decades after the scheme was set up, we are not in a position to evaluate the part played by the Crown in the operation of the forestry venture. No claims were made concerning that aspect of the period after 1973. The following years, however, were when the hopes of the owners were put to the test, and we turn to this now.

## **(2) *The expectations of the Rotoaira landowners***

Although the Crown was heavily involved in establishing the exotic forest around Lake Rotoaira, the evidence shows that the arrangements were made in consultation with – and largely at the request of – Māori authorities and landowners, who had their own motivations for making this major change in land use. As we have seen, in the late 1960s representatives of Ngāti Tūwharetoa urged officials to extend the eastern Taupō afforestation plans to other parts of the tribal rohe, including the area around Lake Rotoaira in the northern section of the National Park inquiry district, and the owners of the land concerned were found to be willing to enter into the scheme. In the following section we will look more closely at why they agreed to participate, and whether there was any degree of opposition, and finally at the degree to which the owners’ hopes for benefit from afforestation were fulfilled.

(a) *Owner objectives:* As Forest Service officials prepared to meet Rotoaira owner representatives in 1970, they were conscious of the government’s strong desire to use forestry to protect the TPD. They were also well aware, however,



that Ngāti Tūwharetoa were interested in afforestation of the area for their own tribal benefit. Therefore, they were keen to keep what they saw as a 'strong negotiating position' and not let the owners 'think we were pleading with them to let us lease their land rather than the current situation where they were pleading with us to lease their land and afforest it'.<sup>225</sup> At the first meeting between officials and the owners, chaired by Pat Hura, Ngāti Tūwharetoa leaders took a prominent part and let it be known that they wanted progress towards a decision. One owner is recorded as having raised concerns about the benefits for owners and whether land could be excluded, but the impression of the officials at this early stage was that there was general interest in the proposal.<sup>226</sup>

In the evidence put before us, most of the documentation originates from the government departments interested in the proposed forest, and, therefore, focuses principally on official objectives and intentions. These records also include much mention, however, of the tribal leaders' desire for afforestation as part of an overall objective of bringing iwi lands into production, and their wish to extend the proposed forested area beyond what was required for hydro protection. Crown officers also met with a generally positive response from the landowners themselves when they were informed of the plan. Several elements in the interest expressed by owners were noted at the time:

1. The owners' anxiety about unpaid rates that might bring about loss of their land unless it was put to productive use.<sup>227</sup>
2. Their inability to finance development of the land themselves.<sup>228</sup>
3. Their lack of enthusiasm for the option of entering into land development programmes with the Department of Maori Affairs.<sup>229</sup>
4. Concern for the future of the lakes if conservation measures were not taken.<sup>230</sup>
5. Hopes for forestry employment.<sup>231</sup>

(b) *The owners' decision*: In reviewing the discussions and consultations that led up to the establishment of the Rotoaira forest, we need to distinguish to some extent

between the leaders of Ngāti Tūwharetoa, whose rohe extended far beyond the Rotoaira district, and the people who actually had interests in the Rotoaira lands. We note, too, that few of these owners actually resided on the lands or within the National Park inquiry district, although all were identified as Ngāti Tūwharetoa.<sup>232</sup> The initiative for forestry development, on the Māori side, had come from the leaders of Ngāti Tūwharetoa, who had already seen the Lake Taupō Forest successfully established. The evidence showed that these prominent iwi members put considerable effort into persuading the Rotoaira landowners to commit themselves to the scheme. At the meeting at Waihi on 28 October 1972, called by Pat Hura and Hepi Te Heuheu, about 400 owners were asked to consider detailed proposals for the forestry and lease. The Department of Māori Affairs later expressed its confidence that the meeting had been well publicised by means of individual letters, press advertisements, and radio announcements.<sup>233</sup> A departmental officer told the Māori Land Court that the meeting had attracted an 'exceptionally large number' of owners, and that 'everyone was given plenty of time to voice their opinions'.<sup>234</sup> Hura, too, was pleased with the attendance and convinced that those present were given clear information about the proposals; he said he had provided plenty of opportunity to speak, and did not think the level of opposition was very great, apart from that offered by two people (one of whom had eventually walked out).<sup>235</sup> Those present were assured that the scheme would be beneficial to them, but that individual owners could opt out if they wished. There was considerable discussion for and against the proposals, and although the meeting decided to give general approval, some requests to be left out of the scheme were made.<sup>236</sup> After the meeting, one of the owners, asserting that many others agreed with him, wrote to protest about the length of the lease period. The same person wrote again later, 'on behalf of the silent majority'.<sup>237</sup> The owner who had walked out complained, in a letter to the Prime Minister, that Hura and the iwi solicitor were putting pressure on the owners to turn their land over to trustees.<sup>238</sup>

Given the numbers involved, it would perhaps be surprising if the afforestation proposals were unanimously

welcomed by the owners. From the beginning of the discussions there were some owners who showed reluctance to see their lands included, and both Ngāti Tūwharetoa leaders and government officials were aware of this. Resistance of this kind was not ignored. Although there was mention during the Māori Land Court hearing in 1972 of powers that could compel owners to include their land if too much was being left out, and also of the possibility that the scheme would not go ahead if too many exclusions threatened its viability, assurances were often given that provision would be made for blocks to be excluded if that was truly the owners' wish.<sup>239</sup> In December 1972, this was one of the conditions imposed by the Māori Land Court when making the order vesting land in the trustees: 'The lease shall not be concluded until the owners of the land affected have had an opportunity of applying to the Court for the exclusion of their land from the lease.' The court would not refuse any application if it was satisfied (1) that the owners of a majority of the shares in the land affected were in favour of its exclusion, and (2) that exclusion of the land would not be 'unduly detrimental to the proposed forestry scheme as a whole.'<sup>240</sup>

The evidence does not give a full explanation of the opposition that was recorded, although it seems that some owners were interested in the possibility of farming their blocks or leasing them out for that purpose. There had been attempts to farm some of the land in the past, and at this time the growing of lucerne (alfalfa) was sometimes seen as a good prospect.<sup>241</sup> There are strong indications, however, that officials regarded farming in this area as potentially harmful to the environment (notably the waterways), and there is no evidence that it was seriously considered as an alternative to forestry.

It is possible that other owners who did agree to participate in the forestry scheme were led to do so by the persuasive arguments of prominent tribal leaders and the Tūwharetoa Trust Board (which had been an influential body since its founding in 1926). Hura later stated that he and the other leaders had made strenuous efforts to have as much of the land as possible included.<sup>242</sup> In his evidence to the CNI Tribunal, Mr Asher described the task of obtaining the owners' agreement as 'a major hurdle'.

He suggested that establishing a trust structure over so many blocks should be seen as 'a remarkable success in overcoming the impediments of multiple land ownership and the fragmentation of Maori land', and as a tribute to the iwi leadership of the day.<sup>243</sup> In her evidence for Ngāti Hikairo, Merle Ormsby referred to the leading role played in the establishment of the Taupō and Rotoaira Forest Trusts by the Tūwharetoa Trust Board. She said, however, that the old people felt pushed into making the decision to accept forestry, fearing that if they refused the proposal they would have no say in what happened to the land. In her opinion, certain owners who were on the Tūwharetoa Trust Board were very influential in the process, causing confusion and mistrust because of uncertainty whether they represented the board (which had developed a strong commercial orientation) or the owners. She said there had not been enough consultation, and what consultation did occur heavily favoured the Crown and the iwi leaders.<sup>244</sup>

Owners who were strongly opposed to participation in the forestry scheme could follow the process set in motion by the Māori Land Court for receiving and hearing applications for the exclusion of lands. At a hearing in March 1973, the court considered eight applications, of which three related to blocks within the National Park district, namely Ōkahukura 8M2C2C2A2, 2B2A1, and 2B2A2.<sup>245</sup> The first two exclusions were allowed, but not the third, which was in the middle of the proposed planting area. It was decided that if the latter piece of land was used for farming, the result would be detrimental to the lake. Furthermore, the interests of the wider body of owners, who were stated to have 'expressed an overwhelming agreement to participate in the forestry scheme', would be adversely affected.<sup>246</sup>

The evidence shows, then, that the owners were not lacking in opportunity to register objections to the inclusion of their lands, and that a process was available for any applications for exclusion to be considered.<sup>247</sup> The possibility existed, however, for objections to be disallowed, with the conditions for this clearly set out, and, as noted, the owners of one block in the National Park district were not permitted to opt out of the scheme. We note also that individual owners could not prevent the inclusion of a



Forest lands beside Lake Rotoaira. These lands are an example of a successful joint venture between the Crown and Ngāti Tūwharetoa. While the Crown wanted to plant pine trees around the lake to protect the Tongariro power development scheme, Ngāti Tūwharetoa wanted to develop forestry in the area.

block in which they had interests unless they constituted a majority of more than 50 per cent. There was potential, then, for some owners to feel that their unwillingness to be included had been overridden. It is clear that a number did feel this way, and some of the claims to the Tribunal reflect dissatisfaction of this kind.

Overall, however, the outcome of the process indicated that most of the owners were willing to have their lands included in the scheme, and it duly went ahead with only a few exclusions. High hopes were held for it. At the inauguration ceremony in 1973, Hepi Te Heuheu described the

establishment of the new forest as a ‘milestone in the forward progress of the Maori people.’<sup>248</sup>

(c) *Benefits to the owners:* It remains now to investigate whether afforestation did indeed provide the benefits the owners had been promised, and for this our best source (though still limited) is the evidence of the claimants themselves.

First of all, the forestry scheme opened the door to income-earning development of a considerable area of land that remained in Māori ownership. Whether or not

some of the land would have been lost if afforestation had not proceeded cannot be known, but clearly the establishment of the forest and the Trust ensured that ownership of the land was retained. Eventually, too, ownership of the forest itself began to pass to the landowners. Continued possession of the land and progressive acquisition of the forestry resource presented a development opportunity in a location where little other potential for productive utilisation had been identified. We note Mr Asher's statement that the owners who opted out continued to experience difficulty in developing their land.<sup>249</sup> For those owners who did not opt out, establishing a trust mechanism made it possible for them to maintain their inherited ties with particular pieces of land and still benefit from the commercial use of areas aggregated under a single management structure.

On the other hand, as Mr Asher pointed out, the participating owners waited nearly 30 years for any financial return from the forest, and even at the time of our hearings, when the payment of dividends had commenced, individual shareholders in the blocks were receiving only small amounts. As far as the delay is concerned, we note Mr Asher's statement that when the owners agreed to the scheme, they knew that they would receive no return until the first planting reached maturity. 'Significantly and unselfishly', he said, 'they were focused on the benefits for the next generations.'<sup>250</sup> Mr Asher, who has been trust manager for the Lake Taupō and Lake Rotoaira Forest Trusts since 1991, acknowledged that the low level of payment being received at the time of our inquiry did not 'endear' the owners to forestry development. He explained that payments to individuals were low because of the fractionation of shares, which he said was an outcome of the Crown-imposed system of Māori land tenure. He also commented that it was a large and costly task to maintain ownership records for the land in order to make the annual payments, since there were thousands of owners and the number was constantly increasing.<sup>251</sup> The evidence of another Trust officer, Tōpia Rameka, also focused on the management difficulties created by multiple ownership. He stated that registration was a prerequisite for receiving payments but that only 36 per cent of all owners

(but holding much more than half of the land) were registered with the trust. The others had not gone through the process of succeeding to the interests of deceased owners, or did not know they were owners, or had not bothered to register because their interests were so small, or could not be contacted. As Mr Rameka pointed out, the low rate of registration means that many owners cannot access the benefits of their ownership, and have no say in how their land is managed or how the trust is operated. He, too, spoke of the difficulty and expense of maintaining the ownership register and communicating with the owners. Mr Rameka confirmed that the owners complain that their payments are small. According to his evidence over half of them receive less than \$10 per annum, 90 per cent receive less than \$100, and only 7 per cent receive \$1,000 or more.<sup>252</sup>

Although the income from the forest seems small when the amounts received by individual shareholders are considered, we have noted the financial benefits and commercial success of the enterprise when it is taken as a whole. We were told that \$500,000 was distributed in 2003 and 2004, and the same amount from 2004 to 2005 and 2005 to 2006. These payments were made despite a severe downturn in the profitability of forest products between 2004 and 2006.<sup>253</sup> Because of the altitude, climate, and low soil quality of the area, the Rotoaira plantation is less viable than many other forests, but high management standards have obtained very good results from it.<sup>254</sup> According to Mr Asher, Ngāti Tūwharetoa have benefited from their insistence on the inclusion in the lease of a commercial and quality performance condition.<sup>255</sup> The outcome, he told us, has been that the commercial objectives of the iwi and owners have probably been met as far as possible in the circumstances. He stated that 'these forests are recognised as probably the best managed forests in New Zealand', and that the timber produced in the forests has gained high acceptability on the domestic and overseas markets.<sup>256</sup>

It should be noted that alongside the dividends paid to the individual owners, an agreed proportion of the trust's income is available for community purposes. In 2006 an inaugural grant of \$105,600 was shared out between the

three local marae of Ōtūkou, Pāpakai, and Hikairo ki Taurewa (as well as smaller amounts for three other marae outside the National Park inquiry district), and further grants were to be made later. There were also plans for assisting kaumātua with their health needs.<sup>257</sup>

Employment is another aspect we considered. The opportunity to find forestry jobs in their own area had been attractive to the owners when the scheme was first discussed. In the late 1970s, however, it was reported that due to the high wages offered to unskilled labourers employed on the power project it was at that time difficult to attract workers to the forestry scheme.<sup>258</sup> A decade later, the employment situation had changed considerably. Just when construction work had come to an end on the power scheme, the demise of the New Zealand Forest Service meant that fewer employees and contractors were needed for forestry work in the area.<sup>259</sup> That said, claimants in our district did not raise any issues arising from the restructuring of the Forest Service, and it is not necessary for us to look further into past employment matters. As for the present situation, we were informed at the time of our hearings that about 170 people were employed by the Lake Taupō and Lake Rotoaira Forest Trusts (a single workforce being used for the two forests).<sup>260</sup> According to Mr Asher, the trust's preference for employing Ngāti Tūwharetoa is respected as far as possible; he stated that in 2005 over 50 per cent of the workforce was Māori, the majority of these being members of Ngāti Tūwharetoa or married to iwi members.<sup>261</sup>

Although the landowners have retained possession of their inheritance, it might be argued that turning their land over to a trust has reduced their control over it and has opened the way for business imperatives to be given priority over traditional land use values. In this regard, we note that since 2000, the nine trustees, elected to their positions by postal ballot every three years, have all been owners.<sup>262</sup> The evidence of Mr Asher and Mr Rameka was that within the limits imposed by commercial considerations, the trust has maintained an ability to influence management decisions, and that the trust's structure allows the owners a high level of input into the running of the forest. This includes ensuring that cultural values

and customs, such as the protection of wāhi tapu, are reflected in management policies and practices. Provision is made for the owners to enjoy access for hunting, fishing, gathering food and plants, and tending wāhi tapu.<sup>263</sup> According to Mr Asher, there was a lot of discussion with kaumātua when the planting was being discussed, and it was only after the cultural and environmental requirements of Ngāti Tūwharetoa were met that the plan to establish and manage a commercial plantation forest on the land was seriously considered.<sup>264</sup> In general terms, the gradual release of the land from Crown lease has progressively increased the trust's control over the forest. There is 'a feeling of achievement and pride each time there is a return of land from the lease to the Trust', writes Mr Asher.<sup>265</sup> Information given to us about the governance of the Lake Taupō Forest Trust indicated that those responsible for the management of the two forest trusts are well aware of the need for accountability to the landowners, and that appropriate mechanisms are in place to ensure that it exists.<sup>266</sup>

We did hear from one witness, however, that the Lake Rotoaira Forest Trust had insufficient accountability to the owners and was not fully representative of them. He said that the trust did not allow enough input from kaumātua, or pay enough attention to the economic or social needs of the owners, and that its meeting procedures made participation by ordinary individual owners difficult.<sup>267</sup> In this connection, we were asked by Ngāti Hikairo to address the question of how well trusts in general (especially those under Te Ture Whenua Māori 1993) are succeeding as mechanisms for managing Māori land.<sup>268</sup> Shelly Christensen from Ngāti Hikairo told us about the problems she and her family had experienced in dealing with the trust responsible for Ōkahukura 8M2C2C2B.<sup>269</sup> Lack of evidence, however, has prevented us from commenting on this case or on wider trust issues.

Environmental issues were raised by some claimants. Mr Asher's evidence was that the environmental safeguards devised by the Forest Service and incorporated into the management of the forest were a positive benefit for the land and its owners. The health of this sensitive ecosystem was something that concerned the owners

just as much as it did the Crown. In Mr Asher's words, 'it would appear that there was a clear mutual understanding about environmental objectives.'<sup>270</sup> Elsewhere he has also stated that the owners and the Crown were able to 'reach agreement on conditions for the protection of key natural resources of great value to the tribe as well as the public', with the terms of lease reflecting the tribe's commitment to its role as kaitiaki of these resources.<sup>271</sup> But protection of the environment came at a cost. Mr Asher pointed out in his evidence that the amount of land left unplanted for environmental and conservation reasons (more than 40 per cent of the total lease area) meant a reduction in the commercial value of the forest. The environmental restrictions safeguarded the tribe's natural heritage but also limited the development potential of the Rotoaira land, as elsewhere in Ngāti Tūwharetoa's rohe. In his view, this amounted to a 'kneecapping of our ability to effectively utilise our remaining land base'. It sprang from the Crown's actions in the national interest, but had not been acknowledged as a loss of opportunity for the owners, or been compensated for.<sup>272</sup> While the environmental safeguards arose from the concerns of both the Crown and the owners, the cost was borne by the latter only.

As for other negative effects, some claimants expressed feelings of regret that a familiar traditional landscape had been changed by the planting of pine trees. Edwyna Moana, for example, lamented the replacement of the open tussock country with pine and 'unattractive scrubland'. Before, she said, 'it used to be beautiful'.<sup>273</sup> Other witnesses told us of nitrate leaching from the trees, and pollution and health problems caused by pollen.<sup>274</sup> Mr Asher stated, however, that exotic forestry was responsible for only minimal levels of nitrification.<sup>275</sup> We did not receive a report on the environmental impact of the pine forest and are not in a position to comment further.

(d) *The realisation of expectations*: To revert to the question we posed at the beginning of this section of our discussion, we are in no doubt that the Rotoaira landowners, in agreeing to lease their land to the Crown for forestry purposes, did so in expectation of certain benefits. We have mentioned these above, and they are not disputed

by either the claimants or the Crown. When the proposed forestry lease was being discussed, the belief that exotic afforestation had the capacity to deliver such benefits was shared by the Crown and Ngāti Tūwharetoa.

It is true that alternative options for productive land use were not formally studied at the time, despite the fact that interest in farming the land was shown by some of the owners. Predicting the level of economic success for particular commercial ventures is obviously difficult, and all land uses have a risk element, but perhaps tourism, residential, or holiday house development, or other land uses could have secured a good return, or even a better return than forestry. In the 1970s, however, the arguments against farming, and in favour of forestry as an economically promising and environmentally responsible use of this land, were compelling. Relevant information was made available to the owners, and the reasons for adopting forestry have not been discredited since then. While other ventures might have worked on some portions of the land taken into the scheme, we cannot see that other land uses would have been, overall, a better choice than exotic forestry as a development opportunity. It is true that the forestry option coincided with the Crown's preference, but this does not necessarily mean that the owners lost economic opportunities by deciding on a project that was also 'in the national interest'. It is hard to accept that Ngāti Tūwharetoa was 'railroaded' into the exotic forestry option, as the iwi's submission suggests at one point. In our view there is more justification in following the lead provided by both Ngāti Tūwharetoa (in other submissions and evidence) and the Crown when they use the expression 'joint venture' and emphasise the shared expectations of the two parties.

We have noted that a process of consultation with the owners resulted in an agreement to establish the forestry project, but we acknowledge that the owners of the Rotoaira lands did not enter unanimously into the scheme. This was emphasised by some of the Ngāti Hikairo claimants, who asserted that because Mr Walz's research was based on official sources that mainly represented the views of the Crown and the Tūwharetoa Trust Board leaders, who were proponents of the scheme, the perspective of

some owners was not well captured. We have heeded the plea of these claimants to pay attention to their evidence in order to correct this potential deficiency. We do not, however, accept that the views and wishes of dissentient owners went unheard at the time, or were ignored then or during our inquiry. The opposition of some owners was recorded, but the evidence does not indicate that a majority resisted the scheme. Nor does it convey any suggestion of a concern among the Rotoaira owners, at the time, that entering a trust-controlled scheme might weaken their hapū and whānau identity by putting it under a bigger Ngāti Tūwharetoa umbrella controlled by the tribal elite.

It is true that of the thousands of titleholders, only 400 attended the meeting that made the decision on behalf of the owners to accept the scheme. At the time, however, officials and iwi leaders were pleased with the attendance and regarded it as a good way of ascertaining the owners' wishes. Given the existence of a system that produced fractionated title and a large number of (often tiny) shares, it was virtually impossible to capture the express will of all owners or even most of them.

It is possible that some of the owners who did participate did so without being fully convinced but in the end accepted the persuasive arguments of influential iwi leaders who assured them of the advantages of the scheme. This might be regarded as 'pressure', but if so it was a reflection of internal iwi relationships. Pressure of another kind could have been felt, and might be attributed to the Crown: an understanding, based on concern for economic viability, that the scheme would not go ahead if too many blocks were left out. The Māori Land Court, too, intimated that it might refuse an application for exclusion if the omission of a block threatened the proposed forestry scheme as a whole.

With regard to those owners who did say they wished to opt out, we have looked at the procedure for dealing with those who objected to being included in the scheme. Our conclusion is that the process was an appropriate means of respecting the rights of individual owners. Understandably, some titleholders in particular blocks found that their objections were overruled by the desire of a majority of other titleholders to go ahead with the

proposal. In one case, the objections of a majority were disallowed because the omission of the block concerned was considered likely to permit environmentally damaging farming activity and would harm the interests of the wider body of owners who supported the scheme. In such a situation, there would have been some owners who felt that their interests had been disregarded in the procedure set down for decision making, and this dissatisfaction is reflected in some of the claims made to the Tribunal several decades later. The emphasis, however, was on the majority interest of the wider community of owners rather than the majority of interests of the owners in the particular block.

All in all, we find it difficult to uphold claims that the Crown disregarded the interests of the owners of the Rotoaira land proposed for afforestation, or failed to fully inform them when seeking a decision about the proposal. While it is true that a minority of interest-holders ultimately made the decision to proceed, it is unrealistic to expect that any meeting could have been organised to include a majority of the thousands on the ownership list. We accept that the decision making of the landowners was made more complicated by the system under which land was held, but that is not the issue here. We are satisfied that, in the widest sense, the Crown acted in a way that was intended to assist the Rotoaira owners, or a majority of them, to see their expectations realised through participation in the forestry scheme, and that the wishes of dissentient owners were, except in clearly defined circumstances, taken into account.

Were the owners' expectations realised? The claimants did not deny that the scheme had some benefits. Counsel for Ngāti Tūwharetoa, however, described them as 'negligible', and asserted that establishing forestry on this land had, overall, not been a sound investment for the owners or been sufficient in itself to meet the needs of the iwi. Ngāti Hikairo told us that the benefits received were less than had been promised, and the forestry project was another example of what the Crown had often done: reaped large benefits by exploiting Māori resources, at a significant cost to Māori landowners but bringing them very little benefit. The Crown, on the other hand, argued

that the Lake Rotoaira Forest Trust had produced good outcomes for both the Crown and Ngāti Tūwharetoa, and that the owners' objectives had been 'substantially achieved or surpassed'. In presenting this assessment, the Crown drew on the evidence given for Ngāti Tūwharetoa by the manager of the two Māori forest trusts. Earlier in this section we have ourselves turned often to this evidence for our understanding of the financial, cultural, and environmental benefits of the forestry scheme.

We do not see the scheme as a failure, commercially or in any other way. Harvesting began in 1999, with the final first-cycle plantings having occurred in 1989.<sup>276</sup> It is likely to continue (based on an approximate 25-year growth cycle for pine) until around 2014, thus assuring ongoing income. But the land, as it is harvested, is progressively coming back under the direct control of the trust and will presumably bring in more returns from its second rotation crop. We accept that very little money has yet found its way into the hands of individual owners in the form of annual dividends, but grants have also been made to marae and we were told of plans to assist kaumātua with their health needs. Then, too, the forest assists the owners to achieve cultural and environmental objectives. As the trust manager, Mr Asher, told the New Zealand Forest Owners Association in 2003, the trust, 'as a Maori business', had 'priorities that go way beyond maximising shareholder financial returns'. 'Top of the list', he said, 'is the need to carry out the kaitiaki (stewardship) responsibility and protect the land and its associated taonga.'<sup>277</sup> This perspective is somewhat at odds with some of the claimant submissions, but we find it more in line with the evidence.

There was some criticism from Ngāti Hikairo claimants that the benefits of afforestation were outweighed by its negative environmental and aesthetic effects. They correctly pointed out that this aspect was not considered in the research report, and they therefore gave it particular attention in their own evidence. The claimants did accept, however, that in this area forestry was much better for the environment than farming would have been. They asked for recognition of certain negative effects, but for lack of sufficient information we are unable to comment on this.

We do, however, observe that environmental objectives were given a prominent place in the establishment of the forest and have continued to be highlighted by the Trust in its management policies. This has enabled the owners to practise kaitiakitanga (stewardship of the land) at the same time as benefiting financially from the forest. A certain tension between commercial and cultural or conservationist objectives does still exist, however, and we concur with Mr Asher that the loss of opportunity suffered by the owners when they agreed to maintain environmental safeguards, which limited the commercial potential of the forest, should be given more recognition.

Overall, however, in our examination of the benefits of the Lake Rotoaira Forest we find the Crown's submissions persuasive. In particular, we agree that despite the difficulties arising from the system of land tenure, and from the current and likely future constraints on land use in the district, exotic forestry still appears to be the best and most economic land use available for this locality.

### **(3) Conclusion and findings**

In considering the Crown's role in the establishment of exotic forestry on Māori land around Lake Rotoaira, we see it as important that an agreement was made, in ways that did not violate the principles of the Treaty, to institute a project that was acceptable to, and in fact desired by, both parties. Although the Crown was strongly motivated to proceed with afforestation in this area, we do not accept that it gave priority to its own interests over those of the owners, or pressured them into accepting the proposal. We find ourselves in accordance with Ngāti Tūwharetoa's submission that the forestry scheme demonstrated that the Crown and the iwi 'were capable of coming to innovative solutions when the situation called for it'. In facilitating the establishment of the forest and the trust, the Crown was meeting its obligation to assist Māori in this district to develop their lands, and this collaborative achievement was consistent with the Treaty principle of partnership.

It is evident that some owners did not wish to participate in the scheme, but we have found that their views were heard and that a fair and open process allowed for



opting out. In regard to the benefit of the scheme to those who agreed to participate in it, we saw that although economic success is not guaranteed under the Treaty, and the monetary returns have not yet been huge, afforestation did bring a certain degree of financial benefit (as the claimants agreed). In addition, important cultural and environmental objectives were achieved. In this connection we note that the owners lost out to some extent by accepting a limitation of planting in order to maintain environmental safeguards. This should be recognised by the Crown in the settlement process. Apart from that, our finding is that the partnership between the Crown and the Māori landowners of the forest area has been established in ways that generally uphold Treaty principles.

#### 9.4 THE DEVELOPMENT OF LAND AND RESOURCES IN THE NATIONAL PARK DISTRICT

After reviewing the Crown's role in the loss of land from Māori ownership in the National Park inquiry district, and also the policies of the Crown that affected the use by Māori of lands that they retained, we are now in a position to draw the threads together and arrive at some overall conclusions concerning the topic of this chapter. To facilitate this, we will first consider whether the Crown had ensured that enough land remained for the needs of Māori in the district, and then assess whether the Crown fulfilled its responsibility to protect the right of Māori to develop their land and resources.

##### 9.4.1 Claimant submissions

###### (1) *Sufficiency of land and resources*

Claimants submitted that the Crown failed to meet its obligation under the Treaty to ensure that all iwi were left with an endowment of land and resources sufficient for their present and future needs.<sup>278</sup> Counsel for Ngāti Hikairo ki Tongariro submitted that this failure was so great that it left the hapū effectively landless.<sup>279</sup> The Tamakana Council of Hapū alleged that the Crown actively facilitated or permitted the transfer of land from the ownership of Te Iwi o Uenuku, and failed to properly investigate the extent of land they required for their present and future needs,

with the result that by 1970 no land in the inquiry district remained in their ownership. Although they had owned other land outside the inquiry district, only a small remnant of that land now remained.<sup>280</sup>

Claimant submissions suggested that, as in other districts, land loss had a negative impact on the socio-economic position of Māori in the National Park inquiry district.<sup>281</sup> Counsel for Ngāti Tūwharetoa submitted that the loss of lands and resources undermined the ability of the iwi to prosper, and was undoubtedly a factor in later socio-economic deprivation.<sup>282</sup> Counsel for Ngāti Waewae argued that it is very likely that the poor socio-economic status of the hapū, both past and present, is partly a consequence of landlessness.<sup>283</sup> Ngāti Hikairo submitted that as a people they have been marginalised by Crown actions that were in breach of the Treaty. Land purchasing and the creation of the national park denied them their most important resource, and its impact is still felt today. They are now unable to gain a livelihood from the remaining lands, or to derive from them the requirements for the wellbeing and survival of the hapū, and have for many years been in a poor socio-economic situation.<sup>284</sup>

###### (2) *Development*

In the generic submissions on twentieth-century Crown purchasing, counsel emphasised that, although Māori in National Park still owned a considerable amount of land at the beginning of the century, they suffered poverty because they lacked the means to develop it, and were also prevented from doing so by the restrictions against private alienation (which included leases and mortgages).<sup>285</sup>

Counsel for Ngāti Tūwharetoa submitted that, while the National Park region is a major centre for development 'in the national interest', this has been achieved at the expense of the iwi's own development and of their control over land and resources. The right of Māori to retain and develop their land and resources, and thus not only to survive but also to prosper as a people, is seen as a critical issue for this inquiry.<sup>286</sup> It was a right that was denied as a result of the Crown's role in resource loss and of other Crown interference; in effect the Crown acted not as a Treaty partner but as a competitor.<sup>287</sup> The Crown's role

in hindering and preventing Ngāti Tūwharetoa development included its programme for the acquisition of land (including forest land), its policy of imposing alienation restrictions, and its failure to provide development assistance.<sup>288</sup>

Other claimants similarly appealed to the Treaty principle of active protection and the right to development, which created an obligation to ensure that Māori were able to utilise their lands and resources effectively. They submitted that alienation restrictions imposed by the Crown on the lands retained by Māori prevented the lands from being developed, thus causing hardship to the owners.<sup>289</sup> Ngāti Hinewai submitted that the Crown's obligation to help Māori develop their land extended to providing access to capital if and when necessary. Ngāti Hikairo enlarged on this by pointing out that the difficulty of raising finance arose from the fragmented state of land title, which is the outcome of the Crown-imposed tenure system.<sup>290</sup>

#### 9.4.2 Crown submissions

##### (1) *Sufficiency of land and resources*

The Crown submitted that safeguards for owners were included in Māori land legislation, including provisions for ensuring sufficiency of land.<sup>291</sup> Beyond that, the Crown did not accept, on the evidence available, that Māori in this district have been left with insufficient land, in terms of either quantity or quality, or that the Crown has failed to ensure that sufficient land was retained for their present and future needs.<sup>292</sup> Counsel argued that it is important to define 'sufficiency of land', and that context is also important: the question is whether at the time of alienation the vendors would have been considered to have retained sufficient land and other interests for their present and future needs.<sup>293</sup> The Crown also submitted that the question of interests held in other districts is relevant, especially since population levels in the inquiry district were low; there is little evidence on this, said counsel, so a reasonable assessment of sufficiency cannot be made.<sup>294</sup> Nor is there much evidence that would allow general conclusions about the viability of the remaining land. Farming would appear to be difficult in most parts of the district.<sup>295</sup> All in all, there

is not enough evidence to make comparative assessments of socio-economic position, or to reach any conclusions about Crown culpability in this regard. The Crown did not accept the generalised assumption that land loss is the cause of subsequent deprivation – there are other factors involved, and the Crown cannot be held responsible for all of them. Land alone does not guarantee economic prosperity or development.<sup>296</sup>

##### (2) *Development*

In the Crown's view, any right of development must coexist with other rights and Treaty principles.<sup>297</sup> The Crown says it is not required by the Treaty to facilitate Māori entry to, or participation in, any form of commercial activity, and that it is bound by no 'absolute positive obligation' to assist in the development of remaining lands or resources.<sup>298</sup> In the years following 1929, however, it did take initiatives to address the tenure and financial problems faced by Māori wishing to engage in the development of their land.<sup>299</sup>

#### 9.4.3 Submissions in reply

Ngāti Tūwharetoa criticised the Crown's approach to sufficiency as being too rigid: the issue is more than whether land can support successful farming or forestry, and a broader assessment would look at the ability of an iwi to sustain an economic base through participation in economic opportunities in the region. They said that there was no evidence that Ngāti Tūwharetoa had been left with enough land, and certainly no evidence that they had developed enterprises that employed or provided income for most of their population.<sup>300</sup> They expressed disappointment that the Crown had engaged so little with the iwi's claims concerning development and their emphasis on the centrality of this issue.<sup>301</sup>

#### 9.4.4 Tribunal analysis

##### (1) *Sufficiency of land and socio-economic deprivation*

An important allegation made by the claimants is that, in the National Park district, the Crown did not meet its obligation to ensure retention of an adequate land and resource base for Māori, with the result that they were left with insufficient resources to meet their present and future

needs or to participate in the new economy. The claimants also say that the Crown's failure in this regard resulted in, or was at least a factor in, the poor socio-economic position of Māori in the district.

There is indeed some evidence of socio-economic deprivation in the Māori population of our district, but no detailed report on this topic was prepared for this inquiry, either for the district as a whole or for groups such as Ngāti Hikairo, who had most of their land within the district and who continued to live there.<sup>302</sup> On the evidence available, it is not possible for us to arrive at conclusions about the socio-economic situation of Māori in the district. Nor is it possible to assess the extent to which land alienation in this district caused economic deprivation, social dislocation, or migration to other places. In general, a direct link between land loss and a poor socio-economic position is not easy to identify, measure, or prove, although other Tribunals have accepted that there is such a connection and that land loss is a factor in subsequent economic marginalisation. No evidence to substantiate the existence of such a link in this district was presented, however.

Nevertheless, we can make some general points. From the beginning of colonisation in New Zealand, the Crown accepted a duty to protect Māori from the alienation of too much of their land. Protections and safeguards were included in the legislation that governed land sales in the twentieth century, but, as we have seen, they were neither adequate nor effective. They did not prevent the loss of a great deal of land in the inquiry district in the early twentieth-century period of purchasing. Furthermore, it was the Crown itself that did most of this purchasing. In his report, Dr Terry Hearn argues that, 'at the beginning of the period under review, the Maori owners of lands in the National Park Inquiry District expressed a strong wish to retain and develop those lands.' He goes on to state that

the Crown, fully aware of the material circumstances and collective and individual wishes of Maori, and of the efforts of owners to turn their resources to productive account, nevertheless embarked upon an extensive land purchasing programme.<sup>303</sup>

We recognise that economic prosperity need not depend only on the possession of land, but for Māori owners in National Park in this period, land was the principal resource to which they had access. When the century began, Māori had already lost just over half of their land in the inquiry district, and by 2000 a large proportion of the rest had gone. Was the 15 per cent that remained enough?

The Crown put forward several points to be taken into account when considering whether sufficient land was retained in this inquiry district, and we agree that the National Park area is distinctive in a number of ways: the land had limited productive potential and the population was small. Furthermore, many of the inhabitants also held interests in other districts, so that they did not rely solely on the land within the inquiry district for their sustenance and livelihood. We agree that it is relevant to take the outside land holdings of ngā iwi o te kāhui maunga into consideration when assessing sufficiency. We have very little information on this, however, either overall or with regard to particular iwi or hapū (including Ngāti Hikairo, who appear to have been the group with the fewest outside resources). We also agree that, historically, the National Park district did not support a large resident Māori population. The area was much used and valued as a seasonal resource, and subject to widely recognised use rights, but large parts of it were inhospitable to permanent occupation. We do not have the figures for nineteenth- and twentieth-century population numbers, distribution, or trends, but it is clear that only a small number of people lived in the district then and that the Māori population is still not large. It might be supposed therefore that a small population would need to retain only a small area of land.

Sufficiency of land, however, should be determined not just with regard to subsistence requirements for survival on particular small pieces of land, but also by taking into account the right to continue customary economic and cultural practices such as wide-ranging resource gathering.

Also, and this is our focus here, the Crown's obligation to ensure Māori retention of sufficient land included the duty to protect the opportunity to prosper by participating

in the new economy of the nineteenth and twentieth centuries. It is the present and future needs of the owners that were to be considered. Iwi and hapū that held rights in National Park land, regardless of how many or how few people were concerned, or whether they also had rights elsewhere, now had the right to develop their National Park land if they wished to do so. Parts of our inquiry district have been recognised over the years as having potential for farming development. Other parts were clothed in indigenous forest, which offered opportunities for logging and sawmilling. Much of the land, including the mountainous centre, has long been acknowledged as having enormous value for tourism and recreation. In other parts, the prospect of exotic forestry development has been pursued. In a district such as this, where there was little probability of achieving prosperity on small pieces of land, there was all the more need for the economic opportunities offered by land and resource use on a wider scale. Extensive loss of land severely reduced the likelihood that the hapū and iwi of the district would be able to participate in the new opportunities emerging in the region. The Crown's obligation to ensure that Māori were left with sufficient land and resources is, therefore, closely related to the question of development opportunities. Huge amounts of land were lost, but did ngā iwi o te kāhui maunga retain an ability to survive and prosper based either on the land that was left to them or on other economic opportunities?

### **(2) Crown restrictions on Māori development**

Our discussion in this section centres on the Treaty right of development, which has been considered by several previous Tribunals, including the CNI Tribunal.<sup>304</sup> The Treaty development right consists not only of the right of Māori to retain a sufficient land and resource base on which they could survive and prosper in the new economy introduced by colonialism but also of the right to develop the properties and taonga guaranteed to them by the Treaty, if they chose to do so. Māori had the right to equal access to development opportunities based on their lands and resources, and also the right to active assistance from the Crown in circumstances where that was appropriate.

We have seen plenty of evidence that Māori in the inquiry district often did wish to utilise their land productively. The Tongariro Timber Company venture, discussed in the previous chapter, was the most elaborate attempt to realise this aspiration, but many other efforts to bring land into profitable development were made on a smaller scale.

There were several ways in which land and resources in this inquiry district could be put to profitable use. In New Zealand around 1900, the most obvious option for land use was agriculture. Some of the tussock lands in our district were used for grazing sheep in the nineteenth century, and a more permanent farming industry was eventually established on Māori-owned blocks in the north-western Taurewa area (and also on the area of Crown land farmed today by Landcorp). Most of the land in the inquiry district, however, was in the end recognised as possessing little potential for agricultural development. At the beginning of the twentieth century, it was the timber industry that offered the greatest prospects for profitable land use. As we saw in chapter 8, much Māori land was under indigenous forest, presenting opportunities for the logging and milling of this valuable resource. Later, there was also the chance to establish exotic forestry on otherwise unproductive open land owned by Māori. The other main possibility for obtaining economic benefit from land and resources in this district – one that was well recognised by this time – was to make use of the attractiveness of the region for tourism and recreation. As we discussed in chapter 4, the Crown was under significant pressure to obtain control of tourism and recreational assets in this region by 1900. Then, as we saw in chapter 8, the Tongariro National Park underwent further expansion and development as a way of fostering tourism (among other objectives). In chapters 11 and 12, we will consider whether Māori were able to participate in the opportunities presented by tourism development.

Access to capital, which was made difficult by the realities of the land tenure system, was a major obstacle to successful Māori farming development, and other Tribunals have concluded that the Crown had a Treaty responsibility to provide financial and other assistance for this endeavour. In National Park, such assistance was not given until

1939, when the Taurewa development scheme was commenced. As we have seen, however, the hopes of the owners of the Taurewa land were not altogether realised. Then, in the 1970s, farming was being considered by owners in the area around Lake Rotoaira, but instead they agreed to accept the assistance of the Crown to establish a commercial exotic forest on the land concerned.

In regard to the era when milling the indigenous forests was widely acceptable, we have already seen that the Crown does not ever appear to have contemplated assisting Māori owners of forest lands in National Park to become active participants in the timber industry. Furthermore, our consideration of the Crown's involvement in land use options in the National Park district has shown that, while the development of Māori land and resources was actively assisted in the case of the Taurewa land development scheme and the Rotoaira exotic afforestation project, it was often hindered, in the case of indigenous forestry, by restrictions imposed by the Crown. One of the most obvious ways in which the Crown restricted the ownership rights of Māori was by use of its power to prohibit the alienation of land to private interests, preventing owners not only from selling their land (except to the Crown) but also from making arrangements such as contracts with logging and milling businesses. During our inquiry, the Crown conceded that it did not always administer this restriction fairly and reasonably, and it is clear that prohibition orders often stood in the way of forestry development. Even without such orders, Māori land was subject to a requirement that alienations, including leases and cutting agreements, could proceed only with government approval (through the Māori Land Boards after 1905). After the First World War, there was a growth in specifically forest-oriented government controls, which further restricted timber operations on Māori land. These controls had various justifiable objectives – the protection of soil and water, the conservation of native timber supplies, the preservation of scenery and encouragement of tourism, and the protection of Māori owners from what were perceived as potentially unscrupulous timber companies – but they undoubtedly restricted the ability of Māori to utilise their forest resource commercially.

Although the development opportunity offered by the ownership of forests was not altogether closed off, it was severely restricted.

We accept that the Crown had a governance responsibility, which included the duty to follow policies designed to promote the national interest. In the National Park inquiry district, however, the Crown's exercise of *kāwanatanga*, in respect of indigenous forests, infringed the rights of Māori landowners. There is an inherent tension here between the Crown's duty to govern the nation and its duty to protect Māori rights, and we must weigh up whether the Crown, in its dual obligation, correctly balanced the interests of the nation and those of Māori landowners. Our view is that the Crown, in disregard of the owners' Treaty right to use and benefit from their property and to have their property rights actively protected, pursued its own objectives at the expense of the owners' aspirations, and without consulting them to any extent. Although the partnership between Māori and the Crown required a balancing of interests, the objectives of the Crown were in competition with the development hopes of Māori landowners in this district, and were given priority.

We are conscious, however, that the objectives of the Crown arose not from a narrowly conceived wish to promote Pākehā settlement (though they contained an element of this at the beginning of the century), but from a widely recognised national interest. We accept that the government's objectives were legitimate, and more than that, soundly based. The essential validity of the Crown's aim of ensuring long-term sustainable management and conservation of the national forest resource, and permanent protection of the natural mountain and forest environment from potentially destructive uses, means that the issue of competing interests must be considered very carefully. The Tongariro National Park and other conservation areas in the inquiry district now constitute an immensely valuable national asset, and it cannot be said that the vision of setting up a conservation estate in the mountains and their surrounding lands and forests was wrongly pursued by the Crown.

This vision became a reality, however, at the expense of Māori owners whose plans for developing the land in

other ways were often obstructed by the Crown without explanation. Furthermore, Māori aspirations were blocked without compensation for the loss of economic opportunity. But the conflict between conservation and development, starkly obvious in National Park, need not have occurred. Conservation as a concept is entirely consonant with Māori views, as shown by the claims made to this Tribunal against the Crown for causing environmental damage. The land and resources in this district are 'valuable' both for ngā iwi o te kāhui maunga and for the nation. As we said earlier, we believe it was not necessary for the rights of Māori land and forest owners to have been overwhelmed by the Crown's governance responsibilities. The Crown could and should have ensured that there was a much greater level of consultation with the owners whose interests it had a duty to protect; it could and should have sought ways of attaining nationally important objectives without ignoring or damaging the owners' interests. Rather than unilaterally imposing curbs on logging in order to conserve the forest resource, consideration could have been given to a joint forestry programme directed towards sustainability. When the focus moved to conservation in the sense of permanent protection, justice would have been better served if the owners had been included in the discussions and compensated for their short-term loss. The principle of partnership required the Crown to balance its interests with those of Māori, but in breach of the Treaty the Crown more often than not disregarded Māori rights in its pursuit of the national interest. Essentially, the Treaty partnership between Māori and the Crown was undermined by Crown competition with Māori, which we find particularly disappointing in a district where development options for Māori were few and far between.

### 9.5 SUMMARY OF FINDINGS

We summarise our findings as follows:

- ▶ While the limited success of the Taurewa land development scheme did not in itself indicate any Treaty breach, the Crown did infringe the Treaty rights of the Taurewa owners by:

- not taking reasonable steps to allow for adequate consultation with them in decisions affecting their land;
- not facilitating their participation in the working of the farm; and
- not building their capacity to operate and manage it themselves.

These were breaches of the principles of partnership and autonomy. There was an infringement of the rights of a particular group of claimants, whose land (Taurewa 4 West E2B1) was amalgamated without their knowledge or consent, although we noted that in this matter the Crown did meet the statutory obligations of the time, and that it was difficult to ensure that all owners were kept informed.

- ▶ In the establishment of exotic forestry on Māori land around Lake Rotoaira, by contrast, the partnership between the Crown and the Māori landowners of the area was established in ways that generally uphold Treaty principles. In saying this, however, we are aware of the loss of opportunity suffered by the owners through their acceptance that some areas would not be planted, in order to maintain environmental safeguards. This limiting of the commercial potential of the forest should be recognised in an offer of appropriate compensation.
- ▶ In breach of the principle of active protection, the Crown failed to ensure that Māori in the National Park inquiry district were left with sufficient land and resources, which diminished their ability to participate in the development opportunities of the twentieth century. On some of the lands that remained, the Crown, in disregard of the owners' Treaty right to use and benefit from their property, pursued its own objectives, which were legitimate and largely intended for the benefit of the nation, at the expense of the owners' aspirations. The principle of partnership required the Crown to balance its interests with those of Māori, and to engage in consultation with a view to securing willing consent, but instead the Crown unnecessarily disregarded Māori rights in its pursuit of national objectives.

**Notes**

1. Native Land Amendment Act 1929, s23(1)
2. For the Tokaanu scheme, see Paul Hamer, 'The Tokaanu Development Scheme, 1930-68' (commissioned research report, Wellington: Waitangi Tribunal, 1994) (Wai 84 RO1, doc B12). The Tokaanu scheme lands that lay within the National Park inquiry district were parts of Ohuanga North 1B2, acquired by the Crown in 1967 in exchange for Crown land, and added to the Pihanga Scenic Reserve; 3A2 and 3B2, both acquired by the Crown in 1949 in exchange for Crown land, and later added to the Pihanga Scenic Reserve ('LHAD: Ohuanga Block History', pp 26-28, 47, 49, 54, 56; 'Reservation of land and declaration that land be part of Pihanga Scenic Reserve', 1 April 1968, *New Zealand Gazette*, 1968, no 18, p 546).
3. Paula Berghan, 'Block Research Narratives of the Tongariro National Park District 1865-2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A5), pp 322-333, 337
4. James Mitchell, 'Quantitative Study of Māori Land Alienation and Management in the National Park Inquiry District' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc D11), pp 193-194
5. Ann Beaglehole, 'The Taurewa Development Scheme 1939-2006' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc E37), p 27
6. Counsel for Ngāti Hikairo, closing submissions, 15 May 2007 (paper 3.3.30), p 120
7. Counsel for Ngāti Hinewai, closing submissions, 14 May 2007 (paper 3.3.18), p 81
8. Counsel for Ngāti Tūwharetoa, closing submissions, 7 June 2007 (paper 3.3.43), pp 10-11, 334-335, 337-350, 359-360. See also claimant counsel, generic submissions on 20th century Crown purchasing, 14 May 2007 (paper 3.3.20), p 7.
9. Paper 3.3.43, p 359
10. Paper 3.3.18, p 67
11. Ibid, pp 68-69; paper 3.3.30, p 119
12. Paper 3.3.18, pp 69, 72-73; paper 3.3.30, pp 118, 122, 125; counsel for Ngāti Hikairo ki Tongariro, closing submissions, 28 May 2007 (paper 3.3.42), p 200
13. Paper 3.3.18, pp 69-72, 79; paper 3.3.30, pp 122-123
14. Paper 3.3.18, p 69; paper 3.3.30, p 122
15. Paper 3.3.18, pp 72, 78-79
16. Ibid, pp 79, 80, 86
17. Paper 3.3.30, pp 121, 123-124
18. Paper 3.3.18, pp 86-87
19. Ibid, pp 4, 73-79, 84-85; paper 3.3.30, pp 120, 121, 124; paper 3.3.42, p 199; counsel of Ngāti Waewae, closing submissions, 28 May 2007 (paper 3.3.41), p 138
20. Paper 3.3.18, pp 85-86, 99; paper 3.3.30, pp 121-122; paper 3.3.42, pp 197-201; paper 3.3.41, pp 137-138
21. Paper 3.3.18, pp 5, 111-112
22. Ibid, p 68
23. Ibid, pp 78, 92
24. Ibid, pp 72, 78-79, 91-92
25. Ibid, pp 4-5, 88-89, 92-93
26. Ibid, pp 4-5, 88-89, 97-100
27. Ibid, pp 4-5, 88-89, 107-108
28. Ibid, pp 4-5, 79-80, 89-90, 108-110
29. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 10, p 47
30. Ibid, pp 46-47, 48
31. Ibid, pp 48-50
32. Ibid, pp 50-51
33. Ibid, pp 51-52
34. Ibid
35. Ibid, pp 53-55
36. Ibid, p 50
37. Ibid, p 49
38. Ibid, p 37
39. Counsel for Ngāti Hinewai, reply to the closing submissions of the Crown, 2 July 2007 (paper 3.3.47), p 6
40. Ibid
41. Ibid, p 5
42. Ibid, pp 5-6
43. Ibid, p 6
44. Ibid, p 2
45. Counsel for Ngāti Hikairo, reply to the closing submissions of the Crown, 6 July 2006 (paper 3.3.52), pp 8-9
46. Ibid, pp 7-8
47. Counsel for Ngāti Tūwharetoa, fourth amended statement of claim, 26 July 2005 (claim 1.2.14), p 61. This point was not followed up in closing submissions.
48. Native Land Act 1909, s 334
49. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 781
50. T J Hearn, 'Crown Land Purchasing in the National Park Inquiry District, 1900-2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc H1), p 35
51. Tony Walzl, 'Maori and Forestry - Taupo, Rotorua, Kaingaroa, 1890-1990' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A44), p 41
52. Document E37, pp 29-30; Merle Maata Ormsby, brief of evidence, 4 September 2006 (doc F9), pp 14, 20-21, 22
53. Native Minister, file note, 27 October 1932, on letter from the Native Minister to under-secretary, Native Department, 25 October 1932, MA1 box 473 22/1/24, Archives New Zealand, Wellington (as quoted in doc E37, pp 30, 32)
54. T J Hearn, 'Land Alienation and Land Administration, 1900-1993' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A42), pp 274-279
55. Te Pau Mariu to Native Minister, 21 April 1926, ABRP 6844 W4598 2/82, Archives New Zealand, Wellington (as quoted in doc A42, pp 279-281)
56. Document A42, pp 349-355; Tony Walzl, 'Ngati Tuwharetoa

Socio-Economic Analysis, 1865–1970’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2007) (doc 19), pp 195–196, 221–224

57. Board of Native Affairs, ‘Native Land Development and the Provision of Houses for Maoris, including Employment Promotion’, 1938, AJHR, 1938, G-10, p 67; ‘Constituting Manunui Development Scheme’, 22 July 1937, *New Zealand Gazette*, 1937, no 47, p 1680

58. *Taumarunui Press*, 30 June 1937 (as quoted in doc A42, p 356)

59. ‘The Maori and the Land’, *Evening Post*, 29 June 1937, p 10, col 3

60. Registrar, Whanganui, to under-secretary, Native Department, 5 July 1938, AAMK 869 w3074 599d 15/5/96, Archives New Zealand, Wellington. A later departmental document, dated 1942, refers to the Kākahi meeting only incidentally, but includes a list of 17 blocks in Taurewa 4 West that were offered on that occasion for development. See document E37, p 36.

61. Document E37, pp 29, 33

62. *Ibid*, p 40

63. Ferris to registrar, Aotea Māori Land Board, 28 June 1938, AAMK 869 w3074 599d 15/5/96, Archives New Zealand, Wellington

64. Ferris, report, 30 June 1938, AAMK 869 w3074 599d 15/5/96, Archives New Zealand, Wellington

65. Chief supervisor to under-secretary, Native Department, 22 August 1938, AAMK 869 w3074 599d 15/5/96, Archives New Zealand, Wellington

66. Registrar, Whanganui, to under-secretary, Native Department, 15 September 1939, AAMK 869 w3074 599d 15/5/96, Archives New Zealand, Wellington

67. Document E37, p 36; Ann Beaglehole, ‘Answers to Questions in Writing from Counsel on Report’, 24 November 2006 (doc E37(a)), p 3; ‘Constituting Taurewa Development Scheme’, 3 November 1939, *New Zealand Gazette*, 1939, no 141, p 3187

68. Kepa Pātēna, interview, 21 February 2006 (doc E37, p 33)

69. Memoir by Kepa Pātēna’s mother (doc E37, p 33)

70. Document F9, pp 18–19

71. Mary Rauaiterangi, ‘Extracts from Mary Rauaiterangi’s History of Taurewa and Whangaiapeke’, 1 August 1993 (doc F9, pp 23–24)

72. Sonny Te Ahuru, interview, 22 February 2006 (doc E37, p 34)

73. Te Wharerangi Te Ahuru, brief of evidence, 4 September 2006 (doc F5), p 5

74. Document E37, p 33

75. Native Land Amendment Act 1936, ss 4(1), 5(1)

76. Native Minister and chairman of the Board of Native Affairs, ‘The Development and Settlement of Native Lands and the Provision of Houses for Maoris’, 1946, AJHR, 1946, G-10, p 25

77. Ashley Gould, Graham Owen, and Dion Tuuta, ‘Maori Land Development, 1929–1954: An Introductory Overview with Representative Case Studies’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 1996) (Wai 674 R01, doc D11), p 61

78. Document F5, p 6

79. Document E37, pp 41–42

80. *Ibid*, pp 46–47

81. District field officer, report, 1968, ABRP 6844 w4598 box 93 6/4/83 pt 3, Archives New Zealand, Wellington (doc E37, pp 50–51); doc E37, pp 51–53

82. Document E37, p 54

83. *Ibid*, pp 81, 86, 89, 93–94

84. Kepa Pātēna, interview (doc E37, pp 94–95)

85. Document E37, pp 100–101

86. Board of Native Affairs, ‘Native Land Development and the Provision of Houses for Maoris, including Employment Promotion’, 1941, AJHR, 1941, G-10, p 30

87. Under-secretary, Māori Affairs Department, to registrar, Whanganui, 30 April 1951, AAMK 869 w3074 599d 15/5/96, Archives New Zealand, Wellington

88. Document E37, pp 37–38, 41. For some years after the Whangaiapeke blocks were gazetted as a development scheme in 1945 they were included in, or at least associated with, the Taurewa scheme.

89. *Ibid*, pp 74–77, 112

90. Sonny Te Ahuru, interview (doc E37, pp 41–42); doc E37, pp 74–75; doc F5, pp 5–6

91. Native Land Amendment Act 1936, s 9(1)

92. Document E37, pp 77–79, 112

93. Department of Māori Affairs, ‘Annual Report of the Board of Maori Affairs, and of the Under-Secretary, Department of Maori Affairs, for the year ended 31 March, 1950’, AJHR, 1950, G-9, p 2

94. Maori Affairs Act 1953, s 327(1)

95. Board of Native Affairs, ‘Native Land Development and the Provision of Houses for Maoris, including Employment Promotion’, 1940, AJHR, 1940, G-10, p 43; Board of Native Affairs, ‘Native Land Development and the Provision of Houses for Maoris, including Employment Promotion’, 1941, AJHR, 1941, G-10, p 30; doc E37, p 79

96. Document E37, pp 40, 68–70

97. *Ibid*, pp 93–94

98. *Ibid*, pp 88, 90, 92–94

99. Native Department, ‘The Development and Settlement of Native Lands and the Provision of Houses for Maoris’, 1947, AJHR, 1947, G-10, p 11

100. Document E37, pp 43–46, 70–74

101. Senior field officer to general manager, western, 9 April 1990, 65/11/1 vol 9, Te Puni Kōkiri, Wellington (doc E37, p 91)

102. Document E37, p 15

103. *Ibid*, p 108

104. *Ibid*, pp 108–109

105. *Ibid*, p 110

106. Document A42, p 485

107. Brian Easton, *In Stormy Seas: The Post-war New Zealand Economy* (Dunedin: Oxford University Press, 1997), pp 149–154

108. Document E37, pp 87–88

109. Native Land Amendment Act 1936, s 42

110. Maori Affairs Act 1953, s 385

111. Maori Affairs Act 1953, s 328(1)

112. Maori Affairs Act 1953, ss 336, 338(3)



113. Wai 674 ROI, doc D11, pp 56–57; Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 1018
114. Document E37, pp 55–58
115. Paper 3.3.18, pp 85–86
116. Maori Affairs Act 1953, s 435
117. Ian Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), p 93
118. ‘The Maori and the Land’, *Evening Post*, p 10
119. District officer, Whanganui, to head office, Department of Māori Affairs, 3 July 1958, AAMK 869 W3074 65/11, pt 1, Archives New Zealand, Wellington (cited in doc E37, p 40 as head office, Māori Affairs Department, to Whanganui Office, 13 August 1958)
120. Taurewa development scheme, balance sheets 1952–64, ABRP 6844 W4598 box 93 6/48/3 pt 4, Archives New Zealand, Wellington (as quoted in doc E37, pp 47–48)
121. Minutes of meeting of owners of the Taurewa development scheme, 28 July 1965 (doc D25(e))
122. The copy of the minutes of the 28 July meeting placed on the inquiry record is incomplete, but according to Ann Beaglehole the formation of the committee was noted by Judge Cull when he saw the minutes in 1979: doc E37, p 60.
123. *Ibid*, p 59
124. Paper 3.3.18, pp 92–93, 94–100
125. Minutes of the meeting for the Taurewa development scheme, 15 September 1965, ABRP 6844 W4598 6/48/3/1, Archives New Zealand, Wellington (as quoted in doc E37, p 59)
126. Document E37, pp 61–63
127. Arthur Smallman, brief of evidence, 29 September 2006 (doc G34(a)), p 8
128. Document E37, pp 63–67
129. Morrill, district officer, Whanganui, to Judge Durie, concerning the amalgamation of titles: Taurewa Development Scheme, 13 August 1979 (doc D25(b))
130. Document E37, pp 59–60
131. Document D25(b)
132. Judge Durie to district officer, Whanganui, concerning Taurewa Development Scheme: amalgamation, 14 September 1979 (doc D25(c))
133. *Albert v Nicholson* [1976] 2 NZLR 624
134. Morrill, district officer, Whanganui, additional submissions, not dated, c November 1979 (doc D25(d))
135. Document E37, pp 84–85
136. ‘LHAD: Taurewa Block History’, pp 54–55, 77, 146–147, 150
137. ‘Maori Land Development Notice’, 28 April 1982, *New Zealand Gazette*, 1982, no 50, pp 1514–1515
138. Document E37, pp 82–83
139. ‘LHAD: Taurewa Block History’, p 55
140. Document E37, p 83
141. ‘LHAD: Taurewa Block History’, p 56
142. Arthur Smallman, interview, 21 February 2006 (doc E37, p 99)
143. Monica Matamua, brief of evidence, 5 May 2006 (doc D25), pp 3–4
144. *Ibid*, p 15
145. *Ibid*, pp 12–13
146. Arin Matamua, brief of evidence, 8 May 2006 (doc D50), pp 3–4
147. Aotea Māori Land Court minute book 36, 16 December 1993, fols 125–126
148. Aotea Māori Land Court minute book 37, 16 March 1994, fol 164; Aotea Māori Land Court minute book 119, 26 July 2002, fols 14–19; Aotea Māori Land Court minute book 127, 17 April 2003, fols 28–34
149. Document D25, pp 15–16
150. Arin Matamua, brief of evidence, 8 May 2006 (doc D50), pp 2, 4
151. June Barbara Kerini Cain, brief of evidence, 8 May 2006 (doc D49), p 8
152. Document A42, p 456
153. Māori Land Act 1993, s 288
154. Aroha Harris, ‘Maori Land Title Improvement since 1945: Communal Ownership and Economic Use’, *New Zealand Journal of History*, vol 31, no 1 (1997), pp 151–152
155. Paper 3.3.43, pp 379–380
156. *Ibid*, p 380
157. *Ibid*, p 377
158. *Ibid*, p 370
159. Paper 3.3.30, pp 138, 143–144
160. *Ibid*, pp 143–144, 146–147
161. *Ibid*, pp 139–140
162. *Ibid*, pp 138, 144–145
163. *Ibid*, pp 146, 147
164. Paper 3.3.43, pp 368–389; paper 3.3.30, pp 142–143
165. Paper 3.3.30, pp 170–172
166. Paper 3.3.43, pp 378, 381
167. Paper 3.3.30, pp 137, 140, 141, 145
168. Paper 3.3.43, p 381
169. Paper 3.3.30, pp 137, 140
170. *Ibid*, pp 139, 141–142, 146
171. *Ibid*, p 140
172. Paper 3.3.45, ch 10, p 85
173. *Ibid*, pp 85–86
174. *Ibid*, p 86
175. *Ibid*, p 89
176. *Ibid*, pp 86, 89–91
177. *Ibid*, p 91
178. *Ibid*
179. Paper 3.3.52, p 10
180. *Ibid*, pp 10–11
181. Document A44, pp 510–552
182. ‘Report of the Department of Maori Affairs and the Maori Trust Office and the Board of Maori Affairs for the year ended 31 March 1963’, AJHR, 1963, G-9, p 19
183. Tony Walzl, ‘Exotic Forestry Leases’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc E35), pp 22–49
184. *Ibid*, p 56
185. *Ibid*, p 36
186. *Ibid*, pp 58–64

187. Document E35, pp16–22
188. George Asher, brief of evidence, 29 April 2005 (doc G7), p 25; George Asher, brief of evidence, 6 October 2006 (doc G52(a)), p14
189. Edwyna Moana, brief of evidence, 4 September 2006 (doc F3), p10
190. ‘Report of the Director-General of Forests for the year ended 31 March 1971’, AJHR, 1971, C-3, p 19
191. Document E35, pp64–70
192. Ibid, pp73–81
193. R Feist to Minister of Māori Affairs, 27 October 1969, AAMK 869 w3074/1313/C 58/2/2 pt 1, Archives New Zealand, Wellington (as quoted in doc E35, pp79–80)
194. Document E35, pp81–85
195. Ibid, pp85–87
196. Ibid, pp87–90
197. Ibid, pp90–104, 106
198. Ibid, pp57–58
199. Ibid, pp109–113
200. Ibid, pp112–120
201. Ibid, pp142–143
202. Ibid, p143
203. Ibid, p144
204. Ibid, p145
205. Ibid, pp145–146
206. Ibid, p144
207. Ibid, pp146–147
208. Ibid, pp147–153
209. Minister of Forests to Minister of Lands, 23 March 1973, AAZU w3619/14 46/6/72, Archives New Zealand, Wellington (as quoted in doc E35, p153)
210. Document G7, p26; doc E35, pp36–40
211. Tokaanu Māori Land Court minute book 52, 13 November 1972, fol 3 (doc E35, p124)
212. Document E35, p125
213. Ibid, p127
214. Ibid, pp135–138, 153–159. The 91 blocks are listed on pages 138 to 142.
215. Ibid, pp165–167
216. Ibid, pp167–168. The lease document includes a schedule listing 79 blocks. See copy in Tony Walzl, comp, ‘Supporting Papers to “Exotic Forestry Leases”’, 2 vols (supporting papers, Wellington: Crown Forestry Rental Trust, 2006) (docs E35(b)–(c)) (doc E35(b)), vol 1, pp629–630.
217. Document E35, p165
218. Ibid, pp173–192
219. Document G7, pp27–28; Topia Rameka, brief of evidence, 28 September 2006 (doc G33(a)), p11. See also the map showing the ‘second schedule’ blocks available at Lake Rotoaira Forest Trust, <http://www.lrft.co.nz>, last accessed 19 March 2012. The map provides a list of the 85 blocks in their three categories – the first, second, and third schedules.
220. Document G33(a), p15
221. George Asher, ‘Maori Plantation Forests – A Challenge for Sustainable Forest Management’, conference paper, March 2003 (doc F26), p6
222. Document G7, pp19–20
223. Document G52(a), p35
224. Tony Walzl, under cross-examination by Mike Doogan, Pāpakai Marae, 21 September 2006 (transcript 4.1.10, p96)
225. R Usmar, report, 17 September 1970 (as quoted in doc E35, p72)
226. Document E35, pp73–81
227. Ibid, pp84, 104; doc G7, p25; doc G52(a), pp13–14
228. Document E35, p123; doc G7, p25
229. Document E35, p83
230. Ibid
231. Ibid, pp80, 130; doc G7, p25
232. Document F26, pp4–5
233. Document E35, pp113–115, 126
234. Tokaanu Māori Land Court minute book 52, 13 November 1972, fol 17 (doc E35, p126)
235. Document E35, pp131–132
236. Ibid, pp113–120
237. B Northcroft to registrar, Aotea Māori Land Board, 12 January 1973, ABRP 6844 w4598/254 2/421/1 pt 1, Archives New Zealand, Wellington (as quoted in doc E35, p155); doc E35, p121
238. Document E35, p121
239. Ibid, pp117, 123–124, 128, 129–130, 136
240. Māori Land Court minute book 52, 22 December 1972, fol 4 (doc E35, pp137–138)
241. Document E35, p151
242. Ibid, p131
243. Document G7, p26
244. Document F9, pp15–17
245. Document E35, pp153–159. The closing submissions of Ngāti Hikairo (refer to the allegation made by Merle Ormsby that although her father wanted his land excluded from planting and this was accepted at an owners’ meeting, the block was nevertheless still planted. The land was identified by Mrs Ormsby as ‘Puketī’. We have no further information about this incident, and the Puketī Block is outside the boundaries of the National Park Inquiry District: counsel for Ngāti Hikairo, closing submissions, 15 May 2007 (paper 3.3.30), p145; doc F9, p15. Another allegation that land was included in the forest against the owners’ wishes was made by Terrill Temanuo Campbell and Georgina Mignonne Poinga in their brief of evidence on behalf of Ngāti Hikairo but we could not investigate this because no specific information was provided. See Terrill Campbell and Georgina Poinga, brief of evidence, 4 September 2006 (doc F7), p3.
246. Tokaanu Māori Land Court minute book 52, 19 March 1973, fols 144–152, 156–159; doc E35, p158
247. Topia Rameka stated that in 1992, after consultation, the owners of two blocks in the National Park inquiry district (Ōkahukura 2B2A and pt Ōkahukura 8M2B3B2) withdrew their land from the Trust: doc G33(a), p3.
248. *Taranaki Daily News*, 11 June 1973 (as quoted in doc E35, p166)

249. Document G7, p 26
250. Document F26, p 5
251. Document G7, pp 29–30; doc G52(a), p 17
252. Document G33(a), pp 2, 4–9. The information about the proportion of the land held by the registered owners came from Mr Asher during cross-examination: George Asher, under cross-examination by Mark McGhie, Ōtūkou Marae, 18 October 2006 (transcript 4.1.11, p 85)
253. Document G33(a), p 8
254. *Ibid*, p 14
255. Document G7, pp 26–27
256. George Asher, under cross-examination by Mike Doogan, Ōtūkou Marae, 18 October 2006 (transcript 4.1.11, p 79); doc F26, p 5
257. Document G33(a), pp 9–10. In her evidence Edwyna Moana was critical of this dissemination of the Trust's income beyond the Rotoaira area, which she said reduced the funds available for local marae upkeep: doc F3, pp 11–12.
258. Document E35, pp 174–175
259. Document G7, p 25
260. Document G33(a), pp 13–14
261. Document G7, p 29
262. Document G33(a), p 3
263. Document G7, pp 27–29; doc G33(a), pp 12–13
264. Document F26, p 4; George Asher, under cross-examination by Mike Doogan, Ōtūkou Marae, 18 October 2006 (transcript 4.1.11, p 76)
265. Document F26, p 6
266. Te Puni Kokiri, 'Case Study: Lake Taupo Forest Trust', Te Puni Kokiri, <http://governance.tpk.govt.nz/share/laketaupo.aspx>, accessed 5 October 2006 (doc G47)
267. Matthew Howell, brief of evidence, 4 September 2006 (doc F1), pp 4–6
268. Paper 3.3.30, pp 170–172
269. Shelly Christensen, brief of evidence, 4 September 2006 (doc F8), pp 3, 9–10, 13–14
270. George Asher, under cross-examination by Mike Doogan, Ōtūkou Marae, 18 October 2006 (transcript 4.1.11, p 74)
271. Document F26, pp 1, 4
272. Document G7, p 28; doc G52(a), pp 17–18, 35–36
273. Document F3, p 11. See also Terrill Campbell and Georgina Poinga, brief of evidence, 4 September 2006 (doc F7), p 6
274. Document F1, pp 9–10; doc F7, p 7
275. George Asher, under cross-examination by Raewyn Wakefield, Ōtūkou Marae, 18 October 2006 (transcript 4.1.11, p 83)
276. Document G7, p 27
277. New Zealand Forest Owners Association, 'George Asher: A Tangata Whenua Perspective', *Forestry Bulletin*, Spring 2003 (doc G48)
278. Paper 3.3.43, pp 336–337; paper 3.3.41, pp 7–22, 12, 14, 149–150; counsel for Ngāti Manunui, closing submissions, 14 May 2007 (paper 3.3.27), pp 28–29; paper 3.3.42, pp 4–7, 16, 136, 138, 206
279. Paper 3.3.42, pp 4, 206
280. Counsel for Tamakana Council of Hapū and others, closing submissions, 23 May 2006 (paper 3.3.40), pp 109, 119, 124, 125, 212
281. Paper 3.3.20, pp 4–5; paper 3.3.40, pp 223, 225; counsel for Uenuku, closing submissions, 22 May 2007 (paper 3.3.37), pp 149–150
282. Paper 3.3.43, pp 5, 351–352
283. Paper 3.3.41, pp 115–116, 143–144, 147–148, 149–150, 155
284. Paper 3.3.30, pp 3–4, 13–14; paper 3.3.42, pp 4, 12, 16, 136, 138–139, 206
285. Paper 3.3.20, pp 6–7
286. Paper 3.3.43, pp 10–11, 337–338, 348–350
287. *Ibid*, pp 334–335, 394–397
288. *Ibid*, pp 308, 325, 350–365
289. Paper 3.3.40, p 213; paper 3.3.42, pp 136–137, 148
290. Paper 3.3.18, pp 81–84, 113–118; paper 3.3.30, p 124
291. Paper 3.3.45, ch 10, pp 19–21, ch 15, pp 4–5
292. *Ibid*, ch 15, p 3
293. *Ibid*, pp 3–4
294. *Ibid*, pp 5–6
295. *Ibid*, p 6
296. *Ibid*, p 20
297. *Ibid*, pp 7–8
298. *Ibid*, p 8
299. *Ibid*, ch 10, pp 46–47
300. Counsel for Ngāti Tūwharetoa, reply to the closing submissions of the Crown, 11 July 2007 (paper 3.3.60), pp 32–33
301. *Ibid*, p 31
302. The report by T Kukutai et al, 'Central North Island Iwi: Population Patterns and Trends', has some relevant material but does not cover National Park comprehensively. See Tahu Kukutai, Ian Pool, and Janet Sceats, 'Central North Island Iwi: Population Patterns and Trends' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A22). Leanne Boulton, 'Contextual Material on Maori and Socio-Economic Issues in the National Park District, 1890–1990' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc A57) is a scoping report and does not do more than survey and discuss the sources for the topic. A little relevant information is included in documents I9 and A42.
303. Document H1, p 126
304. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 885–917

**Page 686: Map 9.2**

**Source:** 'Land', Lake Rotoaira Forest Trust, [www.lrft.co.nz/land.asp](http://www.lrft.co.nz/land.asp), accessed 30 August 2013



CHAPTER 10

## PUBLIC WORKS TAKINGS

### 10.1 INTRODUCTION

One of the things which struck us as our inquiry progressed was how the Crown had essentially displaced Māori from the landscape of the National Park area. The Crown, in its many forms and guises, holds most of the district: there are prison lands, army lands, Crown forests, the Tongariro National Park, and the Tongariro Conservation Area. It also holds much of the land for considerable distances beyond our district's boundaries. By 1900, just under 50 per cent of land remained in Māori hands; by 1970 this had reduced to 15 per cent.<sup>1</sup> The majority of those who whakapapa to te kāhui maunga now live in cities and districts far removed from the National Park.

Unlike most districts where the Crown purchased vast areas of land from Māori, relatively small areas of this inquiry district were acquired for settlement by colonists. The Crown, by and large, has retained ownership of the land, occasionally moving the administration of some of it from one part of the Crown to another, or to wholly Crown-owned companies. Large areas have been retained as Tongariro National Park, the Tongariro Conservation Area, the Karioi and Taurewa Forests, and Taurewa Station, managed by LandCorp. The Crown also acquired and retained great chunks of territory for purposes which are best located well away from the population at large: extensive areas for military manoeuvres, initially at Waimarino to the south-west and later near Waiōuru to the south east, where troops can be deployed and artillery and other weapons fired; and large prison farms surrounded by open country at Rangipō to the north-east.

Beyond these large scale acquisitions, the State has acquired lands for roads and railways. This highland core of the North Island lies astride the most direct road and rail routes between Wellington and Auckland. The Crown, over 12 decades, has used various processes to obtain land for eight State highways, and the North Island main trunk railway.<sup>2</sup>

The larger proportion of lands lost to Māori were taken by Crown purchases in the nineteenth century (see chapters 4 and 5) or set aside for National Park (see chapter 10). A lesser proportion, still substantial, was taken by the operations of the Public Works Acts and other Acts which included provision for the taking of lands for public works.<sup>3</sup> In this chapter we investigate these takings in terms of the various Public Works Acts to consider whether the Crown met its Treaty obligations when it took land for public works. We also look at what the Crown did when land, taken for public works, was no longer required. Takings of land for a quarry and shingle pit at Ōtūkou have been of special concern for claimants: we conclude the chapter with an Ōtūkou case study. We analyse claimant and

Decade	Uncompensated (hectares)	Compensation payable (hectares)	Total (hectares)
1890s	187.9	—	187.9
1900s	1.8	46.6	49.4
1910s	6.3	1,924.4	1,930.7
1920s	3.3	9.5	12.8
1930s	—	24.7	24.7
1940s	—	2,560.0	2,560.0
1950s	—	2.3	2.3
1960s	22.4	516.2	539.6
1970s	—	641.6	641.6
1980s	—	26.7	26.7
1990s	—	7.6	7.6
Total	221.7	5,759.6	5,983.3

Table 10.1: Land taken for public works, by decade

Crown submissions in relation to the takings and make findings and recommendations as appropriate.

The total area of land taken for public works, including the Tongariro power development (TPD) is very close to 6,000 hectares. The land history alienation database, compiled by Crown Forestry Rental Trust researchers from Crown records, identifies 135 blocks of land from within the National Park inquiry district that were taken from Māori for public works purposes.<sup>4</sup> The most numerous takings were for roading, including road realignments, and for the multiple dimensions of the TPD. The largest taking was an 1,811-hectare block taken from Rangipō–Waiū 1B for defence purposes and the smallest was a 0.03 hectare block taken from Ōkahukura 5B for a post office. The pattern of takings, by decades, is shown in table 10.1.<sup>5</sup>

Takings for roads began in the 1890s and continued; takings for the North Island main trunk railway took place around 1910 and were followed by taking of land for a scenic reserve, adjacent to the railway, in 1911. Defence

takings, involving very large areas of land, took place in the 1910s in Waimarino to the west of Ruapehu maunga, and in the 1940s adjacent to Waiōuru Military Camp to the east. Takings for a small trout fish hatchery on the Tongariro River were made in 1926 and multiple takings for the very large TPD were made between 1969 and 1991. Table 10.2 shows the amount of land taken for different types of public works. Substantial areas used for prisons at Rangipō in the north-east, were taken from Crown lands, previously purchased from Māori, and not taken under public works legislation.

### 10.2 CLAIMANT SUBMISSIONS

The issues surrounding the taking of Māori land for public works are at the core of the Treaty relationship. Counsel for the Tamakana Council of Hapū, in a generic submission, stated:

An issue at the heart of a number of claims was the Tension between the Crown right to govern, and to protect Maori rangatiratanga, and whether an overriding public interest was involved. If there was such a need to take Maori land then was there an obligation to return the land to Maori when no longer required.<sup>6</sup>

There is a balance to be struck between the rights of the Crown to exercise kāwanatanga (article 1), and the guarantees that rangatiratanga will be protected and Māori will have all the rights and privileges of British subjects (articles 2 and 3).<sup>7</sup> Counsel underlined that the authority of the Crown to make laws for all New Zealanders is subject to an undertaking to protect Māori interests.<sup>8</sup>

Counsel for the various claimant groups elaborated on the obligations of the Crown in the various public works contexts:

- ▶ The Crown has an obligation to recognise and protect tribal rangatiratanga, including the right to retain their lands in accordance with custom.<sup>9</sup>
- ▶ The Crown has an obligation to protect tribal taonga, tangible and intangible, including lands, wāhi tapu, and food gathering places.<sup>10</sup>

Purpose	Uncompensated (hectares)	Compensation payable (hectares)	Total (hectares)
Roads	221.7	90.3	312.0
Railway	—	55.8	55.8
Defence	—	4,389.3	4,389.3
Scenery preservation	—	81.2	81.2
Fish hatchery	—	5.5	5.5
Māori schools	—	9.4	9.4
TPD	—	1,069.0	1,069.0
TPD quarry and metal pits	—	60.9	60.9
Other*	—	0.2	0.2
<b>Total</b>	<b>221.7</b>	<b>5,761.6</b>	<b>5,983.3</b>

\* Soil conservation 0.2, Post Office 0.03

Table 10.2: Land taken for public works, by purpose

- ▶ Māori land should be taken for public works only as a last resort. As part of their consultation with Māori, the Crown and local authorities should explore other mechanisms, including lease, licence, or easement, before land is taken under the Public Works Act.<sup>11</sup>
- ▶ The Crown has an obligation, when takings are contemplated or land taken is no longer needed, to initiate consultation at the earliest possible opportunity.<sup>12</sup>
- ▶ The Crown has an obligation, in taking land for public works, to ensure that iwi and hapū are left with sufficient land for their own use and for future generations.<sup>13</sup>
- ▶ The Crown has an obligation to pay compensation for lands taken, to ensure that Māori values are recognised in assessing compensation, and to ensure that Māori and non-Māori are treated equitably.<sup>14</sup>
- ▶ The Crown, in determining the price of land offered back, has an obligation to share with owners the increased value of the land and should take into

account the circumstances surrounding the acquisition and the practicalities of multiple ownership.<sup>15</sup>

- ▶ The Crown has an obligation to restore lands that are in a dangerous or polluted state before they are offered back to the descendants of the original owners.<sup>16</sup>
- ▶ The Crown cannot divest itself of its obligations by conferring authority on other organisations, in particular local government, without ensuring that their jurisdiction is consistent with the Crown's Treaty promises.<sup>17</sup>

A number of counsel have focused attention by drawing up lists of issues to be addressed or questions to answer.<sup>18</sup>

The closing submissions on public works are also claimant specific and topic specific. We provide examples of these, organised in chronological order, under the following headings:

- ▶ *Roads*: Ngāti Hikairo and Ngāti Waewae claim that the Crown breached the principles of the Treaty by taking land for public works without paying compensation.<sup>19</sup> Takings without compensation took place in the 1890s and continued in the twentieth century under section 387 of the Native Land Act 1909 which allowed the Crown, without consent of Māori owners and without compensation, to develop roads on Māori customary land.<sup>20</sup> European-owned land was treated far more favourably under the taking provisions of the Public Works Acts, which is a breach of article 3 and the guarantees to Māori that they would have the same legal rights.<sup>21</sup>
- ▶ *Railways*: Whanganui and King Country Māori were promised by under secretary Thomas Lewis (December 1884) and Native Minister John Ballance (January and February 1885) that compensation would be paid for land taken for the North Island main trunk railway.<sup>22</sup> The Crown paid for some but not all of the land taken. The Crown breached its obligations towards Māori when it enacted 'section 393 of the Native Land Act 1909 which provided that no compensation is payable when customary land is taken for railways purposes'.<sup>23</sup>
- ▶ *Scenic reserves*: The Crown, on the recommendation

of the Scenery Preservation Board, created scenic reserves adjacent to the North Island main trunk railway. Two hundred acres (81 hectares) of Taurewa 4 West were taken for the Whakapapa Gorge Scenic Reserve without consultation: in the absence of consultation, options other than fee simple title were not explored.<sup>24</sup> The Scenery Preservation Board targeted Māori land as it was thought

a comparatively easy task to secure the bulk of the forest land bordering the route of the railway, as nearly the whole of it is in the hands of the Crown or natives.<sup>25</sup>

Compensation for land taken for scenic reserves was insufficient. The figure was determined on a commercial basis of land and timber: the Native Land Court accepted Eurocentric views on land value put to it by the Crown and ignored Māori cultural perceptions and whether the land was used as a mahinga kai, or was the location of wāhi tapu.<sup>26</sup> In the case of the Whakapapa Gorge Scenic Reserve there were procedural improprieties: the figure of £687 determined by the Court was not adequately assessed and was unlikely to be fair.<sup>27</sup>

- ▶ *Defence purposes:* Large areas of land in the vicinity of the North Island main trunk railway line were taken in 1909 and 1910 to be used as military training grounds. They were not used for this purpose and either became part of Tongariro National Park in 1922 or were designated as permanent state forests and then passed on to LandCorp.<sup>28</sup> Ngāti Waewae lost large areas of land. Ngāti Waewae has four major claims: first, that the land was unfairly and wrongfully taken using public works legislation; secondly, that the Crown failed to provide compensation to Ngāti Waewae for the Mahuia block; thirdly, that compensation for the Tāwhai North block was not provided in a timely manner; and, fourthly, the Crown failed to return the Mahuia B and Tāwhai North blocks when they were no longer required for the purposes for which they were taken.<sup>29</sup> Added to these claims is a very strong concern, supported

by the evidence of Drs Peter Clayworth and Robyn Anderson, that the Crown failed to consult the Māori owners about the takings.<sup>30</sup>

Counsel for Tamakana Council of Hapū, in generic submissions on behalf of all claimant groups, directs attention to Philip Cleaver's evidence which suggests that the Crown had an aversion to returning land to Māori.<sup>31</sup> Waimarino defence lands should have been returned when military training plans changed. This, counsel says, was a breach of the Crown obligation to protect Māori land.<sup>32</sup>

- ▶ *Prisons:* Ngāti Tūwharetoa and Ngāti Tūrāngitukua claim that the Crown acquired extensive estates for the Hautu and Rangipō prisons.<sup>33</sup> Ngāti Tūwharetoa submit that 'with the consolidation of the Rangipo and Hautu Prisons, there are lands at Rangipo that are now surplus to requirements for the Department of Corrections' and ask that the surplus land be offered back to the descendants of the original owners.<sup>34</sup> Ngāti Tūrāngitukua ask that lands still required for prisons should be vested back to the descendants of the owners and leased to Corrections.<sup>35</sup>
- ▶ *A national trout hatchery:* The taking in 1926 of two blocks of land at Kōwhai Flat, adjacent to the Tongariro Stream and close to State Highway 1 between Tūrāngi and Rangipō, was a major concern to Ngāti Tūwharetoa claimants Rangikamutua Downs and Whakapumautanga Downs.<sup>36</sup> The two blocks were taken by proclamation, without consideration of alternatives, for the now famous Tongariro River Trout Hatchery. The Crown needed a trout hatchery 'for the national interest', the Crown took two blocks of river flat land, and the owners had to move away.<sup>37</sup> Now, in the 2000s, the next generation of owners are concerned that the tourist attraction may encroach onto their remaining land.<sup>38</sup>
- ▶ *The Tongariro power development:* Claims relating to the TPD, including the taking of waters and the impacts on Lake Rotoaira, are considered in chapter 12. In the public works context, the claimants were concerned with the taking of lands without proper consultation, the failure to consider alternative



takings, the failure to ensure that Māori were left with sufficient lands for their own use, and the failure to return lands which were no longer required. In particular:

- Counsel for Ngāti Waewae submitted that the TPD was one of the principal reasons for compulsory land takings in the National Park inquiry district and was a means by which the Crown ‘appropriated a vital resource of the various hapū.’<sup>39</sup>
- In the submission of counsel for Ngāti Hikairo, the Crown used the 1958 Order in Council to gain entry onto Māori land for the TPD, even before issuing any proclamation under the public works legislation, thus evading the protection mechanisms supposedly available to Māori.<sup>40</sup>
- Lands over which Ngāti Hikairo exercised customary rights and rangatiratanga were taken without consent for quarrying and metal pits, in some cases with ‘a disastrous cultural, social and economic impact on the hapū.’<sup>41</sup>
- Counsel for Ngāti Hikairo submitted that the Crown used the Public Works Act to acquire more than 94 acres of Ōkahukura 2, 2B2, and 2B1A2 for a metal pit and quarry at Ōtūkou.<sup>42</sup> In doing so, the Crown breached its duty of good faith and active protection by ‘failing to recognise the relationship of Ngati Hikairo Ki Tongariro to their ancestral land.’<sup>43</sup> Its owners had never consented to sell their land to the Crown.
- Counsel for Ngāti Hikairo argued that the Crown ‘failed to subsequently return the land when it was no longer used for the purpose for which it was taken.’<sup>44</sup>

### 10.3 CROWN SUBMISSIONS

The Crown submits that public works acquisitions have not been a major focus of the claims made or the evidence presented in the National Park Inquiry. The Crown, in its closing submissions, estimates that 2 per cent of the land

area of National Park has been taken for public works.<sup>45</sup> Alongside this, it acknowledges that particular pieces of land may have a significance for local iwi or hapū that is not revealed by the size in hectares.<sup>46</sup>

Counsel submitted that compulsory acquisition of land could be justified as a legitimate exercise of kāwanatanga.<sup>47</sup> At times it was in the public interest for land to be taken so that essential infrastructure may be built and maintained. Such infrastructure is essential to the functioning of the modern economy and society. All citizens benefit from its provision.<sup>48</sup>

The Crown notes that the *Turangi Township* and *Te Maunga Railways* reports adopt the position that Māori land should be taken for public works only if there are no other practicable options and those affected have been appropriately consulted. In the Crown’s view, these findings set the bar too high.<sup>49</sup> They unreasonably fetter legitimate policy options.

The Crown submits that there are five matters to consider in making particular public works acquisitions:

1. Was there consultation and a proper process?
2. Was compensation payable, and if so, was it paid?
3. How was the particular site selected and were other sites considered?
4. Were alternative forms of tenure, other than outright acquisition, considered?
5. Were the relevant landowners left with sufficient lands for their present and reasonably foreseeable future needs?<sup>50</sup>

The Crown notes that the five items above are also identified by claimant counsel. There are two areas, the Crown suggests, where it and the claimants depart. First, independent verification of the need for the Crown to exercise compulsory acquisition in the national interest. This, the Crown believes, is an unnecessary fetter on it. Secondly, the requirement that the Crown offer back surplus land at the earliest possible opportunity and with the least cost and inconvenience to the former owners. The Crown believes that the Treaty does not require this and that it fails to take into account the compensation paid and the improvements made at the public’s expense.<sup>51</sup>

The Crown commented on the nature of the evidence,

pointing in particular to the commissioned reports by Cleaver, Walzl, Clayworth, and Anderson, and urged the Tribunal to be ‘cautious in relying on this fragmented record.’ Each acquisition, it believed, ‘must be addressed on a case by case basis.’<sup>52</sup> For its part, the Crown prioritised its research and did not endeavour to address all the gaps in the evidential record. ‘The fact that not all evidence or issues were responded to, does not mean that the evidence is simply accepted unchallenged.’<sup>53</sup>

There are a number of instances where the Crown is quite specific about its acceptance, or non-acceptance, of the evidence presented to the Tribunal:

- ▶ *Waimarino 4B2*: The Crown conceded that there was a breach of the Treaty of Waitangi and its principles in the case of the 1912 defence acquisitions of Waimarino 4B2. The owners were not consulted prior to their land being acquired, and as a result they did not have opportunity to negotiate the amount of land taken.<sup>54</sup>
- ▶ *Sufficiency of land*: The Crown conceded that the evidence available in this inquiry district does not appear to indicate any significant consideration by officials of the extent of land held by the people from whom land was acquired.<sup>55</sup>
- ▶ *Māori land targeted*: The Crown denies any suggestion or claims that Māori land was targeted for public works acquisition. More Crown land was used for public works than any other land. Geographic features and the incidence of ownership influenced the choices that were made.<sup>56</sup>
- ▶ *Protection of sites of significance*: Some Acts contained provisions to protect specified categories of land. The Native Lands Act 1873, for example, provided protection for land occupied by Māori pā, villages, or cultivations as well as the more general buildings, gardens, orchards, plantations, burial, and other ornamental grounds.<sup>57</sup>
- ▶ *Consideration of other sites*: Lord Cooke in *McGuire v Hastings District Council* considered the Treaty guarantees for ‘full exclusive and undisturbed possession’ and found that compulsory acquisition, with appropriate compensation, is not excluded. Geographic

features will often determine the appropriate or best site for a public work.<sup>58</sup>

- ▶ *Alternative forms of tenure*: In the historical context, the Crown believed that public ownership was a prerequisite if public money was to be expended. There were cases where the Crown considered alternatives: temporary occupation to meet defence needs; simple entry in the case of the Ōtūkou quarry.<sup>59</sup>
- ▶ *Compensation*: Compensation was agreed and paid in respect of the Whakapapa Gorge Scenic Reserve, and compensation was paid in respect of the defence takings from Waimarino 4B2.<sup>60</sup> The Crown notes that compensation payments for defence lands were delayed in some cases.<sup>61</sup> Compensation was paid for the land taken for Ōtūkou quarry, and the right to compensation for metal taken remains.<sup>62</sup>
- ▶ *Disposal*: The Public Works Acts 1876, 1928, and 1981 all contained ‘offer-back’ provisions. The Crown argues that it has always been permissible to apply land acquired for one purpose to another purpose should the first not work out, or another become more important. The Crown says there is nothing inherently inconsistent with the Treaty or its principles in this policy.<sup>63</sup>
- ▶ *Defence purposes*: Lands taken for defence purposes from Waimarino 4B2 were incorporated into Tongariro National Park in 1922. This did not mean they were no longer required for defence purposes and the National Park Amendment Act 1927 contained provision for army manoeuvres on these lands.<sup>64</sup>
- ▶ *Roading*: When a title was issued by the Native Land Court, up to 5 per cent could be set aside for roads. Compensation was not paid for land set aside under these provisions.<sup>65</sup>
- ▶ *Prisons*: The Crown submits that claims regarding the taking or return of Hautu lands are outside of this inquiry.<sup>66</sup>
- ▶ *Land takings for the TPD*: The TPD was a scheme of national importance. Counsel argued that it must be accepted that ‘from time to time, the Crown has obligations under Article 1 of the Treaty to acquire land

compulsorily in the public interest to provide public works. A balancing exercise is required to decide on appropriate impact of the obligation as it impacts on the promise to protect rangatiratanga.<sup>67</sup> In the Crown's view, the finding of the *Turangi Township Report* that Māori land should be taken for public works only in exceptional circumstances and as a last resort in the national interest set the bar too high.<sup>68</sup> Counsel rejected claimant submissions that compulsory public works acquisition could never be justified.

On the issue of the taking of land at Ōtūkou, counsel challenged claimant arguments that no agreement or even consultation had occurred. Claims that there was no evidence of any agreement could not be sustained. The Crown submits that there was notice, consultation, and agreement in relation to this taking.<sup>69</sup>

The Crown submits that the public works legislation contained protection for burial grounds. In the case of the Ōtūkou quarry, the owners reached an agreement with the Ministry of Works (MOW) concerning the relocation of bodies in the urupā.<sup>70</sup>

#### 10.4 CLAIMANT SUBMISSIONS IN REPLY

Submissions in reply address the larger issues and the specifics:

- ▶ *'Setting the bar too high'*: Counsel address the Crown's claim that previous Tribunals, Te Maunga Railway and Turangi Township in particular, have 'set the bar too high' with respect to public works acquisitions of Māori land. Ngāti Waewae submit that the Crown seems to place kāwanatanga at a far higher level than the protection of te tino rangatiratanga.<sup>71</sup> The obligation to provide active protection is, counsel submits, a constant one and there is no hierarchy of power in the Treaty articles. Article 2 'clearly and fully protects Māori Rangatiratanga and control over their resources and assets.'<sup>72</sup>

Ngāti Hikairo respond similarly and take the discussion a step further. It is essential, their counsel

submits, that the bar be set at such a level that the Crown is required to actively pursue all other possible alternatives to compulsorily acquiring Māori land.<sup>73</sup> This would include the possibility of leasing or holding the land as tenants in common with the Māori owners so that both benefit. Counsel adds that the Crown's ability to express kāwanatanga is entirely subject to protecting and preserving Māori property and rangatiratanga.<sup>74</sup> 'There can be no more significant public interest for Māori and the Crown,' they emphasise, 'than the guarantee to Māori of rangatiratanga.'<sup>75</sup>

- ▶ *'The silence of the Crown'*: Ngāti Hinewai has responded in some detail to the Crown's statement that 'the fact that not all evidence or issues were responded to, or in some cases not cross-examined, does not mean that the evidence is simply accepted unchallenged.'<sup>76</sup> Ngāti Hinewai find this position untenable.<sup>77</sup> 'Is it to be assumed that wherever the Crown has failed to or refused to question evidence, the evidence has in fact been challenged by the Crown?' Carried to its logical conclusion, counsel submits, the position is problematic: '[t]he more the Crown is silent . . . the more evidence the Crown rejects.'<sup>78</sup> Counsel continues: '[i]t is not for the Tribunal to be second-guessing as to whether or not the Crown does or does not challenge evidence the Crown has not responded to.'<sup>79</sup>

Ngāti Hikairo address the same point and suggest that where the Crown has failed to provide a response to Ngāti Hikairo issues, the Crown must be taken to have no issue with the evidence, or is unable to provide a contrary position.<sup>80</sup>

- ▶ *Legislation*: notification and objection procedures: Ngāti Hikairo is concerned about the manner in which the Crown has responded to their public works evidence.<sup>81</sup> Counsel submits that the Crown closing submissions are deceptively selective and do not reflect all the available evidence.<sup>82</sup> Counsel notes the Crown's defence that earlier twentieth century legislation did not require notification or provide for objection procedures, and submits that this is an

express acknowledgement that the legislation was inconsistent with the Treaty and its principles.<sup>83</sup>

Ngāti Waewae have similar concerns about lands taken for defence purposes at Waimarino. They respond to the Crown's statement that no notice of intention was given or published as none was required. In terms of the principles of the Treaty, counsel submits, the Crown should have opened a full dialogue of consultation with the original owners before initiating the taking of the land.<sup>84</sup>

- ▶ *Active protection*: Counsel for Ngāti Hikairo points to a failure by the Crown to ensure that the hapū retained sufficient lands for their maintenance, support, and future needs.<sup>85</sup> Counsel adds that the use of public works legislation in this inquiry has played a large part in causing the landlessness of Māori.<sup>86</sup> Counsel also claims that they have presented tangata whenua evidence which the Crown has not responded to. This evidence, counsel submits, clearly demonstrates the Crown's failure to ensure that adequate resources remain for the hapū to exercise their rangatiratanga and find employment in their own place.<sup>87</sup>

Active protection is an important component of the balance to be struck between kāwanatanga and rangatiratanga. The balance is not merely the impact of the Crown's obligation on rangatiratanga but also its obligation of good faith and partnership, and its obligations to ensure that Māori retain sufficient land for their own sustenance. These obligations, counsel submits, are fundamental.<sup>88</sup>

- ▶ *Compulsory acquisition and exploration of alternatives*: Ngāti Hikairo say that the Crown must not only consult with Māori before any compulsory acquisition, it must explore other alternatives as the loss of land will have a major adverse social, cultural, and economic impact on Māori.<sup>89</sup>
- ▶ *Return of land*: The Crown and the public at large have had the benefit of the use of land, resource, and income from its use, submits counsel for Ngāti Hikairo. In Ngāti Hikairo's view, this outweighs any improvements or compensation paid for the land.<sup>90</sup>

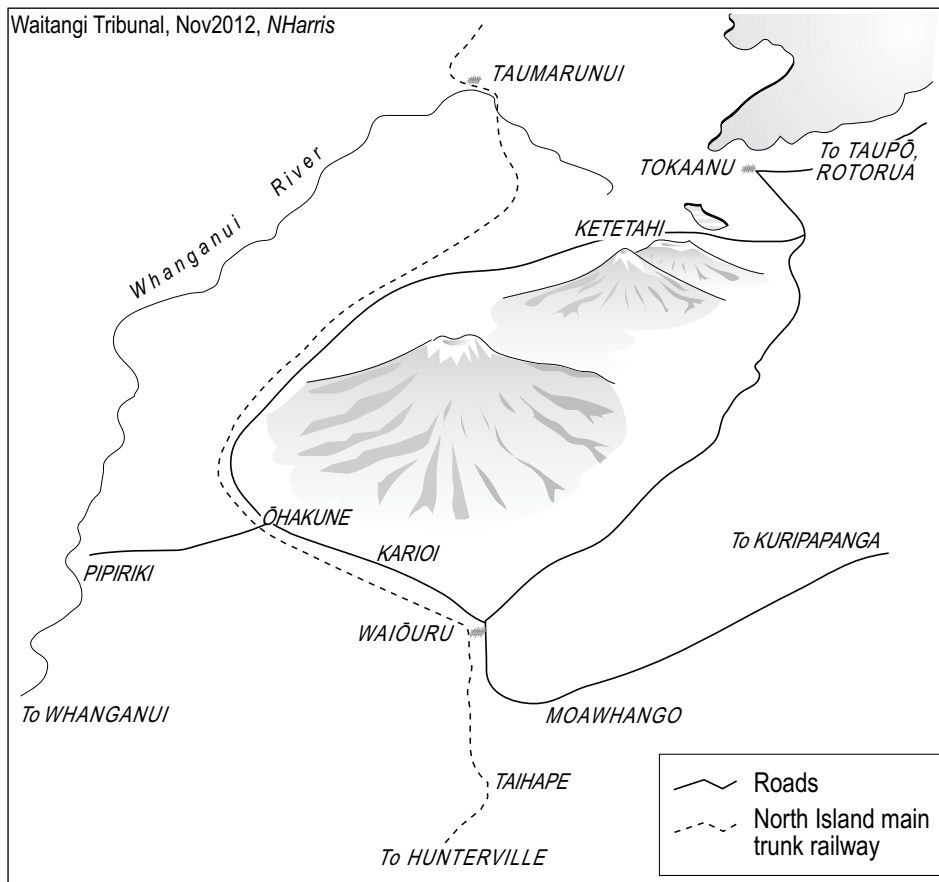
Land no longer required should be returned, at the earliest opportunity, and at the least cost and inconvenience to Māori owners.<sup>91</sup>

- ▶ *Leasing for defence purposes*: Counsel for Ngāti Waewae submits that lands required for defence purposes at Mahuia B and Tāwhai North, Rangipō–Waiū 1B and Rangipō North could have been leased from the owners.<sup>92</sup> In that way, hapū owners would have received continuing money and there would have been a greater chance that the Defence Department would return the land to Māori. Instead, the Mahuia B and Tāwhai North lands were transferred to the Tongariro National Park in 1922.<sup>93</sup>
- ▶ *Ōtūkou quarry and school*: Counsel for Ngāti Hikairo submits that section 14 of the Public Works Amendments Act 1948 requires that land containing a burial ground or cemetery could not be taken without the consent in writing of either the owners or the Governor General in Council.<sup>94</sup> No such consent has been presented to this inquiry. Ngāti Hikairo add that the Crown's contention that an agreement had been reached, and that the owners of Ōtūkou quarry were willing sellers, does not constitute a legal contract.<sup>95</sup> Counsel further submits that there was no evidence provided that anyone was formally appointed as spokesperson with the authority to bind the owners.<sup>96</sup> Ngāti Hikairo do not accept that the owners would ever have agreed to their land being permanently lost: the area was one of considerable cultural significance and their own tūpuna were buried in the very lands the Crown wanted to take.<sup>97</sup>
  - ▶ The Ōtūkou school site is unused and should be returned at nil consideration.<sup>98</sup>

## 10.5 TRIBUNAL ANALYSIS

Our aim in this chapter is to address two key questions:

- ▶ What were the Crown's obligations under the Treaty when lands in National Park were needed for public works?
- ▶ What were the Crown's obligations under the Treaty if and when lands taken were no longer required?



Map 10.1: Road works in the central North Island, 1880–95

To answer those questions, however, we need to look first at what land was taken and also to consider the legislative context for these takings.

#### 10.5.1 Public works takings in the inquiry district

Land purchases, land settlement, and public works came later to this inland and up-river district than to the down-river and coastal districts. The first formal takings were for roads, beginning in 1895. Some 20 blocks of land were taken under the Public Works Acts, without payment of compensation, between November 1885 and February 1925. There is one situation where we know that some consultation must have occurred, although possibly only

after the taking had happened: district surveyor Charles Hursthouse, reporting in 1891 on the road southwards from Tokaanu, notes that construction was under way and ‘the first four miles were let to the Ngati Tuwharetoa Natives.’<sup>99</sup> A further 47 blocks were taken, mainly for highway realignments, from 1935 onwards and all but two of these were compensated.<sup>100</sup>

The largest takings, in terms of area taken, were for defence purposes. The first round of takings, in the lead up to the First World War, was at Waimarino where lands were taken from Waimarino 4B2, Tāwhai North, and Mahuia B. They were taken under section 9 (Defence) of the Public Works Act 1908, which required neither



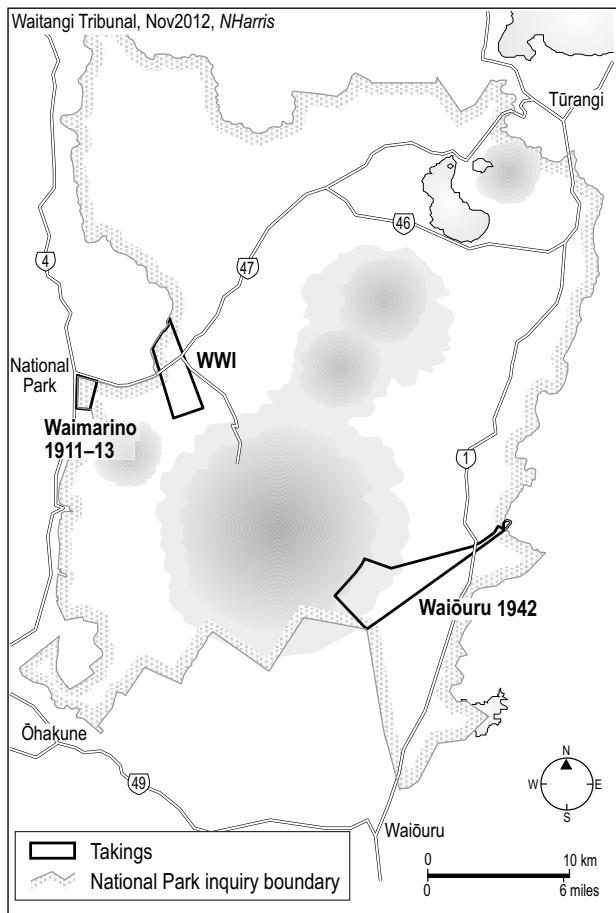
The intersection of State Highways 47 and 48 in the shadow of Mount Tongariro, early 1950s. Early public works takings in the district were for roads, while later ones were mostly for highway realignments.

consultation, negotiation about price, nor advance notice to the owners. A total of 1,829 hectares was taken and compensation of £2,260 was awarded by the Native Land Court.<sup>101</sup> The Waimarino defence lands became surplus to requirements in the 1920s. None was returned to the Māori owners: some became part of the National Park in 1922; others became State forest or passed to the Department of Lands and Survey. In the 1980s, the latter lands were passed to LandCorp and became part of Taurewa Station.

We note that the Taurewa Station was under occupation

by descendants of the former Māori owners throughout our sitting week in the area and for a considerable time before and after. The occupation was precipitated by the knowledge that in March 2006 the Crown had entered into conditional agreements to sell the property. It ended after the Crown announced that the sale process had been stopped and the farm placed in a protected category scheme along with other LandCorp farms.<sup>102</sup>

A second round of defence takings, this time to the south-east of the mountains, took place when the Waiōuru Army Base, which needed large areas of open



Map 10.2: Defence takings of Māori land in the inquiry district

country for artillery ranges, was established at the outset of the Second World War.<sup>103</sup> The main facilities at Waiōuru are outside of the National Park inquiry district. Large areas were needed for artillery ranges and field manoeuvres and the army asked the Public Works Department to take more land. The first areas taken, in November 1939, were not Māori land.<sup>104</sup> Further land was needed, and in June 1942 the Crown used the Public Works Act to take another 6,500 hectares, including 2,560 hectares of Māori land.<sup>105</sup> The Native Department, believing that the Māori owners would be amenable to such a wartime request,

### Tūroa Karatea

Tūroa Karatea of Ngāti Waewae, who had served in the Army at Waiōuru and rose to the rank of Sergeant, raised three questions about the use of Rangipō North 6C and Rangipō–Waiū 1B lands:

- ▶ Why were the Rangipō North 6C lands, high on the mountain, taken by the army but never used?
- ▶ Why was the portion of Rangipō–Waiū 1B that was leased to farmers in the 1960s and 1970s not offered back to the descendants of the original owners?
- ▶ What damage was done to wāhi tapu by explosions from army weapons?

offered to convene a meeting between owners and army at Tokaanu. Neither the army nor the defence officials took up this offer. The two blocks of Māori land – 749 hectares from Rangipō North 6C and 1,811 hectares from Rangipō–Waiū 1B – were simply taken by *Gazette* proclamation on 13 July 1942 (see map 10.2).<sup>106</sup>

The combined area taken from Māori was close to 25 square kilometres (or almost 10 square miles). The matter of compensation for the land taken was contentious and long drawn out.

We cannot help but reflect that, around this same time in 1942, Māori (Te Heuheu's descendants among them) were volunteering to serve in the 28th Māori Battalion and other units of the New Zealand's defence forces, and dying in great numbers in North Africa.<sup>107</sup> The members of the Māori Battalion were obviously not fighting to defend Māori land rights. Nor was the Crown thinking much about the Treaty of Waitangi. This could be excused – but only for the duration of the war. The sharp point must be made: not only were Māori volunteering in more than proportional numbers to serve in the war but they lost land, taken by proclamation and without compensation, to support the war effort. There is no evidence before us of any attention being paid to these issues after the war.

- ▶ The Waimarino Plains, with Mounts Pukeonake and Ruapehu in the background. According to army legend, British Field Marshall Viscount Kitchener saw the vast and supposedly 'empty' plains of Waimarino and noted that they would be ideal for defence training when reviewing the New Zealand government's defence regime. Acting on his suggestion, the government took land from several Waimarino blocks, using it for defence purposes as the First World War approached.
- ▼ Waiōuru Military Camp, with Mount Ruapehu in the background. The vast area of land seen here to the south-east of the mountains was taken for military training at the beginning of the Second World War. More Māori land from within the National Park inquiry district was taken in 1942.







◀ Soldiers eating at the Waiōuru military camp, 1942

▼ Army exercises at Waiōuru. Large areas of land were needed for military training, and during the Second World War more land was taken for artillery ranges and for field manoeuvres, in which army vehicles like these two Valentine tanks operated.



### Fighting on Foreign Soil

Among the descendants of Horonuku Te Heuheu who fought, and in some cases died, in North Africa and Italy were:

- † 19907 Second Lieutenant William Sutherland Laurence McRae; and
- † 62556 Captain Peter Frederick Te Heu Heu Ornberg (killed in Italy 30 May 1944).

Another Ngāti Tūwharetoa officer was:

- † 25935 Captain Kereti Pau Mariu (killed in Italy 9 January 1944.)



New Zealand war cemetery near El Alamein, North Africa, 1942



The Taonui Viaduct on the North Island main trunk railway near Horopito. Land between Horopito and Ōhakune was taken for the railway under public works legislation.

Takings for the North Island main trunk railway and for scenic reserves were closely connected. The railway is a key component for the communications network of the central North Island. For the most part, however, it is just outside the western boundary of the inquiry district. Nevertheless, there are two important takings between Ōhakune and Horopito, in the south-west of the district, which bring it firmly into our purview: two portions of Raetihi 4B were taken on 31 December 1909 and 11

February 1910.<sup>108</sup> We have no record as to what proportion of the takings was compensated (if any), how much was paid, and when, or what evidence was used to assess compensation.

Scenery preservation, as an adjunct to tourism, was an important component of government policy.<sup>109</sup> Scenery preservation Acts, passed from 1903 onwards, were designed to preserve the quality of the tourist experience by ensuring that the virgin bush was preserved, thereby



The Hapuawhenua Viaduct. The preservation of native bush along the railway track has long been recognised as an important addition to the tourist experience. From 1906, the Scenery Preservation Commission wanted native bush areas left intact at intervals along roads as well.

enabling passengers on the newly opened North Island main trunk railway to savour ‘unspoilt’ views from the trains and stations. The Whakapapa Gorge Scenic Reserve is adjacent to the railway and the Whakapapa River and is heavily forested. The initial proposals were for a large reserve, in excess of 2,400 acres (almost 1,000 hectares), taken from Crown land and Māori land, but when the reserve was notified in 1911 it was only 200 acres (just over 80 hectares) in size, and all of that land came from the

Māori-owned Taurewa 4 West block.<sup>110</sup> Notice of intention to take was given in the *New Zealand Gazette* on 15 March 1911. It is unclear whether the individual owners received direct notice of the intention to take the land.<sup>111</sup> The land was taken and the manner in which compensation was assessed became contentious. The Crown agent, Edwin Bold, telegraphed a special valuation of £687 but was not present at the Native Land Court hearing to answer questions about the assessment.<sup>112</sup> The owners objected on the

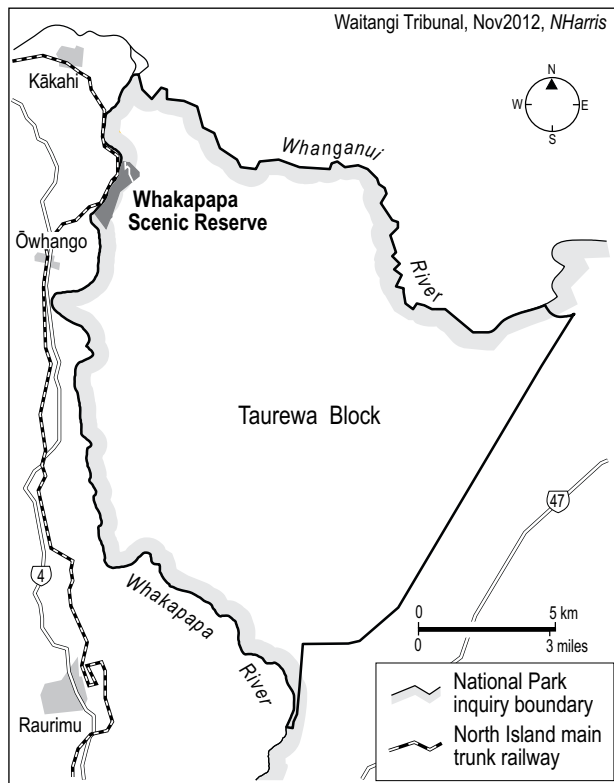


The Whakapapa Scenic Reserve. Scenic reserves were created from land taken in order to preserve pristine native bush and to enhance the experience for tourists travelling on the North Island main trunk railway.

grounds that the amount was insufficient, a second hearing was held, and Bold was again absent. The court nevertheless awarded the £687.<sup>113</sup> The owners were disadvantaged by the failure of Bold to attend in person, or provide additional information about the valuation between the two hearings.

The TPD draws on the headwaters of National Park and Whanganui rivers to generate power at Rangipō and Tokaanu Power Stations before releasing water into Lake

Taupō and making it available to nine more power stations on the Waikato River. The scheme was built between 1964 and 1984 to overcome post war electricity shortages and provide energy for industrial development.<sup>114</sup> Lake Rotoaira was used for water storage and new lakes were created at Te Whaiiau and Ōtamangākau in the north-west, and Moawhango in the south-east. Large quantities of construction materials were used for the various components of the scheme and for access roads: lands were



Map 10.4: The Whakapapa Scenic Reserve

temporarily occupied and lands were taken for quarrying purposes.

The TPD scheme had major impacts on the landscape and the economy of the National Park inquiry district and New Zealand. The story of the TPD, and its wider implications, are considered in part IV of this report. Attention here is focussed on those lands which were taken, or temporarily occupied, for public works purposes.

The MOW, from 1948 onwards, was actively involved in plans and preparations for the TPD.<sup>115</sup> Surveys and sub-surface prospecting took place from 1955 onwards.<sup>116</sup> The Crown issued an Order in Council under section 311 of the Public Works Act 1929, on 29 October 1959.<sup>117</sup> This permitted officials to enter any land, carry out any investigations, and construct works, including permanent works, across

the designated region and to maintain and operate them. It allowed the Crown to proceed, without risk of delays, to do everything necessary to construct and operate the TPD.

The Order in Council was a wide and comprehensive instrument. From the evidence before us, the Crown had decided to build the scheme, and used the order to do so. From the Māori landowners' perspective, the order left them with the probability of nothing but a limited form of compensation, if and when their lands might eventually be taken. Walzl, in the course of an extensive examination of MOW and other official files for the 1950s has found no evidence of consultation with Ngāti Tūwharetoa iwi or hapū at the point where the Order in Council was contemplated in 1958 or issued in 1959.<sup>118</sup> Nor is there any record in the MOW files that consultation with Ngāti Rangī or other Whanganui iwi was contemplated, let alone initiated.

Nevertheless, faced with the prospect of taking a large number of pieces of land, of varying sizes and distributed over a large area, the Crown between 1969 and 1971 entered into direct discussions with the representatives of the Ngāti Tūwharetoa owners.<sup>119</sup> A heads of agreement, embracing 8,500 acres (3440 hectares) was signed between the Crown and Ngāti Tūwharetoa representatives in November 1972. For any lands taken, the Crown would pay market value and interest accrued to the date of payment. In addition, there would be a lump sum of \$10,000 for full and final settlement of all claims for temporary occupation and damage. The Crown would also, as far as practicable, restore the topsoil to any sites damaged.<sup>120</sup>

The land history alienation database schedule of public works takings within the National Park inquiry district contains 1,069.0 hectares of land taken for the TPD and 60.9 hectares for quarries and metal pits. Two parcels of land totalling 409.7 hectares were taken by *Gazette* notices in July and August 1969.<sup>121</sup> A further 44 parcels of land, totalling 666.4 hectares, were taken over a period of 18 years from 1973 to 1991.<sup>122</sup> These included land taken for the new lakes created by the scheme, namely, Lakes Te Whaiāu and Ōtamangākau.<sup>123</sup> A number of portions were taken from the Waimanu 2D, Waimanu 2G, and Ōkahukura 4B1 blocks. The land needed for a new Lake

## Prison Lands

Prison lands are an important component of the National Park landscape. The Tongariro Prison lands, to the north-east of Mount Tongariro and in excess of 9,000 hectares, are partly inside and partly outside the inquiry district.<sup>1</sup> The portions inside were initially part of Rangipō North 2. The Crown, in the 1920s, established prison camps at Hautu just outside the district and at Rangipō just inside, and used prison labour to work on the Tūrangi to Waimarino road and to build the Desert Road.<sup>2</sup> Land development, farming, and tree planting were added as part of a prison service 'agriculture and forestry policy'.<sup>3</sup> In the 1930s, after cobalt and selenium deficiencies were identified and remedied, large prison farms were established, and later still large pine forests.<sup>4</sup> Prison lands were not, however, taken under the provisions of the Public Works Acts: Rangipō North 2 lands were purchased by the Crown between September 1887 and March 1899, long before their use for prisons was contemplated.<sup>5</sup> When the prisons were created in the 1920s and expanded in the 1930s, the Rangipō lands used were already owned by the Crown.

Robert Severne came to Hautu to join the prison service

at age 21. He married Charlotte Biddle and was appointed to Tongariro Rangipō in 1986. He gave these insights:

The reason that the [Rangipō and Hautu] prisons are expanding now is expedience. It's cheaper to do so, you don't have to bother about getting resource consent, there's no crowd of angry farmers saying you won't have a prison in our place, they've got all this land and they can keep putting units up here there and everywhere on this land. However, in my opinion, it is quite wrong that they should be dumping a fair proportion of the prison population of New Zealand on our door step, and the type of prison that they are building here now is not what the land was given originally for and that's as simple as that.<sup>6</sup>

These prisons, Mr Severne said, are 'cheap alternatives to the city prisons'.<sup>7</sup> Most inmates are confined and no longer work on the farms or in the forests. The Crown should 'give the farm and forest prison land back to the tangata whenua'.<sup>8</sup> If the prisons are privatised, Ngāti Tūwharetoa should be allowed to 'run the thing to their benefit'.<sup>9</sup>

Moawhango was not taken under the Public Works Act: it had been purchased by the Crown in the early 1900s.

The lands used for quarries and metal pits to support TPD construction work in the 1960s were not initially taken. The MOW built roads, and opened up pits and quarries under the provisions of the Public Works Act 1928 which provided for the government to do this without leasing or taking. When problems arose about the use of these metal pits and quarries by independent contractors, the MOW moved to take ownership.<sup>124</sup> Six metal pits and one quarry were taken in 1968, 1969, and 1973 to provide materials needed for the construction of roads, dams, canals, and other structures for the TPD.<sup>125</sup>

The matter of payment for metal taken became

contentious in the case of a 96 hectares metal pit taken at Rangipō North 6C.<sup>126</sup> The trustees for the block claimed compensation for the metal taken but the Crown, when the case was brought to the courts, submitted that the value of compensation for the metal should not exceed the value of the land. The Court of Appeal found that, under section 17 of the Public Works Act 1928, reasonable compensation, without an upper limit, should be paid for the metal taken.<sup>127</sup>

The Ōtūkou metal pit and quarry, close to 45 hectares in total, were taken from Ōkahukura blocks by *New Zealand Gazette* proclamations in January and February 1969.<sup>128</sup> We return to these takings, and the matter of consultation, in our case study on the Ōtūkou quarry.

**‘M**Y DAD told me that once he was travelling to a board meeting at Lake Rotoaira along the Desert Road. . . . They saw these trucks crossing the Desert Road and they were carting metal. They saw that the trucks were coming out of . . . the Rangipo North 6C block. He was hopping mad and stopped the trucks and asked them what they were doing. They said they were crushing metal and carting it to the Power Scheme. My Dad was so angry that these guys were just stealing the metal from our lands. . . . Goodness knows how much metal went before we caught them.’

—Tūroa Karatea<sup>1</sup>



One of many access roads built for the Tongariro power development between 1964 and 1984. This one, seen in 1970, crosses the Moawhango River.



### The Order in Council

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*Authorising the Minister of Electricity to Construct and Use Works in Connection with the Utilisation of Water Power From the Wanganui, Tokaanu, Tongariro, Rangitikei, and Wangaehu Rivers for the Generation of Electrical Energy*

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COBHAM, Governor-General  
ORDER IN COUNCIL

At the Government House at Wellington this 29th day of October 1958

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 311 of the Public Works Act 1928, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby authorises the Minister of Electricity to erect, construct, provide, and use such works, appliances, and conveniences as may be necessary in connection with the utilisation of water power from the Wanganui, Tokaanu, Tongariro, Rangitikei, and Wangaehu Rivers, and all their tributary lakes, rivers, and streams, in the Land Districts of South Auckland, Taranaki, and Wellington, for the generation and storage of electrical energy, and with the transmission, use, supply, and sale of electrical energy when so generated; also to use electrical energy when so generated in the construction, working, or maintenance of any public work, or for the smelting, reduction, manufacture, or development of ores, metals, or other substances; also to raise or lower the level of all or any of the said rivers and their tributary lakes; rivers, and streams, and impound or divert the waters thereof; also to construct tunnels under private land, or aqueducts and flumes over the same, erect pylons, towers or poles thereon, and carry wires over or along any such land, without being bound to acquire the same, and with right of way to and along all such works and erections; and also to supply and sell electrical energy and recover moneys due for the same.

TJ SHERRARD, Clerk of the Executive Council.  
(NZED 21 /75/1)<sup>1</sup>

Alongside these larger takings, for defence and for the TPD, are smaller takings which have assumed an important place in the hearings, in particular the taking of land for the Tongariro National Trout Centre. On 14 June 1926, the Crown took three blocks of land at Kōwhai Point, near the Tongariro River, for a fish hatchery site and a road. The trout hatchery is an important national facility and, in addition, receives a very large number of tourist visitors annually. The blocks, owned by Morehu Henry Downs

and his brother Te Hoka Downs, gave access to the puna or springs at the foot of Pihanga maunga. There were written protests but these were to no avail.

The blocks (of 4.04, 0.91, and 3.14 hectares) were taken in 1926, with compensation assessed in 1927. Paula Berghan reports that the court ordered payment of £6 per acre for the 20 acres (eight hectares) taken for the fish hatchery but decided that no compensation was payable for the two acres (0.8 hectares) taken for the road.<sup>129</sup>

### Kōwhai Flat Takings for the National Trout Centre

We have no record of negotiations carried out with the landowners over the Kōwhai Flat takings for the National Trout Centre, but we do know that Morehu Downs and Nohopapa Whataiwi wrote a letter of protest to the Native Minister in 1925:

We strongly object to this intention to acquire because this is . . . the only part of the front of our block which touches the Tongariro stream. Therefore we will never agree that the Crown should acquire that is, that it should be sold to the Crown.

Wherefore we respectfully request that this application of the Crown and the desire to acquire be withdrawn because it is desired that the whole of the block above-named be not sold.<sup>1</sup>

Mr Downs and Mr Whataiwi's request was declined. The Minister replied that the land would be taken and compensation paid. In March 1926, Mr Whataiwi wrote again,

concerned that the proposals were proceeding and adding that '[t]his portion is a cultivation. It is the only suitable part for a home. It is desired that a papakāinga be located there.'<sup>2</sup>

The sons of Morehu Downs, Whakapumautanga Darkie Downs and Rangikamutua Henry Downs, brought evidence to us in April 2005. Their land, Ohuanga 2B2B, adjoins the southern end of the hatchery property. Rangikamutua Downs said:

The Crown considered the area provided ideal conditions for breeding trout . . . There is a stream that runs through the block and there is also fresh water from Pihanga that comes underground and feeds into this stream.

The hatchery supplies Trout for Lake Taupo . . . It is still used as a hatchery but in recent years has also developed into a significant tourist attraction.

We have concerns that this development is going to encroach on our remaining land and we will have to spend more time and resources fighting to stop it.<sup>3</sup>

We move now to a consideration of the laws used to carry out these various takings in the National Park inquiry district, and the insights provided by previous Tribunals.

#### 10.5.2 The legislative context

The first generation of Tribunal hearings which considered the taking of Māori lands for public works established the foundational jurisprudence reported in the 1990s. The *Te Maunga Railways Land Report* of 1994 and the *Turangi Township Report* of 1995 have underscored the unique relationship between the Crown and Māori in New Zealand, the centrality of land, and the responsibility of the Crown to leave Māori in full control of the lands they wished to retain. The second generation of public works reports, in particular the district reports for Gisborne,

Hauraki, the central North Island, Tauranga Moana, and Wairarapa ki Tararua, used these foundational insights to test the performance of the Crown and its agents.<sup>130</sup> In each inquiry district, there were a multiplicity of public works takings, for a range of different purposes, over an extended period of time. Aided by the thinking of these previous Tribunals, we now focus our attention on the legislative regimes which have determined the actions of Crown agents in the National Park inquiry district.

#### (1) *Relevant public works legislation*

The Native Lands Act 1862, passed before Māori were represented in parliament, allowed the government to take Māori land for public works. Under section 27 of that Act, the Governor could take, for roading purposes, up to 5 per cent of any block of land purchased from Māori and



processed by the Native Land Court. There was no provision for payment or compensation and no time limit for the taking.<sup>131</sup> Protection was provided for lands occupied by buildings, gardens, orchards, plantations, or ornamental grounds, but not for burial places or urupā.<sup>132</sup>

The Public Works Lands Act 1864 gave the Crown the power to take any land for public works,<sup>133</sup> and the provisions were the same for Māori land and for general land. The article 2 rights of Māori were not recognised: the legislation overrode the rights of Māori to retain their lands and took no account of their tino rangatiratanga in relation to their lands.

The Public Works Act 1882, unlike the 1864 Act, made separate provisions for the taking of Māori land and general land. The *Hauraki Report* notes that compensation for Māori land was routinely set at lower levels than for other categories of land, and depended on the discretion of the Minister.<sup>134</sup> The Act simplified the processes for taking Māori land and in so doing increased the Crown's power to do so without prior consultation and agreement.

The Public Works Act 1894 provided the legislative backdrop and the administrative guide for public works takings in the National Park district during the first three decades of the twentieth century. It was a lengthy and detailed Act which continued the broad provisions of the earlier Acts and spelt out the procedures in finer detail.<sup>135</sup> Under section 87, compensation would be paid if Māori land was taken for purposes other than road and railway, and the protection for lands occupied by buildings, gardens, orchards, and plantations was extended to include burial grounds.

The fundamental provisions were essentially the same as those in the 1882 Act. Māori land as well as general land could be taken for public works and the levels of protection provided to the owners of Māori land were less than those provided for the owners of general lands.

▲▲ Morehu Downs (with fish). Downs was one of the owners of the blocks of land taken for the National Trout Centre. Protest letters they sent fell on deaf ears.

▲ Tongariro National Trout Centre sign, showing the layout of the centre and its proximity to the Tongariro River





**New road between Tokaanu and Lake Rotoaira, 1966. The road, through virgin native forest, followed the path of earlier Māori war trails and was built to support the Tongariro power development.**

The 1927 and 1928 legislation consolidated the previous legislation, removed the 5 per cent provision, and brought together the previously separate provisions for compensation of Māori land and general land. The government's powers to take up to 5 per cent of Māori land without compensation had continued until 1927, when the government passed the Native Land Amendment and Native Land Claims Adjustment Act.<sup>136</sup> Native Minister Gordon Coates explained the rationale for the Bill to parliament:

the time has arrived when we can ask Parliament definitely to forego any rights [an allusion to the five per cent provisions] under that [1862] Act, and that all Natives as far as

compensation is concerned should in future be treated in the same manner as the pakeha – that is to say, he should have the same right to claim compensation as the pakeha for the taking of the land.<sup>137</sup>

The Public Works Act 1928 recognised that there were complexities associated with Māori land ownership: compensation for general land would be determined by a Compensation Court but that for Māori Land would be determined by the Native Land Court, which had specialist knowledge.<sup>138</sup>

There were other important new provisions. The 1928 Act addressed the matter of land which was taken for a

public work but, subsequently, was no longer required for the initial purpose. Provision was made for it to be offered back to the original owners, but this did not apply to Māori land.<sup>139</sup>

From 1928 to 1981 – a period of over 50 years – the Public Works Act 1928 held sway, although parliament passed numerous amendments and a wide variety of other Acts which contained land-taking powers.<sup>140</sup> They included not only Land Acts, Reserves Acts, and Māori Purposes Acts but also Finance Acts, Noxious Weeds Acts, and special purposes legislation, such as the Turangi Township Act 1964, which took land for particular local projects.

Alternative forms of tenure for public works were contemplated in some situations from the 1930s and 1940s. In 1935 the Public Works Amendment Act made provision for aerodromes and inserted a clause which enabled it to ‘take or otherwise acquire’ land for this purpose.<sup>141</sup> In 1948, a further amendment to the Public Works Act was more explicit about the leasing option: section 16(1) allowed the Crown to ‘take or lease’ any land.<sup>142</sup>

The Second World War produced another round of defence needs: Defence Emergency Regulations, passed in 1939 and extended in 1940, gave the government wide powers to commandeer services, and property including land.<sup>143</sup> The Soil Conservation and Rivers Control Act 1941 had land taking provisions which included Māori lands.<sup>144</sup> The Finance Act (No 2) 1945, and the Housing Improvement Act 1945, allowed local authorities to take land for housing and subdivision purposes.

Some legislation passed during this time was advantageous to Māori, some was not. On the positive side, The Native Purposes Act 1943 and the Māori Affairs Act 1953 both contained provisions which would allow taking authorities to re-vest land, taken from Māori, if it was no longer required for public works. Section 14 of the Public Works Amendment Act 1948 ensured that protections for cemeteries and burial grounds specifically included urupā.<sup>145</sup> On the negative side, a 1962 amendment to the Public Works Act allowed the Crown or local authority to bypass notification procedures to individual owners by sending the notice to the Maori Trustee.<sup>146</sup> There was potential for more land to be lost when the Māori Affairs

Amendment Act 1967 included provision for counties to require a 10 per cent reserve contribution when Māori land was partitioned.<sup>147</sup>

The Public Works Act 1981 reshaped previous legislation.<sup>148</sup> Under it, Māori land is no longer treated separately but the concept of ‘essential need’ for a taking is strengthened. Greater emphasis is placed on voluntary agreements between taking agencies and owners, be they Māori or non-Māori. Under this regime, compulsory acquisition becomes a last resort, if negotiations fail. There is a right of appeal to the Town and Country Planning Tribunal (now the Environment Court). However, the appeal process, set out in section 24(7), does not allow consideration of Māori spiritual and cultural attachments to land or ask if the Māori owners will be left with other ancestral lands. Offer-back provisions, at current market valuation, are explicitly extended to Māori, but the decisions about which land, and when it is offered back, remain with the taking authority.

Te Ture Whenua Māori Act 1993 contains provisions, in section 134, which enable Māori land, acquired by the Crown or local authority or public body for a public purpose, and no longer required for that purpose, to be vested back to those entitled to receive it.<sup>149</sup> The Māori Land Court has jurisdiction but the application must be made by the Crown body, or local authority, or public body which acquired the land in the first instance.<sup>150</sup>

In summary: there were a number of Acts which dealt with public works and which authorised the Crown to take lands for public purposes. The Native Lands Act 1862 and the Public Works Act 1882 predate formal land takings in National Park but set out the 5 per cent provisions that were repeated in the 1882 and 1894 Acts. The Public Works Act 1894 and a series of acts and amendments in the early 1900s provide the context for the initial round of takings in National Park, and the Public Works Act 1928 and the Public Works Act 1981 apply for more recent takings.

## **(2) *The views of previous Tribunals***

Looking at the suite of legislation as a whole, *He Maunga Rongo* concludes that, from 1882 to 1974, multiply owned Māori land was subject to sustained and serious

discrimination. The legislation was in breach of the Treaty principles of equity, active protection, partnership and reciprocity. The Crown enacted laws which provided fewer legal rights and much less protection for the lands of its Māori citizens than the lands of Pākehā citizens. *He Maunga Rongo* sets out its conclusion in these words:

By enacting this discriminatory legislation, the Crown compounded the Treaty breach of taking land by compulsion without consent.<sup>151</sup>

*Tauranga Moana*, following *He Maunga Rongo*, summarises succinctly. Compulsory acquisition is a breach of the plain meaning of article 2 of the Treaty.<sup>152</sup> Māori were guaranteed possession of their lands for as long as they wished to retain them. It is possible that Māori, properly consulted, might have consented to set aside some of these rights:

The establishment of compulsory acquisition for public works in New Zealand without consultation or consent was, then, a serious breach of the Treaty.<sup>153</sup>

The *Wairarapa ki Tararua Report* finds that the 1981 Act did not curtail the powers of local authorities to take Māori lands for public works.<sup>154</sup> It examined the legislation against a wide range of public works takings and reached the conclusion that

The whole public works regime was, and remains, monocultural. The Crown failed to apprehend, and take account of, the special circumstances of land to Māori. In particular, it had no regard to the fact that, by the twentieth century, the land remaining in Māori hands was usually important or strategic for both cultural and economic reasons. Continuing to facilitate the land's easy compulsory purchase by (mainly) local authorities was a woeful failure to protect Māori from unnecessary cultural, spiritual, and financial loss.<sup>155</sup>

The *Tauranga Moana* and *Wairarapa ki Tararua* reports, both published in 2010, consider fair payment for land taken for public works and address the manner

in which compensation for Māori land has been and is assessed. *Tauranga Moana* notes that

the way in which land has been assessed for valuation purposes is based solely on European principles and models, without any influence from Māori views or consideration of how Māori interests might be valued.<sup>156</sup>

*Wairarapa ki Tararua* looks at the fairness and Treaty compliance of the valuation methodologies that were applied. Their conclusion is that the criteria for fair payment were monocultural and, even in Pākehā terms, were unfair because attributes like unique suitability were not recognised and the compensation methodology failed to ask if the whānau concerned had sufficient other landholdings.<sup>157</sup>

*Te Tau Ihu o Te Waka a Maui* has affirmed the intentions of Te Ture Whenua Māori Act 1993 relating to the return of land no longer required for public purposes, but identified shortcomings from the perspective of Māori owners: the agencies charged with the task often failed to initiate the necessary action. The Tribunal has recommended that section 134 be amended so that owners from which the land was originally acquired be themselves entitled to make application to the Māori Land Court for its return.<sup>158</sup>

The *Wairarapa ki Tararua* and *Tauranga Moana* reports both point to the Crown's failure to address deficiencies in the current public works legislation. The Act passed in 1981 still provides the current operational framework, and the comprehensive review which reported in 2000 has not resulted in a new enactment.<sup>159</sup> *Wairarapa ki Tararua* notes:

A review of public works legislation has been under way since the early 1990s, but that review, and its failure to give rise to conclusions and actions, cannot continue to be proffered as a Crown response. We are aware that, nowadays, neither governments nor local authorities typically resort to the compulsory acquisition of Māori land without exploring other options. Nevertheless, the power to do so remains – without limitation as to the purpose for which the land is

taken, and without regard for whether the Māori owners have other land. Nor is there any requirement for other possibilities to be exhausted first. This is a totally unsatisfactory situation, which is an ongoing and substantial breach of the principles of the Treaty.<sup>160</sup>

*Tauranga Moana* draws on the Treaty principles of reciprocity, partnership, active protection, and equal treatment, to set out criteria which should apply when land is taken:

- ▶ the avoidance of the use of Māori land for public works if possible;
- ▶ genuine consultation and attempts to reach agreement on public works projects;
- ▶ the use of compulsory acquisition only in exceptional circumstances and as a last resort in the national interest;
- ▶ the taking of lesser interests such as leaseholds rather than freehold title; and
- ▶ the payment of compensation in a manner that is fair and Treaty compliant.<sup>161</sup>

There is one item, identified by the Crown and the claimants in the National Park hearings and contained in *Wairarapa ki Tararua*, that we would add to the *Tauranga Moana* list: relevant landowners should be left with sufficient land for present and reasonably foreseeable future needs.<sup>162</sup>

### (3) *Tribunal findings on the legislation*

The public works legislation passed between 1862 and 1927 contains a fundamental Treaty breach. During this period the succession of Acts allowed the Crown to take Māori land, without consultation or compensation, for roads and, in some measure, for railways. The promise of exclusive tribal possession was breached.<sup>163</sup> The Land Act 1894 allowed the Crown to take some 19 blocks, a total of 199.3 hectares, for road works in the National Park inquiry district between November 1895 and February 1925.<sup>164</sup>

Between 1882 and 1927 there were separate legislative provisions for Māori land and for general land. The way was open for the Crown to pay lower levels of compensation to the owners of Māori land. Our reading of the

1927 and 1928 legislation is that it went a long way towards removing these article 3 breaches. However, there was no recognition that Māori land should, in keeping with article 2 of the Treaty, be protected in ways that Pākehā land was not.

We have found no evidence prior to the passing of the Public Works Amendment Acts 1935 and 1948 that the Crown considered lesser forms of tenure, such as leases. The Public Works Act 1981 encouraged consultation with owners which opened the way to alternative arrangements, but there are no explicit provisions for leases, easements, joint ownership, or tenancy-in-common, when Māori land was required for public purposes.<sup>165</sup>

The evidence with regard to offer-back provisions is mixed. There are no provisions, prior to the passing of the Public Works Act 1928, for land to be offered back when it is no longer required for the original purpose. Marr notes that the 1928 provision applied to takings from Māori land under Crown-granted title but not from land held under Māori customary title.<sup>166</sup> The offer back provisions were removed from all lands in the Public Works Act 1954 but restored in the Public Works Act 1981. In the meantime, the Native Purposes Act 1943 made provision for such land to be revested by the Māori Land Court where it was 'deemed expedient' to do so.<sup>167</sup>

The valuation provisions in successive Acts, including the Public Works Act 1981, do not consider Māori spiritual and cultural attachments to lands in assessing land value. If this issue to do with valuation is not addressed, there are breaches of the Treaty principles of partnership, good faith, and active protection.<sup>168</sup>

There is no requirement in the legislation for the Crown to consider if the landowners are left with sufficient land for their present and future needs. Land to meet the basic needs of hapū and whānau to gather is outside the terms of reference of the Public Works Act 1981.

### (4) *The obligations of the Crown*

We bring together the specific circumstances of public works takings in the National Park inquiry district, laid out earlier, and the previous Waitangi Tribunal jurisprudence on public works legislation, just discussed. We are

aware that every case of a proposed taking must be considered on its merits. That much is agreed by the Crown.<sup>169</sup> Many questions need to be addressed in each case before a proposal to take should proceed. The 16 questions set out in the Statement of Issues for the National Park Inquiry,<sup>170</sup> the set of eight ‘key questions’ included in the closing submission of counsel for Ngāti Waewae,<sup>171</sup> and the set of criteria identified by the *Tauranga Moana* report, bring us back to our two key questions identified earlier. We ask: What were the obligations of the Crown, under the Treaty, when lands in National Park were needed for public works; and, secondly, What were the obligations of the Crown, under the Treaty, if and when any lands taken were no longer required? In considering each of these broad questions we will also look at a series of sub-issues.

### 10.5.3 What were the Crown’s Treaty obligations when lands were needed for public works?

The Crown has taken 5,983 hectares of Māori land in the National Park inquiry district for public works purposes.<sup>172</sup> When we consider the specific takings, numbering 135 in total in the National Park inquiry district, the evidence with respect to notification, consultation, negotiation, and informed consent is often lacking. Much of the information was unrecorded, and even where it was recorded, many of the records are lost in the mists of time. What we do have, carefully preserved, are the clear and unambiguous provisions contained in successive Acts of parliament.

Our discussion in this section is broken down into five sub-questions, applied in the context of lands taken for roads, defence, scenic reserves, and other public purposes in the National Park inquiry district:

- ▶ Did the Crown undertake full consultation with Māori owners to seek informed consent and agreement for purchase at an agreed price?
- ▶ Did the Crown seek to ensure that no other land was suitable as an alternative to taking Māori land?
- ▶ Did the Crown consider whether Māori owners retained sufficient land for their use?
- ▶ Did the Crown explore other mechanisms for acquiring Māori land such as leases, licences, or easements?

- ▶ Did the Crown pay compensation in a manner that was fair and Treaty compliant? Was compensation paid in a timely manner?

#### (1) *Did the Crown undertake full consultation?*

(a) *Discussion on roads*: Roads existed in this district from at least the 1870s and 1880s. Māori newspapers make reference to Māori support for road building between the Whanganui River and Lake Taupō.<sup>173</sup> Particularly important in the national context was the road from Pipiriki to Tokaanu via the Waimarino plains and Lake Rotoaira, which was part of the military and tourist link between the Whanganui river and lakes Taupō and Rotorua.<sup>174</sup> Until the 1890s, land for roads was made available, without change of ownership, for the mutual benefit of Māori, the Crown, runholders, and tourists.<sup>175</sup> Crown legislation, passed in 1871 and repealed in 1891, gave a window of opportunity that was never opened: the government made provision for native districts road boards, but none was established.<sup>176</sup> *He Maunga Rongo* points out that early roads, such as these, were built on a negotiable and consensual basis:

Many roads were built to the benefit of the community, without the necessity of their being in Crown ownership. . . . It is ahistorical, therefore, to assume that the national interest necessarily required or requires compulsion.<sup>177</sup>

It was in the 1890s that government practice changed in the National Park inquiry district. The Crown made preparations to enable land settlement in the wake of Crown purchases within the Waimarino block.<sup>178</sup> Negotiations and informed consent for road building gave way to public works takings. Using the Public Works Act 1882 and then the Public Works Act 1894, the Crown began to take land for Public Works purposes and to publish these actions in the *New Zealand Gazette*. Māori were not averse to new public roads but consultation with National Park Māori about specific takings in the 1890s was minimal. We have found evidence of just one situation where there was some consultation with regards to particular portions of road: some sort of consultation must have taken place





The Pipiriki to Taupō road passes by Lake Rotoaira. Known as early as the 1870s, the road was of immense importance as a military and tourist link between the Whanganui River and Rotorua. Its route to Rotorua was via Pipiriki, the Waimarino, Lake Rotoaira, Tokaanu, and Taupō.

with regards to the portion of road extending southwards from Tokaanu, since Ngāti Tūwharetoa tribal members were employed on road construction in 1891 (see section 10.5.1). We can assume some consultation about the road in this instance: whether it was full consultation leading to informed consent and agreement about the land taking, or whether it came only after the taking, and was confined to offering employment on the project, we do not know.

Agreement about price assumes consultation. But prior consultation was not required: a *Gazette* notice was deemed sufficient – and since compensation was generally not required, the matter of an agreed price did not apply.<sup>179</sup>

Māori land continued to be taken for roading from 1936 onwards. The 5 per cent provision had been removed in 1928, compensation was payable and the provisions of the 1928 and 1981 Acts dealt with Māori land in a more equitable manner.

(b) *Discussion on defence takings*: Defence takings in the inquiry district represent one of the largest losses of land for public works purposes. Three blocks at Waimarino, taken in 1911 and 1913, are more than 1,800 hectares in total.<sup>180</sup> The Ngāti Waewae claimants have brought grievances relating to lack of notice and lack of consultation.

Neither Peter Clayworth, in his detailed report on public works takings, nor the Crown, provided us with any evidence of consultation.<sup>181</sup> Dr Clayworth gives details of a letter written by Haitana Te Kauhi and others in February 1912, objecting to takings for roads, railway, and railway stations and to proposals to take lands for defence, and seeking a face-to-face meeting. We are aware, however, that more recent research by Brent Parker, which contains evidence of consultation, has been presented to the Whanganui inquiry.<sup>182</sup> The evidence available to this inquiry, however, is insufficient for us to make a finding on consultation.

Defence takings near Waiōuru, close to 25 square kilometres in total, are even larger. As we have seen, land was needed, at the outset of the Second World War, to expand the training facilities at Waiōuru. The army asked the Public Works Department to take more land and the Public Works Department consulted the Native Department. Opportunity was provided for full consultation and informed consent for the takings when the Native Department offered to convene a meeting between owners and army at Tokaanu. Neither the army, with a substantial base at Waiōuru, nor the defence officials in Wellington, responded to the opportunity. The army wanted the land, the legislation was in position, and in 1942 the Crown took two areas – one from Rangipō–Waiū 1B and the other from Rangipō North 6C – by *New Zealand Gazette* proclamation.<sup>183</sup> There was no face-to-face consultation, no agreed price, and no informed consent.

(c) *Discussion on scenic reserves*: Scenic reserves, made possible by Scenery Preservation Acts 1903, 1908, 1910, and 1915, allowed the Crown to designate Crown lands and take private and Māori lands, to create reserves which would preserve scenery and protect native bush adjacent to tourist corridors (see section 10.5.1).<sup>184</sup> Land with a potential for agriculture, and forest land which had already been milled, were not considered for scenery preservation. Māori and non-Māori members participated in the debates.<sup>185</sup> Māori members, some supporting the legislation and some in opposition to it, made detailed suggestions on appropriate ways for the Crown to engage

with Māori. Requests that Māori be given access to living taonga (plants and birds) and urupā within scenic reserves were incorporated into the Act. Wi Pere probed the provisions for compensation contained in the 1910 Act and was assured by the attorney-general, Dr John Findlay, that there would be ‘mutual agreement – so that nothing can be done unless the Natives agree’.<sup>186</sup>

The government promised much, but fell short in the delivery. Consultation with Māori was, at best, intermittent and cursory. In the early part of the nineteenth century, the Scenery Preservation Board, which played a crucial role in site selection, made a series of inspections along the route selected for the North Island main trunk railway. Its 1907 report made some 20 recommendations relating to the creation of reserves: seven from Māori land, two from a mix of Crown and Māori land, and the remainder from Crown land. The report makes no reference to consultation with Māori owners and contains no information about the values of these lands from a Māori perspective (see section 10.5.1).<sup>187</sup>

Two of the reserves created, the Whakapapa Gorge Scenic Reserve and the Ōhakune (Rongokaupō) Scenic Reserve, are within the National Park inquiry district. The Scenery Preservation Board recommended that 2,401 acres (972 hectares) be taken for Whakapapa: 1,791 acres (725 hectares) from Crown land and 637 acres (272 hectares) from Māori land. When the reserve was taken in 1911 it was much smaller, 200 acres (81 hectares) in size and all of it from Māori land. The Crown, anticipating the creation of the Ōhakune (Rongokaupō) Scenic Reserve, prohibited the owners of Māori land from milling their timber or leasing their lands. It was thus able to purchase these lands and designate them as scenic reserve. No Māori land was taken, directly, for this reserve.

Despite the assurances given to Wi Pere by the attorney-general, we have found no evidence that it was the scenic reserve policy of the Scenery Preservation Board or the Public Works Department to consult with Māori owners or obtain consent for takings. In the case of the Whakapapa Scenic Reserve the working file could not be located when Mr Cleaver did his research.<sup>188</sup> We are unable to make a specific finding.

(d) *Discussion on trout hatchery takings:* The trout hatchery takings at Kōwhai Point in 1926 involved small but fertile areas of river flat located between State Highway 1 and the Tongariro River. The Downs brothers, Rangikamutua and Whakapumautanga, pointed us to exchanges of correspondence with the Native Minister in 1925 and 1926, Ms Paula Berghan and Dr Terry Hearn gave us specific evidence drawn from the files, and Dr Anderson helped us to set it in context.<sup>189</sup> The Crown did not include the National Trout Hatchery in its consideration of particular public works takings.<sup>190</sup> From the available evidence, we conclude that consultation was minimal and one sided. The Crown wanted the land and the land was taken. Morehu Downs and Nohopapa Whataiwi objected in writing but to no avail.

(e) *Findings on consultation, consent, and agreed prices:* In *He Maunga Rongo*, the central North Island Tribunal found that there are clear breaches of equity, active protection, partnership and reciprocity in the legislation that allowed the Crown to take land.<sup>191</sup> We endorse those findings. Neither full consultation nor informed consent for road takings were required under the 1882 and 1894 Acts and the takings of lands for roads in the National Park inquiry district between 1895 and 1925 took place under that regime. There is insufficient evidence for us to tell if these breaches were mitigated by consultation on the ground in the National Park inquiry district. Māori suffered because land was taken without compensation and because Māori landowners were not given the level of protection accorded to Pākehā landowners. On the evidence before us, we find that there was minimal consultation, and few if any instances of informed consent for road takings between 1895 and 1925.

There was no consultation with the Māori landowners when the Crown took lands near Waiōuru in 1942 for defence purposes. The taking of the Rangipō–Waiū and Rangipō North lands on 13 July 1942 was a clear breach of the plain meaning of article 2 of the Treaty. The Native Department created an opportunity for consultation at Tokaanu, but the other agencies of the Crown did not take it up. The failure of the Crown, in particular the army, to

meet with Māori, face-to-face, before it took the Rangipō lands is a poignant one. Māori from the area were supporting the Crown's war effort in North Africa, the Pacific, and elsewhere – often losing their lives in the process – but were not accorded the respect of being consulted over the taking of their land for defence purposes. In our view, this was a breach of the principle of partnership.

We are unable to make a finding about consultation and informed consent when the Crown took Taurewa 4 lands to establish the Whakapapa Scenic Reserve.

There was neither full consultation nor informed consent when lands were taken for the trout hatchery at Kōwhai Point. The owners were dispossessed: they lost their lands and they lost the opportunity to participate in a venture of national importance.

**(2) Did the Crown seek to ensure that no other land was suitable?**

(a) *Discussion:* In the situations reported above, where proper consultation with Māori was lacking, it is difficult to see how the Crown could have had any understanding of whether the particular portions of land taken for public works held special significance for those Māori affected. The legislation did give a measure of protection to lands occupied by native villages, cultivations, and burial grounds in the 1800s but was not explicit about wāhi tapu and urupā until well into the 1900s. That said, the historical records are meagre and the evidence brought to us is slim. For the most part, we have no evidence about the actions of land surveyors and other Crown agents on the ground. We would have liked to know much more about a range of matters:

- ▶ the extent to which land surveyors met with Māori and questioned them about their resource uses, their economic development aspirations, and their sacred places deserving of protection;
- ▶ the ways in which those surveyors understood and took into account 'native cultivations' and 'burial grounds'; and
- ▶ the ways in which the surveyors considered the economic, subsistence, and cultural implications of each taking.

The answers are largely beyond our reach, but they go to the nitty gritty of the Treaty relationship and the Treaty promises.

There are five situations where we have been given small but important windows of insight.

- ▶ There is evidence of discontent, contained in the letter written by Haitana and 12 others in 1912, at the takings of Waimarino land for the North Island main trunk railway. Issues to do with the building of the railway, and the selection of the general line that it would take, will be considered by the Te Rohe Pōtae inquiry. But this general line had to be translated into local engineering – no small task in this rugged terrain – and specific local takings. There is no evidence of meetings held, options considered, or adjustments made as a result. There is no evidence of consultation preceding the detailed local surveys at other places along the line. There is no evidence of specific protection given to wāhi tapu in Waimarino 4 B2 or elsewhere.
- ▶ The Waimarino defence takings included a large area of Māori land. Again, we have the evidence that Haitana Te Kaihi and 12 others sought face to face consultation. All we know for certain is that the defence lands were taken before any such consultations were held.
- ▶ The Rangipō–Waiū and Rangipō North lands taken in 1942 for army purposes contain wāhi tapu. There is no evidence that the Crown gave any consideration of ways in which wāhi tapu could be protected. Nor is there evidence that alternative lands were considered. We do know that the opportunity for face to face consultation between owners and Army was not taken up.
- ▶ The Whakapapa Scenic Reserve contains forests and river. We have no evidence that Māori values or aspirations were taken into account, or that access to rongōa or urupā in the reserve, provided for under the scenic reserves legislation, was agreed with the customary users of these lands.
- ▶ At Kōwhai Point, the Crown was made forcefully aware of the native cultivations and the development

aspirations of the Downs whānau. There were other lands, privately owned and adjacent to the Tongariro river, which could have been taken for the trout hatchery purposes.<sup>192</sup> There is no evidence that alternative takings were either contemplated or considered. There is evidence, in the wider files, of the Crown's refusal to listen to or recognise the development aspirations of the Downs whānau.<sup>193</sup>

(b) *Finding on consideration of other lands:* We have insufficient evidence to reach a firm finding on Treaty breaches in relation to the Crown's consideration of other lands for roads, specific rail takings, scenic reserves, and defence takings. In at least two cases there were written objections, but there is no evidence that the Crown responded by considering alternative lands. The evidence is, however, insufficient to make a general finding.

### (3) *Did the Crown consider whether Māori owners retained sufficient land for their use?*

(a) *Discussion:* There are two strands to this question. Sufficiency of lands is not only important from the perspective of immediate owners who have occupied and cultivated lands within the inquiry district. It is also a matter of importance to the wider kin group who have customary associations with the land and resources concerned. We deal first with the claims brought by the immediate owners.

This question of loss of lands by immediate owners is most important in the case of Tāwhai North, Mahuia B, and Waimarino 4 lands, taken for the Waimarino army grounds in 1911 and 1913, and the Rangipō–Waiū and Rangipō North lands taken in 1942 for army purposes near Waiōuru. It is also important for the Downs whānau who lost a small but fertile area for the trout hatchery.

In situations where there was minimal consultation and limited public record, as is the case with the defence takings, we find this a difficult question to address. Ms Berghan, working from Native Land Court records, provides us with a bare overview of the takings.<sup>194</sup>

Tāwhai North was a 3,000-acre land block retained by certain Ngāti Tūwharetoa hapū when the very large

Taupōnuiātia block was sold and surveyed in the 1880s. The totality of Tāwhai North was taken for defence purposes in 1913.<sup>195</sup> The situation for Mahuia B was similar. A 2000 acre Mahuia block was retained by Ngāti Tūwharetoa hapū when the large Taupōnuiātia block was sold. Pātena Hokopakeke presented evidence for ‘Ngati Hikairo, N’Tu . . . [and] Ngati Waewae’ in 1886: ‘[m]y ancestors lived on this block and we their descendants have continued to do so up to the present time.’<sup>196</sup> The Mahuia block was partitioned in 1899 at the request of the Crown: Mahuia A (1,455 acres, or 589 hectares) went to the Crown, and Mahuia B (545 acres, or 220.6 hectares) remained with the 12 designated Mahuia owners. In March 1913, the whole of Mahuia B was taken for defence purposes.<sup>197</sup>

The Waimarino 4 taking was more complex. This block of 3,450 acres was retained, when the large Waimarino purchase was defined by the court, by 15 owners from the hapū of Ngāti Maringi, Ngāti Kahukurapango, Ngāti Atamira, and Ngāti Ruakōpiri.<sup>198</sup> A number of partitions were subsequently made and land was taken for public works. In 1911 the Crown took 1,417 acres (573.9 hectares) from Waimarino 4A1, Waimarino 4A5, and Waimarino 4B2 for defence purposes. Not all of this was required and 367 acres (almost 150 hectares) taken from Waimarino 4A1 and Waimarino 4A5 was revoked. It is not clear if the owners were aware at the time (a) that 1,417 acres of their land were taken or (b) that around a quarter of that area was subsequently spared.

Three decades later, when the nation was embroiled in the Second World War and the army developed Waiōuru as a major training base for artillery and armoured forces, the Crown took 2,560 more acres: 749 acres (303.3 hectares) from Rangipō North 4C, and 1,811 acres (733.5 hectares) from Rangipō–Waiū. There were overlapping ownerships involved, including: Ngāti Tūwharetoa, Ngāti Tama, Ngāti Rangitukia, and Ngāti Waewae.<sup>199</sup> We have noted above that no meeting was held with owners and we have seen no documentation to indicate that the Crown was aware of, or took into account, the circumstances of any of the owners, the extent to which they used or valued the lands that were taken, or asked if they had sufficient lands elsewhere.

We have insufficient evidence, in relation to defence takings, to confirm whether the Crown paid any heed to whether the owners had sufficient other lands for their needs.

The area of land taken for the Tongariro Trout Hatchery was very small from a Crown perspective but, given its road and riverside location and its fertility, very valuable from a Downs whānau perspective. The question was brought firmly to the Crown’s attention in 1925 and again in 1926 when Mr Downs and Mr Whataiwi each wrote to the Native Minister pointing out that the land was a cultivation, and was wanted for a papakāinga. We have no record of the Crown’s deliberations or the reason why the legal right and the Treaty right of the Māori owners were declined. We do know that there were other lands in the vicinity, privately owned by other parties, which could have been used to reduce the area of Māori land taken for the trout hatchery.

Sufficiency of lands is also important from the perspective of downriver whanaunga in the habit of travelling upriver each summer to exercise customary rights. The clearing of Māori from National Park lands has not only displaced those who were resident: it has also entailed the loss of property rights, related to the seasonal cycle, which were at the heart of society and culture around the maunga and which bound together upriver and downriver Māori.

Much of the land had been held under complex overlapping rights for supporting annual seasonal customary harvest and cultivation cycles with seasonally occupied kāinga (some with resident caretakers) in a great many locations connected by complex track systems.<sup>200</sup> The loss of those rights, the exercise of which would have occupied all but the climatically harsh winter months, affected diet, health, standing, culture, society, and life itself as much as the loss of any settled land under cultivation, in a way that the Crown did not comprehend, chose to ignore, or refused to recognise. To cite but one example, the development by Māori of sophisticated rights in relation to bird snaring areas – where, for instance, named miro trees would be allocated for the snaring of kererū – took property rights, literally, to new heights when compared with

anything brought to this country with the English common law. A single tree might be subject to multiple use rights, with different groups all agreeing on who should be allowed to set snares in its branches.<sup>201</sup> Given that the fruit- or berry-bearing life of the allocated trees could be many hundreds of years and nourish dozens of human generations, these were substantial rights indeed. It is intriguing to compare the capacity of one tree to nourish many Māori in terms of fruit, bird protein, and fat, yet its felling would make way for an area of pasture incapable of supporting even one sheep. Which, one might ask, was the more sophisticated, productive, and sustainable culture?

(b) *Finding on sufficiency of other lands*: The record is sparse. We have insufficient evidence in most instances to determine whether or not the Crown considered the sufficiency of land left when lands were taken for public works. We do know that the legislation allowed the Crown to take the land without asking this question. In the case of the land taken at Kōwhai Point for the trout hatchery we have a record of the letters written, and the questions asked, by Mr Downs and Mr Whataiwi in 1925 and 1926. We find, in this instance, that the Crown was asked for active protection and failed to provide it.

We have drawn attention to the richness of seasonal resources in this district, to the customary harvests, and the exercise of rights by downriver whanaunga. We have no evidence that the Crown contemplated these relationships when it created legislation relating to land sales, or took them into account when it considered sufficiency of land left for Māori owners. We underline the fundamental importance of customary uses, but we lack the detailed evidence needed to establish a Treaty breach. Suffice to say that the Crown provided little support for Māori wishing to continue customary uses alongside employment in the cash economy.

**(4) Did the Crown explore other mechanisms for acquiring Māori land such as leases, licences, or easements?**

(a) *Discussion*: Previous Waitangi Tribunal reports, beginning with *Te Maunga Railways*, *Ngai Tahu Ancillary Claims*, and *Turangi Township*, have pointed to alternatives

such as leasing, licences, and easements, which will allow the Crown to proceed with public works without taking title to land. The Crown concurs with this position<sup>202</sup> but argues that this is a new realisation: in the historical context, the Crown believed that ownership of the land was a prerequisite for Crown expenditure on public works. The assumption that ownership was required has worked against the best interests of Māori and a positive Crown-Māori relationship. *Tauranga Moana* explains:

The Crown created a regime which favoured taking the freehold title for public works. Placing its own interests and convenience to the fore, the Crown did not consider the consequences of this for Māori, nor did it attempt to minimise the impact of takings for landowners. In many cases, if compulsory acquisition was absolutely unavoidable, then leasehold or other types of lesser interests would have been a more acceptable treatment of Māori land than taking the freehold.<sup>203</sup>

Failure to consult with Māori when lands were taken, meant that the Crown undervalued the deep attachment that Māori have with their lands and the importance of an ongoing relationship with those lands. *Tauranga Moana* adds that easements or leases could recognise this continuing attachment, provide a rental income, and make it easier to return lands which were no longer needed. *Wairarapa ki Tararua* points to other arrangements that can be explored, including an exchange of land for Māori land needed for public purposes and, in the modern context, the creation of public-private joint ventures with land as one component of the Māori contribution.<sup>204</sup>

Leaseholds, or temporary occupation licences, would have been particularly appropriate to meet the Crown's defence needs at Waimarino in the 1910s, and near Waiōuru in the 1940s. In neither case were the lands required for permanent base-camp facilities: rather they were needed for seasonal camps or occasional manoeuvres over large sweeps of territory. In the Waimarino case, the army gave up title to land when the ownership was transferred to the Tongariro National Park in 1922. The needs of the army were recognised and restored when the

National Park Amendment Act was passed in 1927 and allowed the army to continue its use of the transferred lands: here, at least, ownership was not seen as a prerequisite for military use.<sup>205</sup> In the 1940s, when Rangipō North and Rangipō–Waiū lands were taken, the Crown could have used the lands temporarily under provisions set out in section 3(2)(b) and (c) of the Emergency Regulations Act 1939.<sup>206</sup> This alternative was considered but, for reasons which were not reported, the Crown decided against it and took the title to the lands.<sup>207</sup>

(b) *Finding on other mechanisms*: leases, licences, or easements: We find that the Crown gave no serious consideration of other mechanisms for Māori to retain ownership of land used for public works between the 1890s and the 1940s, and this was a breach of its duty of active protection.<sup>208</sup> We do, however, recognise that this was the normal practice of the time in the received British tradition.

**(5) Did the Crown pay compensation in a manner that was fair, Treaty compliant, and timely?**

(a) *Discussion*: We are faced with a paucity of records in relation to takings for roads. The primary grievance in relation to road takings has been addressed above: Māori land was taken for roads, without consent and in breach of article 2 of the Treaty. Taking without compensation adds to that injustice. Some 20 blocks of land were taken for roading between 1895 and 1925 and only one of these was paid for. The 5 per cent provisions were removed in 1935 and a further 47 blocks were taken. All but two of these are shown as ‘compensated’ in the land history alienation database, but we have used the ‘compensation payable’ terminology in tables 10.1 and 10.2. We are unable to ascertain the amount of compensation or if payments were made in a timely manner. We make no additional findings on roads.

The situation with respect to railway takings is confused. Claimants are adamant that the Crown failed to fulfil its promise of paying compensation for lands taken. The record simply shows that two portions, with a total area of 55.8 hectares, were taken from Raetihi 4B in 1910 and 1911 and some compensation was paid. We have no

details as to the portions compensated and uncompensated, the amount of compensation paid, or the timeliness of the payments. These matters will be explored in depth in the pending Rohe Pōtae hearings. We make no further findings on railway takings.

Compensation for lands taken for the Waimarino defence facility was assessed by the Native Land Court. The owners of Waimarino 4B2 were awarded £539 for 1,417 acres (573.9 hectares) in 1912; those for Tāwhai North and Mahuia B were awarded £1,302 for 1,210 acres (490 hectares) and £419 for 334 acres (135.3 hectares) respectively in 1914. We will return to the adequacy of compensation below. Payments were delayed in at least two of the three cases: the money for Tāwhai North owners sat in the Public Trustee accounts from 1914 until 1924 and some of the Mahuia B owners had to wait until 1943 (see section 10.5.1).

The compensation hearings for the Rangipō North 6C and Rangipō–Waiū lands taken to expand the Waiōuru army facilities in the 1940s highlight the deficiencies of the valuation provisions used to determine compensation. The court sat in Whanganui in June 1943, without representation of the owners, to determine compensation for these lands.<sup>209</sup> Government valuations of £442 for Rangipō North and £127 for Rangipō–Waiū were disregarded by the Crown when it produced a special valuation of £5 for each block.<sup>210</sup> The district valuer presenting the special valuation argued that the lands had no commercial value. The court was not satisfied and asked the Crown to reconsider its offer. The Crown came back with a new offer of £250 for the two blocks and indicated that the survey liens would be £156. The court was willing to endorse the £250 provided the Crown agreed to pay the survey costs. The record from then on is sparse: the hearing was not reconvened, but the Crown did cancel the survey liens.

With respect to the matter of compensation payments, we have no record of payments to the owners of the Rangipō 6C and Rangipō–Waiū 1 lands. It is clear to us, however, that the process by which compensation was determined in the 1940s was narrowly conceived and the sum of £250 (with or without survey deductions of £156) was woefully inadequate for an area of some 25 square kilometres. The sole focus of attention on the part of the

valuation officials was on the potential of the land for farming or for forestry. Neither the valuation legislation current in the 1940s, nor the valuation officials' investigation, considered the cultural or subsistence value of the lands for tangata whenua, or the operational value of the lands for the army. We are considering a vast area of land, unsuitable for farming but very useful for army purposes and with substantial cultural, spiritual, and customary value for the Māori owners. The claimants have been deprived of the use of their land and they have not received recompense that is in any way commensurate with the value of the lands.

The Whakapapa Scenic Reserve was an area of 200 acres (81 hectares), taken out of Taurewa 4 in July 1911. It was rugged and forest covered, unsuitable for farming but containing millable timber. Scenic reserve status meant that the forest could not be cut, thus protecting the scenery, but significantly reducing the value of the timber. The compensation hearings were convened promptly. A special government valuation of £687 was put before the court. The absence of the Crown agent Bold precluded either questions or negotiation and left the owners in a 'take it or leave it' situation. The owners accepted the Crown offer, under duress, but this was not a just outcome.

In 1971 and 1974, payments were made for Ōkahukura lands taken for the metal pits and quarry, in relation to work on the TPD in 1968 and 1969.<sup>211</sup> They included, for instance, compensation of \$3,161.44 for a 31.36-hectare metal pit in Ōkahukura 2, 2B1A, and 2B2. These payments covered the current market value of the land, together with interest from the date of occupation to the date of payment.

Compensation for materials taken from these metal pits between the dates of entry and the dates when the land was taken and transferred to the Crown is a separate issue. In February 1967, the Māori Affairs Department, acting for the Māori Trustee, asked the MOW to provide details of metal being taken.<sup>212</sup> No details were provided and the Māori Trustee did not pursue the matter further. Pat Hura, acting for the trustees for Rangipō North 6c, did: he took the matter to the Supreme Court in Whanganui in 1978 and defended it against the Crown in the Court

of Appeal in 1979. The Crown argued that the maximum value for metal taken should not exceed the value of the land. The Court of Appeal determined otherwise: reasonable compensation should be paid for the metal taken and the ceiling does not apply.<sup>213</sup> We are unable to determine if and when compensation was paid for the metal taken from this and other metal pits used for TPD construction since the district office file could not be located when Mr Cleaver did his research in 2004.<sup>214</sup> We return to the Ōtūkou quarry and metal pit in a case study later in the chapter.

We complete this question with consideration of valuation issues which span all of the lands taken for public works in the National Park inquiry district.

We are of the firm view that the valuations provided by the government valuation system, and those brought to the land court or the Compensation Court, represent an inadequate assessment of value in that they were based only on a particular range of considerations. Under the legislative regimes of the day there was no provision for Māori values to be taken into account in setting land value or compensation.

These matters have been traversed in some depth by the Tauranga Moana and the Wairarapa Tribunals. Both underscore that valuation methodologies, as they have developed over time and as they are currently applied, have regard only to the current market value of the land in question. Value for compensation purposes in areas such as the Wairarapa or the National Park has thus been assessed entirely as value for agricultural or pastoral farming. *Wairarapa ki Tararua* continues:

No regard was paid to the spiritual or emotional value of the land to its owners; nor to the role that the land played in cultural practices such as hunting and gathering; nor to whether the whānau had other land of comparable or any value; nor to whether the land to be acquired was the only land suitable and should therefore attract a premium . . .<sup>215</sup>

*Wairarapa ki Tararua* also asks if the land in question has unique potential for other purposes, contemplated but not yet initiated. In the National Park context – where



defence, hydro-electric power development, recreation, and tourism are all important – valuation should also consider portions of land from these perspectives. And if the land has a national importance, sufficient for it to be taken under public works legislation, this importance should be taken into account in settling the value of the land for compensation purposes.

(b) *Findings on compensation*: Crown provisions for compensation for lands taken for public works in this district fell short in Treaty terms. The Crown, in assessing compensation, did not recognise the spiritual importance of land from a Māori perspective; did not take into account the value of the lands for cultural and subsistence purposes; nor did it consider whether or not the owners had others lands. More than this, there were some situations where the owners of land received no compensation, and other situations where compensation was awarded but long delayed. In such cases the owners were disadvantaged in two ways: there was depreciation of the dollar value; and there were lost opportunity costs. We will return to the matter of compensation for the Ōtūkou lands in the case study reported below.

We turn now to the second of our key questions for this chapter: What were the Crown's obligations under the Treaty if and when lands taken were no longer required?

#### 10.5.4 What were the Crown's obligations when land taken for public works was no longer required?

Again, we break the larger question into more specific questions. The first pair of questions, taken from the statement of issues, are general and can be applied to all public works takings in the National Park inquiry district; the second pair are specific to the Waimarino defence lands that were taken in the 1910s and then became surplus to army needs:

- ▶ Did the Crown have an obligation to 'offer-back' land taken for public works once it was no longer required, or no longer required for the original purpose for which the land had been taken? If so, was the Crown obliged to return this land at the least cost and inconvenience to the Māori owners?<sup>216</sup>

- ▶ Was land taken for defence purposes offered back to Māori when it was no longer required for defence purposes? If it was not offered back, did the Crown consult with Māori before making this decision?<sup>217</sup>

We have not included a parallel question for prisons. We have found above that the Rangipō North 2 lands were sold to the Crown some decades in advance of the establishment of the prisons (see section 10.5.1). Important claims have been made about the manner in which lands were taken for Hautu Prison, and to link Hautu and Rangipō Prisons. The most detailed and substantial evidence is that provided by Robert Severne and Arthur Parish, both of whom had career-long experience in the larger prison service as well as at the Tongariro prisons.<sup>218</sup> These claims open up questions about the return of lands which are no longer used for the core business of prisons. The evidence has been provided, the case has been made and needs to be answered, but the Hautu lands which are at the core of these claims are outside of our inquiry district.

#### (1) *Did the Crown have an obligation to 'offer-back' land and, if so, on what terms?*

English common law and early New Zealand legislation for public works provided for a careful balance between the public good and the protection of the rights of private landowners.<sup>219</sup> Land was never to be taken lightly and, when it was taken, there were rights to be acknowledged and safeguards to be put in place. The 'offer-back' provision was one of the cornerstones of these safeguards: if the public purpose changed, or the initial need was exhausted, the original owner should have the opportunity to purchase it back.<sup>220</sup>

Māori, with their rights clearly set out in article 3, were entitled to these 'offer-back' safeguards. But more than this, Māori have article 2 rights and the relationship of Māori and land goes to the core of Māori identity and the heart of the Treaty relationship. *Wairarapa ki Tararua* sets it out clearly:

taking Māori land for public works is an extreme act of Government authority. Not only does it override the property



**The Hautū Prison Farm near Tūrangi. Hautū was one of two prisons in the region, the other being Rangipō.**

rights of Māori as citizens, but it also tramples on their whakapapa connection to ancestral land. If the land is not restored to them, the whakapapa connection to that land is effectively lost.<sup>221</sup>

Māori land which is taken compulsorily does not cease to be ancestral land to which hapū whakapapa. It is, and continues to be, a taonga tuku iho – an inherited treasure – as confirmed in the preamble of Te Ture Whenua Māori Act 1993. A more Treaty consistent view is that if ancestral Māori land must still be taken, the practical day to day exercise of rangatiratanga may be suspended, put in abeyance, set aside or suppressed, but only for the duration of the public work. At that point the land should be returned, because there is no longer any reason why the rangatiratanga of the ancestral owners ought to be fettered or constrained. The situation can be compared to the bracken fern: when a whare is erected, the bracken

disappears; when the whare is removed and the rain can again fall on the ground, the fronds flourish once more.

There are high level obligations for the Crown to restore Māori land, taken for a public purpose but no longer used for that purpose, to the original owners or their successors. When Māori land has been made available in the national interest for public works, the relationship between tangata whenua and their lands has not been severed. There is a double onus on the Crown: to make a good faith offer to return surplus land to Māori ownership at the earliest opportunity; and to return this land at the least cost and inconvenience, to the former owners.

Offer-back provisions, in various forms, have been included in public works legislation from 1862 to 1981. There have been times when the offer-back provisions for Māori land have fallen short of those for general land, and some provisions have allowed government authorities to change the use of land or set aside the offer-back

**Ngaiterangi Smallman on Offer-back Rights**

Ngaiterangi Smallman is a trustee of Ngāti Hikairo ki Tongariro, the chairperson of the Ōtūkou Marae, the secretary of the Ōtūkou Farm Trust, and the kaiako at Te Kura o Hirangi. He firmly rejects the idea that offer-back rights should expire:

*The Treaty does not expire,  
the land does not expire,  
nor the generations of Ngāti Hikairo that are here today.  
There can be no valid reason why the offer back rights  
should expire.<sup>1</sup>*

requirement. The Public Works Act 1928, for example, contained provision for offer-back in section 35 but added a further provision that allowed the Crown to circumvent this by declaring the surplus land ‘to be Crown land.’<sup>222</sup> This change-of-use provision, *Tauranga Moana* found (building on *Turangi Township* and the Crown apology contained in the Ngāti Tūrangitukua Claims Settlement Act 1999), was convenient for the Crown but did not take into account the interests of the Native owners.<sup>223</sup>

*Tauranga Moana* has directed attention to the Native Purposes Act 1943 and the Māori Affairs Act 1953 which enabled taking authorities, if it was ‘deemed expedient’, to apply to the Māori Land Court to have surplus land, taken from Māori, re-vested in Māori ownership.<sup>224</sup> The *Tauranga Moana* Tribunal recognised the importance of the legislation but was not able to assess its effectiveness in practice. The Public Works Act 1981 consolidates and expands on previous legislation. The offer-back provisions in sections 40, 41, and 42 are more detailed than before but they need not be applied if the public work has substantially changed the character of the land or if return is ‘impracticable, unreasonable or unfair.’<sup>225</sup> An important 1982 amendment to the 1981 Act made it possible for the Crown to return Māori land at less than market

value. This was a very positive move in that it made the re-acquisition of ancestral land more affordable for Māori. Changes in the legislative provisions were beginning to accumulate, but the impact of these from the perspective of Māori who had lost land was not easy to determine in the *Tauranga Moana* context. Neither is it easy to determine in the National Park context.

The Waitangi Tribunal process, from the 1980s onwards, has generated new opportunities for interaction between Māori and Crown at a range of levels and in a variety of contexts. Formal findings in Waitangi Tribunal reports and *kanohi ki te kanohi* settlement negotiations have had their impacts on Crown policies; and research carried out by and for the Crown and claimants, and by Tribunal staff, has added to the depth of understanding.

Recognition of Treaty of Waitangi responsibilities is also becoming the norm within government agencies. The *Wairarapa ki Tararua* hearings and report have given us important information about developments and practices within Land Information New Zealand. For instance, the department was established in 1996 to provide land information and to manage Crown-owned properties.<sup>226</sup> One of its roles is to set standards and guidelines for the acquisition, administration, and disposal of Crown owned lands which include land gifted by Māori and land taken from Māori for public works.<sup>227</sup> In 1999 and 2000, the department prepared discussion papers and facilitated a public review of the Public Works Act 1981.<sup>228</sup> These materials provided important resources for the *Wairarapa ki Tararua* Tribunal as it worked through the issues and formulated its own recommendations and report in 2010.

*Wairarapa ki Tararua* provides a set of detailed suggestions for legislative changes for the public works regime in relation to Māori land. Its more specific recommendations are prefaced by a primary recommendation that ‘the Public Works Act 1981 be amended to provide that it should be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.’<sup>229</sup>

The recommendations which address the offer-back provisions are specific and detailed (table 13). They bring together common law, Treaty jurisprudence, and the practical experience which has accumulated in the last three

**Wairarapa ki Tararua Recommendations for Changes to the Offer-back Provisions in the Public Works Act 1981**

In its report, the Wairarapa ki Tararua Tribunal made the following recommendations on changes to the offer-back provisions in part III of the Public Works Act 1981:

3. [We] recommend that part III of the Public Works Act 1981 be amended to require the Crown or local authority, as the case may be, to:
  - (a) Consult with former Māori owners or their successors before deciding not to offer surplus land back to such owners, and before putting any land taken for a public work to any other purpose.
  - (b) Offer to return surplus land to Māori ownership at the earliest possible opportunity with the least cost and inconvenience to the former Māori owners.
4. In determining the price at which the land is offered back to the former Māori owners, we recommend that the Crown or local authority:
  - (a) Share with such owners the increased value in the land arising from the use and development of their land.
  - (b) Have regard to the means of such former Māori owners.
  - (c) Have regard to the circumstances surrounding the compulsory acquisition of such land.
  - (d) Have regard to the special circumstances of multiple Māori owners and seek to accommodate such circumstances.
5. If for any reason the former Māori owners are unable or unwilling to take up the offer back, we recommend that the Crown or local authority is to offer the land to the wider hapū or tribal group to which the former Māori owners belong.
6. In order to facilitate the process of offer-back, we recommend the amendment of section 134 of the Te Ture Whenua Maori Act 1993 . . . to enable the owners from whom the land was originally taken or their descendants to apply to the [Māori Land] Court for the return of such land.
7. We recommend that section 342 of, and schedule 10 to, the Local Government Act 1974 should be amended or repealed to prevent local bodies from avoiding the requirements of the Public Works Act 1981 to offer back lands to their former owners once they are no longer required for public works.<sup>1</sup>
  - (e) Have regard to the adequacy of the compensation paid when the land was compulsorily acquired, in the light of Treaty principle.
  - (f) Have regard to whether the Crown should pay compensation to Māori when the land is returned. The quantum of any such compensation is to be assessed on the basis of a fair return to Māori for the use of the land by the Crown, and the length of time the land has been used for any public purpose.

decades. They do not dwell at length on past grievances but look forward to a better future.

There is a convergence between the submissions made to the Land Information New Zealand review, the *Wairarapa ki Tararua Report* recommendations set out above, and the closing submissions made by the Crown to this Tribunal.<sup>230</sup>

We now turn to the second pair of questions: Was land taken for defence purposes offered back to Māori when

it was no longer required for defence purposes? If it was not offered back, did the Crown consult with Māori before making this decision?

**(2) Was land taken for defence purposes offered back and, if not, did the Crown consult with Māori?**

We have already set out the sequence of events in relation to the taking and non-return of Waimarino defence lands. The story of the Waimarino 4B2 lands is relatively

straightforward; that for Mahuia B and Tāwhai North has more twists and turns.

We have already noted the Crown's concession about the Waimarino 4B2 lands – namely that it took them without consultation or agreement, and that this was a breach of article 2.

The whakapapa connections between the owners of Waimarino 4B2 and their lands were not severed by the Treaty breach which removed them from their lands. Neither did the Crown's duty of active protection end at this point. This duty was, moreover, reinforced by the offer-back provisions of section 30 of the Public Works Act 1909.

By the end of the First World War, circumstances had changed. The Waimarino lands were no longer needed for defence and the Crown was encouraged by conservation groups to include them in the National Park. However, the Crown failed to consult with the former owners of Waimarino 4B2 at the point where this change in use was contemplated. Had consultation occurred and consent been granted, the Crown would have been protected from a further Treaty breach. This did not happen and the Crown thus failed in its duty of active protection when it passed the Tongariro National Park Act 1922 and unilaterally included the Waimarino 4B2 defence lands in the park.

The Mahuia B and Tāwhai North lands became similarly surplus to defence requirements, and again the Crown failed to consult in the 1920s when these were included in the Tongariro National Park. This was a further failure in the duty of active protection.

Then the ecological value of these lands was reassessed in the 1930s. The Crown contemplated their exclusion from the park and their designation as Crown lands on the grounds that they were better suited for forestry and farming. Now that the lands were also surplus to park requirements, the onus was again on the Crown to consult with the former owners, with a view to returning the land or obtaining their consent for the changes in use and title. Consultation did not happen, and the Crown once more breached its duty of active protection when the lands were taken out of the park, used commercially, and

eventually found their way into Taurewa Station owned by LandCorp.

In 2000, the Crown prepared to sell Taurewa station. Occupation and protest forced the Crown to consult. The Crown consulted, agreed not to proceed with the sale, and thus stopped short of a further Treaty breach.

### **(3) Findings on 'offer-back' of Waimarino defence lands**

There have been breaches of active protection in relation to the Waimarino 4B2, Mahuia B, and Taurewa North lands. Lands which were taken for defence purposes were not returned when they became surplus to requirements. Had consultation taken place when the defence needs changed, these breaches could have been averted. Some of the lands taken for Waimarino defence facilities are now in Tongariro National Park; some, part of Taurewa Station, are currently held by LandCorp.

### **(4) Findings on 'offer-back' of Waiōuru defence lands**

With respect to the current use of lands by the Army in the area near to Waiōuru Military Camp, and the return of lands no longer required, the evidence before us is insufficient for us to make a finding that lands taken are now surplus to requirements. We will, however, return to the Rangipō North 4C and Rangipō–Waiū 1B lands in our recommendations.

### **(5) Recommendations in relation to public works**

Two things are clearly evident. First, the record of the Crown in relation to public works in National Park has not been a happy one. At no point has there been full consultation: consultation in relation to roads has been minimal and there was no full consultation and informed consent in relation to defence takings, scenic reserves, or the Tongariro trout hatchery. The evidence is meagre but we have found no substantial indication that the Crown, in taking Māori land for public works, considered other lands or (for most of the period under scrutiny) other forms of tenure. There were, in situations other than roads before 1935, provisions for compensation but the valuations were heavily constrained and, in some cases, long delayed.

Secondly, the Crown now has a wide range of conceptual and information resources available to it, and an apparent intent to better recognise the relationship between Māori and their lands and to act as a responsible Treaty partner in relation to the taking of lands for public purposes. The conceptual and information resources available to the Crown include the findings of Waitangi Tribunal reports – in particular *He Maunga Rongo*, *Tauranga Moana*, and *Wairarapa ki Tararua* – and the discussion papers, submissions, and summary of submissions, to the Crown's review of the Public Works Act 1981.<sup>231</sup> The intentions of the Crown in relation to public works takings have been well set out in submissions brought to this Tribunal (see sections 10.2 to 10.4).<sup>232</sup>

Our primary recommendation is that the Crown proceed with new legislation which updates and replaces the Public Works Act 1981 and expands the offer back provisions contained in section 134 of Te Ture Whenua Māori Act 1993 to enable Māori owners to bring an application to the court under this section. We draw attention, in particular, to the recommendations of the *Wairarapa ki Tararua Report* and table 10.3.

Beyond that primary and general recommendation there are specific grievances to be recognised and past injustices to be remedied in respect of ngā iwi o te kāhui maunga. Most of these will be part of the larger settlement negotiated between claimants and Crown. There are five that deserve specific comment:

- ▶ Lands required for defence purposes at Waimarino in the lead up to the First World War belonged to the owners of Waimarino 4B2, Mahuia B, and Tāwhai North (and doubtless had customary associations for a much wider number of people). These lands became surplus to army needs in the 1920s but were not offered back to the beneficiary owners. Some became part of the Tongariro National Park, some became state forests, and some became Taurewa Station, currently held by LandCorp. The matter of those now contained in the Tongariro National Park is discussed further in chapter 11. The remaining lands in Crown ownership should be returned to the beneficial owners.

- ▶ Large areas of land were taken from the Waimanu and Ōkahukura 4 blocks for the creation of the storage lakes, Te Whaiiau and Ōtamangākau.<sup>233</sup> Land previously purchased by the Crown was used for Lake Moawhango.<sup>234</sup> These actions can be remedied by the creation of rights to Lake Te Whaiiau and Lake Ōtamangākau which are akin to rights to Lake Rotoaira. This request was made at the point where the lakes were created.
- ▶ Lands taken for defence purposes during the Second World War. We have directed attention to the manner in which lands were taken from the owners of Rangipō–Waiū 1B and Rangipō North 6C and we have alluded to the contributions of the 28th Māori Battalion. There is a need to restore relationships between the army and ngā iwi o te kāhui maunga. The army currently owns these lands and uses them for armoured vehicle manoeuvres and artillery ranges. These uses may continue under lease or covenant, but the ownership of the lands can be returned.
- ▶ We have no specific recommendations in relation to lands at Kōwhai Point. The Tongariro National Trout Centre has national importance and the revision of the Public Works Act should leave the Downs whānau secure in the ownership of lands adjacent to the hatchery and the tourist facility.
- ▶ The matter of the Ōtūkou quarry, shingle pit, and school site is considered next.

#### 10.5.5 The Ōtūkou quarry: case study

At this point in the discussion we shift the focus to a specific landscape feature and a relatively small block of land. Huimako Bluff and the associated Ōtūkou quarry and metal pit have been a major source of grievance for the Ngāti Hikairo claimants at Ōtūkou Marae. The grievance is so profound, and the evidence is so compelling, that we have separated it out from the rest of the chapter and present it in the form of a case study.

##### (1) *The events of late 1964*

On 20 September 1964, at a meeting at Tokaanu, the Crown first revealed its intention to quarry rock at



Ōtūkou native settlement, 1926. The practice of carrying out major quarrying in Ōtūkou for the Tongariro power development led to severe disruption in this peaceful village.

Ōtūkou, some 30 kilometres away to the south, over the Te Ponanga Saddle. Notice for this Tokaanu meeting had apparently been confined to some 53 members of the Ngāti Tūrangitukua hapū.<sup>235</sup> The rock in question was needed for roading work associated with the TPD, and the quarrying operation was to be located at Huimako Bluff, behind Ōtūkou Marae and close to the homes of the largely Ngāti Hikairo families living there.

Some information about the intended operation was given at the meeting, but the 20 pages of MOW-generated minutes make clear that the bulk of the meeting was taken up with ‘advising progress on the Tongariro Hydro Scheme and particularly . . . the planning of the Turangi Township.’<sup>236</sup> The focus on the township was perhaps why notice had been sent only to owners of the land that would be affected by the new settlement.

Roading was discussed near the beginning of the meeting. Referring to the area ‘around Roto Aira and up to the Chateau’, TPD project engineer, A W Gibson, commented that

There will be no plans in detail in advance of works starting. Little or none of this area of country is actually occupied . . . He would ask them [Ngāti Tūwharetoa] to accept the proposition so that work can go straight ahead.<sup>237</sup>

Speaking more specifically of Ōtūkou, Gibson indicated that rock behind Ōtūkou Marae was to be extensively quarried, and stressed the urgency of the Crown’s need: ‘this quarry will be operating 24 hours a day . . . The Department wants to get this work under way before Christmas.’ He assured his listeners that ‘[a]t first there will be no disturbance to householders at the Pa’ but conceded that ‘[l]ater on it may be necessary to move the people in the Pa because . . . the noise nuisance could possibly be a disadvantage.’<sup>238</sup>

Discussion then moved on to other topics, but Ōtūkou surfaced again briefly when Mr Northcroft asked for details about exactly which area would be affected by the quarrying. Gibson replied that it would be ‘the cliff face opposite the school – the whole of it’, but Jack Asher

**Huimako Cliff, Ōtūkou. From the commanding heights of this bluff, putatara (shell trumpets) had customarily been sounded. Later, shotguns were fired to signal that something important was happening in the district. But from 1964 until the early 1970s, often 24 hours a day, 'blasting, crushing and trucking' was carried out, and the peace and quiet of Ōtūkou was replaced by noise and flying rock.**



intervened to say that Gibson was 'speaking generally' and that '[a]ll details would come back to the committee in due course'. From the information available to us, his reference would appear to be to the Ngāti Tūrangitukua standing committee, which represented owners of the area affected by the new Tūrangi township proposals.<sup>239</sup>

The meeting then again moved to discussing the township. Some considerable time later, matters came back to roading, at which point Gibson commented that 'Otukou will provide sealing chips . . . ¾ million yards of rock will be quarried. 100,000 will be obtained just after Christmas.'<sup>240</sup>

Asher again intervened, this time saying that this was 'a matter for the Otukou block owners' and that 'Mr Hura [was] to negotiate' – although it is not clear that Hura was himself an owner of the Ōtūkou land affected.<sup>241</sup> Mr Gibson then commented that it would definitely be necessary, 'eventually', to move people away from the quarry

area, and Fearon Grace asked whether the MOW proposed to 'shift the Pa', commenting, 'You won't force the people to move'. Gibson once again pointed to the inconvenience of 'the noise, etc.'<sup>242</sup>

Eleven days later, on 1 October 1964, MOW officials, led by resident engineer RT West, visited Ōtūkou to meet with the people living there and to undertake site visits. Also present were 'T Turanga' (possibly Te Pura, who had attended the 20 September meeting at Tokaanu<sup>243</sup>) and Pat Hura, both described in the MOW summary of the visit as 'representing Maori owners'. The summary indicated that the officials' aim was 'to describe activities and effects the Tongariro Development will have on Maori land in the area', and noted that the MOW's immediate interest was 'centred around the andesite deposits adjacent to the Otukou Pa'. It then went on to record: 'Tenders have been called for this work and quarrying should commence early November 1964.'<sup>244</sup> This marks a distinct firming of





Ōkahukura, the meeting house at Ōtūkou Pā, 1908

position compared with 11 days earlier, when there was no mention of the work having been tendered and the time-frame for getting it underway was a more vague ‘before Christmas’.

According to the summary, the people were told that

Quarry activities including blasting, crushing and trucking will disturb the present scene and the Otukou Pa (within 10 chains [200 metres] of the working face) will be in danger of flying rock.

Following the extraction of the first 100,000 cu yds from the quarry (anticipated to occupy 24 hours per day) the operation of the quarry would be continuous until the end of 1970.<sup>245</sup>

The summary also noted that there was ‘a Maori graveyard located on top of the rock outcrop where seven

bodies are interred’ and another cemetery some 200 yards back from the rock face.<sup>246</sup> It recorded that agreement had been reached for the remains in the graveyard to be shifted to the cemetery. The work was to be arranged by the MOW’s resident engineer at Taumarunui and was to commence ‘forthwith’.<sup>247</sup> We will return to this matter shortly.

Also during the discussion with the residents of Ōtūkou (described as numbering ‘20 in the Konui families and seven in the Morgan family’), it was agreed that alternative accommodation of a temporary nature would be provided for them. Mrs Konui, speaking on the residents’ behalf, then expressed the wish that ‘her people be able to return to the present Pa site when quarry activities ceased’. She further asked that her temporary accommodation be within easy distance of Tongariro School.<sup>248</sup>

Meanwhile, on 25 September 1964, the MOW engineer, West, had sent notice to the Whanganui-based Māori

Trustee advising, amongst other things, that the MOW was about to enter onto certain land for the purposes of taking ‘stone and pumice’ in connection with the TPD project:

after the expiration of 24 hours from the service of this notice the Minister, by his agents, the officers and servants of the Ministry of Works and its contractors will enter onto lands under your control and shown shaded red on enclosed copy of plan and will dig and take material being stone and pumice for the purposes of the construction of a public work being Access Road to Otamangakau Dam and the widening and realignment of Otukou Road in connection with the utilisation of water power for the generation of electrical energy (Tongariro Power Scheme) as duly authorised by Order in Council gazetted on the 30th October 1958, page 1463.

This notice is given in pursuance of the powers conferred by Section 17 of the Public Works Act 1929.<sup>249</sup>

The land indicated on the plan was the area known as Huimako Bluff, behind Ōtūkou Marae. The notice reached the Māori Trustee’s office four days later, on 29 September – just two days before the meeting at Ōtūkou.<sup>250</sup>

The MOW’s sense of urgency over the project is evident from the speed at which occupants were relocated and quarrying work started. The formal date of entry onto the site is recorded as 1 November 1964.<sup>251</sup> By 11 December 1964, the MOW was reporting that the Konui and Morgan families were in possession of relocated houses that had been transported by road from the Aratiatia hydro project.<sup>252</sup> Meanwhile, as Daisy Curran (formerly Konui) recalled in evidence, the devastating effects of the quarrying were becoming clear:

The stones and rocks would fly across and hit the marae after the blasts went off. They rained down upon our whare and around Otukou.<sup>253</sup>

As to the removal of the kōiwi, it seems that only some more recent remains were actually moved. On 9 October 1964, West wrote to the Whanganui medical officer of health regarding arrangements ‘to remove the remains of approximately 8 bodies from a burial ground on the

Haimako [Huimako] Hill to the communal burial ground now established at Tiatai [Taitaia] on the site of the old Papakae [Papakai] Pa.’ He described the Huimako graves as being ‘at the top of a bluff which is to be quarried commencing in November’ and sought formal approval from the director general of health for the removal and reinterment of these remains.<sup>254</sup> The reburial occurred on 4 November 1964, at a ceremony attended by Ōtūkou occupants and Crown representatives. In the event, it seems that only three (not eight) burials were involved: those of two adults and a child who had died between 1926 and 1935.<sup>255</sup>

A thorough search of the evidence before us, including voluminous quantities of supporting material, has not shed any light on why there were only three reinterments. There is, by contrast, much discussion in the official documents about human remains in the Tokaanu area, where at least 26 reburials were carried out, and also reference to archaeological work at Ōpōtaka on the shores of Rotoaira and at Poutū, where there was danger of graves being flooded by raised water levels.<sup>256</sup> There is no mention of what investigation occurred at Ōtūkou and whether further information was exchanged. All we have is a fleeting reference to a C Goldfinch, of the stores office of the MOW, who ‘acted as mediator between the parties and was concerned with [the] matter of rehousing and also the shifting of graves.’<sup>257</sup> From claimant evidence, it appears that other kōiwi remained where they had lain from much earlier times – and not necessarily in the place recognised by officials as being the ‘burial ground’ or ‘urupā’. For instance, when Rawinia Konui spoke with historian Philip Cleaver in September 2004, she mentioned that there had been an old urupā on a rocky outcrop of the bluff.<sup>258</sup> Edwyna Moana, giving evidence to us in 2006, indicated the location of yet other remains:

Bones of our ancestors were laid *in the caves all over the Huimako hill*. These were all filled in though, after an accident when we were kids when one of my cousins fell into one. These burial sites were destroyed by the blasting of the quarry. . . . [My Dad] knew that our tupuna were being blown up with no respect or thought for them at all. The Ministry had only

moved the *three bodies from the urupa* to the Taitaia urupa. They moved them in caskets. [Emphasis added.]<sup>259</sup>

In short, the two different strands of evidence give us a less than complete account of what happened. There was an interval of four weeks between the meeting on 1 October and the exhumations on 4 November, and a

## Bodies Exhumed and Reburied

The *Taumarunui Press* of Tuesday, 10 November 1964 reported the following:

On November 4th the bodies of three Maoris were exhumed at Otukou and were reburied in order to allow for the quarrying of metal for the Tongariro hydro-electric scheme.

The deceased who were re-interred at Taitaia cemetery were te Onewa Marangataua, who died in 1926, Peia Pakau, who died in 1927, and a child Pare Pakau, who died in 1935. All were members of a sub-tribe of the Ngati Tuwharetoa, and Peia Pakau was a descendant of a high chief of the Roto-Aira locality in the European days.

The Rev Father Flannery, of Tokaanu, conducted separate services in Maori for the deceased.

Present at the ceremonies were the Chairman of the Tongariro Marae Committee, Mr R Konui, and the secretary Mr G Turanga, and an elder, Mrs A Paurini, of Turangi, also the Konui family from Otukou.

Official representatives connected with the re-burial arrangements who attended at the Taitaia service were the Resident Engineer, Ministry of Works, Mr RT West, the district Health Officer, Mr BM Dennison, and Mr C Goldfinch, JP.

Mr RE Hough of the Ministry of Works, Taumarunui, commendably supervised the difficult task of exhumation and re-burial.

Mr RH Goodall, of Taumarunui, was the funeral director.

further interval of six weeks before quarrying finally began on 15 December. We have no firm information that Ōtūkou Māori provided information during that time about the location of additional burials on and within Huimako Bluff, or that the Crown officials sought this information before quarrying began.

We note that four years later, when the land was formally gazetted for taking, the district commissioner of works in Whanganui queried whether it was 'occupied for any of the purposes set out in section 18(b) of the Public Works Act [1928]'.<sup>260</sup> These included use of the land for a cemetery or burial ground. The project engineer, Gibson, responded that an inspection had been carried out and he could confirm that it was not used for any of those purposes.<sup>261</sup>

We turn now to consider the Treaty breaches involved and consider, first, the matter of notice, consultation and consent and, secondly, the destruction of burial places within Huimako Bluff.

## (2) *Were the Crown's actions Treaty-compliant?*

Critical to a discussion of the Ōtūkou quarry, in our view, are the matters of notice, consultation, and consent – and in considering these, the main events of significance in late 1964 are the 20 September meeting at Tokaanu, the 25 September notice sent to the Māori Trustee, and the 1 October meeting at Ōtūkou.

Of these, it is clear that the 20 September meeting was much more concerned with plans for the new Tūrangi township. While it may have given Ōtūkou residents some forewarning of what was to befall them, assuming the news was passed to them (and we note here that those present were principally of the hapū of Ngāti Tūrangitukua from Tūrangi, not Ngāti Hikairo from Ōtūkou), we cannot accept that it provided them with sufficient detail about what might happen at Ōtūkou for it to constitute proper notice, still less consultation and agreement. Indeed, Jack Asher stressed that detail about the Ōtūkou operation would be provided separately.

So what of the 25 September notice, served, as we have seen, under section 17 of the Public Works Act 1928? According to the terms of that section, if gravel or stone

was required for any authorised public work, two courses of action were open to the Crown or its agents: either the land concerned could be taken (using the appropriate provisions of the Act); or the land could be entered (without being taken) at 24 hours notice to the occupier for the purposes of extracting the material. There was no stipulation that the notice had to be in writing. Where land was entered rather than taken, reasonable compensation was to be paid 'for any injury done to or material taken from the land entered upon.'

The communication sent to the Māori Trustee makes clear that the intention was to enter the land, not to take it, but did it constitute '24 hours notice to the occupier'?<sup>262</sup> In our view that is questionable: the Māori Trustee at Whanganui was the point of contact but he was not himself the occupier. Indeed, an internal MOW letter dated 10 December of the following year indicates there is '[n]o record of notices having been served on the Owners [sic] under Section 17 of the Act'. Rather, it says: '[i]t was apparently assumed that further action was not required after the site meeting with the representatives of the Maori owners at Otukou on 1.10.64.'<sup>263</sup> This brings us to the October meeting at Ōtūkou.

The Crown contends that the 1 October briefing 'demonstrates notice, consultation and, in the Crown's view, agreement in relation to the taking.'<sup>264</sup> Let us examine that assertion.

Leaving aside the question of notice for the time being, we begin with consultation and agreement. The Crown says that the consultation and agreement were 'in relation to the taking', but the taking of what?<sup>265</sup> If the supposed consultation was about the taking of the land, then the contention is not borne out by the evidence: nowhere in the MOW's summary of the meeting is there any reference to discussion (still less agreement) about the taking of land – and we have already seen that the notice to the Māori Trustee made no reference to taking land either. The summary does, however, mention quarrying activity and the likely removal of some 100,000 cubic yards of rock.<sup>266</sup>

So was the supposed consultation about the possibility of taking andesite rock (the 'stone and pumice' of the

September 1964 notice)? That cannot be termed consultation because, by the time the meeting took place, tenders for the work had already been called and an imminent start date established. Although the area affected was described as the 'proposed' quarry site, there is no indication that the process could be stopped or that an alternative location might be possible. In short, when West and his fellow officials briefed the occupants on 1 October, they merely informed their listeners of a course of action already embarked on.

We, therefore, cannot accept that the briefing constituted consultation and agreement in relation to any taking of either land or metal.

But did the briefing constitute due notice that metal was to be taken? Here, perhaps, the Crown is on stronger ground, since giving notice implies warning or informing that something is about to happen. Section 17 does not stipulate that the notice must be in writing. Crown officials did indeed warn the Ōtūkou occupants about the intended quarrying, and the briefing took place more than 24 hours before the quarrying began, thus technically fulfilling the requirement of the Act. In our view, however, considerably more care and consideration might have been expected from Crown officials in view of the upheaval to the lives of those living there.

We pause here to consider the events of 1 October from the claimants' viewpoint. A squad of officials drive up to a small and remote marae. A detailed briefing of the nearby residents unfolds. The range of activity outlined to them includes blasting that poses a risk to their lives, their property, and their marae buildings – not to mention the destruction of the remains of their tūpuna and more recently deceased loved ones. Tenders have already been called for the quarrying, which is due to start in about a month's time and, in the early stages of the work, activity is likely to continue for 24 hours a day. In all, the disruption is expected to last for six years. There is no indication that the plan is optional.

So was there consultation and agreement about any aspect of the events that unfolded at Ōtūkou in late 1964? In terms of the relocation to other accommodation for the duration of the quarrying, the officials had made it clear



Ōtūkou Marae, with Mount Tongariro in the background

that Ōtūkou residents had little other choice but to move if they valued their safety. Furthermore, the impact was swift and significant. With no regard for how long they or their forebears may have lived there, on their ancestral land, a month after the October meeting their land was entered upon by the MOW and, six weeks after that, they found themselves relocated. The most that can be said is that the officials seemed prepared to pay some heed to the families' preferences as to where their temporary housing would be located: a three-bedroomed house was provided 'adjacent to Papakai Pa on highway 47' for the eight members of the Morgan family, and a five-bedroomed house for the 20-member Konui household on a site chosen by Mrs Konui.<sup>267</sup> That local Māori were reluctant to abandon Ōtūkou, however, would seem demonstrated by the fact that the vacated houses did not remain empty. A land purchase office memorandum of early 1965 records: 'the original Pa occupants have vacated . . . but another Maori family or families, have moved into the Pa buildings.'<sup>268</sup>

From Daisy Curran's evidence, those who had moved in appear to have been other members of the Konui whānau.<sup>269</sup> West was instructed to contact Hura and Turanga 'with a view to ensuring that the Pa buildings are vacated', but six months later the people were still there.<sup>270</sup> Indeed, from Mrs Curran's evidence, they stayed throughout the entire period of the quarrying. This, taken with Fearon Grace's 20 September statement that 'You won't force the people to move', does not seem to us to betoken a general agreement to the relocation. Rather, the situation seems to have been more akin to strategic retreat for safety reasons by some members of the hapū while others, more willing to run the risk, 'held the fort'.

Turning to the relocation of human remains, we have noted that some kōiwi from graves at the top of Huimako Bluff were respectfully located and reinterred in a cemetery safe from quarrying. It is not clear if the officials were aware of more ancient burials. From the evidence of Rawinia Konui and Edwyna Moana, it is clear to us

that there were both early burials and more recent ones. Certainly, Ms Moana's reference to '[b]ones in the caves all over the Huimako hill' points to early sites, and suggests that there were a number of them. On the other hand, the three reburials on 4 November 1964 involved only the remains of named loved ones who had died much more recently. We have seen that four years later, at the time of the formal taking of the land, Gibson certified that the area had been inspected and he could confirm that it was not used as a cemetery or burial ground. But we do not know when the inspection took place. If, as seems likely, it was not till the time of the taking, then clearly the blasting would already have destroyed any evidence of burials. If it had been carried out earlier, it takes no account of the fact that officials had noted their understanding of at least seven graves yet carried out only three reburials.

There were many burial places within Huimako Bluff. There is no doubt in our minds that the whole area was wāhi tapu to the people of Ōtūkou and that the destruction of the bluff and the kōiwi within it caused great distress to the descendants of those buried there. In short, a significant ancient burial site was destroyed by the operation of the quarry and the kōiwi were not protected. We find this is a serious breach of active protection.

Nevertheless, we contrast the very limited removal of human remains at Ōtūkou with what happened in Wellington during 1964, after plans were unveiled to construct an urban motorway through a section of the Bolton Street Cemetery, where as many as 700 of the city's European pioneers were known to be buried.<sup>271</sup> A preservation society made up of the capital's intellectual and professional elite mobilised public and media opposition to the scheme in October 1964 – precisely the same period when Ngāti Hikairo and Ngāti Tūwharetoa were voicing their protests to Crown officials in Ōtūkou – and the issue dominated the 1965 city council elections. District works commissioner Hugh Fullarton responded on three fronts, acknowledging 'the 'personal distress' of those whose forebears lay in the cemetery, the Ministry's 'natural distress at any loss suffered by an historic site', and 'the general distress through possible loss of a public or pedestrian amenity':

Each of these three factors has been given the most careful consideration . . . The outcome . . . was a design of high standard that reflected a deep understanding of the issues involved and went 'far beyond' merely 'reduc[ing] the damage' to the cemetery.<sup>272</sup>

New proposals, drawn up at the request of the Minister of Works, Percy Allen, and worth more than \$11 million in today's terms, included a piazza spanning the motorway and a park to commemorate those whose graves were displaced. Debate continued over the next couple of years until 1967, when the council closed the cemetery and motorway construction began. At that point:

efforts were made to record all of the graves due to be disturbed, using photographs and film. A history of the cemetery was commissioned. Next of kin were approached, and a number of funeral ceremonies were performed before a common grave, known as the memorial grave, could be prepared.<sup>273</sup>

The contrast between, on the one hand, the long consultation period accorded Wellingtonians, the ministerial interest, and the care and sensitivity extended to anyone who might be remotely concerned about the remains in the Bolton Street Cemetery, and, on the other, the peremptory notice and limited efforts to locate and rebury the remains at Ōtūkou breaches the principle of equity. Why should the remains of Māori in the caves at Ōtūkou be less deserving of care and respect than those of Wellington settlers?

To sum up, in the events of late 1964, Māori at Ōtūkou were informed, not consulted; their notice was peremptory; and there was little option but for them to comply with the steps outlined to them. Their choices were effectively limited to where they wanted their temporary housing to be sited.

We thus find that, by the end of 1964, the Crown had committed a serious breach of its duty to consult with Māori and to provide active protection of their interests. We also find that the kōiwi within Huimako Bluff were destroyed by explosives and quarry operations, and the human remains carried away with the rock. They are



Abandoned Ministry of Works buildings. Since the workers departed, these dilapidated buildings have just been left and have deteriorated.

serious breaches of the principles of active protection and equity.

But the story of the Ōtūkou quarry does not end there.

### **(3) Events after 1964, compensation, and royalties**

As we have seen, residents were informed at the October 1964 meeting that the quarrying would continue until the end of 1970.<sup>274</sup> Daisy Curran told us how there had been ‘little blasts that would happen over months and one big blast that shocked the land around us.’ She recalled that ‘people would come from all around to watch’ and said ‘It was quite an event to hear the loud crack and watch the rock face collapse while the dust and debris fell all around our marae.’<sup>275</sup>

After the works finished, said Mrs Curran, ‘the workers packed up their gear and just left’. Describing the aftermath, she said:

There are boulders and huge rocks lying all over the place. It’s so dangerous up there that people can’t go walking there for fear of rocks falling. It’s a complete mess. It’s not left how it was found. There is nothing nice up there.<sup>276</sup>

She also commented about the state of the Wairehu Stream, near the marae, saying it had been a good food source for them before the blasting started, providing freshwater kōura and trout. However, ‘[a]fter the works began the water became cloudy and very dirty’, and fish numbers decreased.<sup>277</sup>

At the September 1964 meeting, Gibson had variously estimated the amount of material to be extracted as 750,000 or 1,000,000 cubic yards of rock.<sup>278</sup> On 4 December, JE Cater, from the Māori Trustee’s office in Whanganui, informed the MOW that the trustee would be putting in a claim for compensation on behalf of the

landowners. He warned that complete records should, therefore, be kept of the amount of material extracted.<sup>279</sup> Some days later he wrote again, noting that he had spoken in the meantime with the MOW land purchase officer, who had told him no records would be kept because there was no other use for the material and hence it had no commercial value.<sup>280</sup> The district commissioner of works, EA Flynn, responded immediately to confirm that indeed the MOW saw itself as having no obligation to pay royalties. However, he conceded that compensation would be payable ‘for any net loss or damage on a “before” and “after” basis’, and if the Māori Trustee wished to claim compensation, it would be up to him to ‘record the quantities involved and then to establish his claim in the Land Valuation Court.’<sup>281</sup> There is no further discussion, in the archival material presented to us, about the amount of material extracted, but Dr Russell Kirkpatrick, Kataraina Belshaw, and Dr John Campbell, in their evidence to the Tribunal, estimated the quantity at around two million cubic metres.<sup>282</sup> They did not say how they had arrived at this figure.

As early as February 1965, Cater began inquiring whether it was the MOW’s intention to take any portion of the land being occupied by the quarry. Flynn responded that he had received no instruction to take any of it by proclamation, and that furthermore there was ‘no survey plan available clearly defining the areas of the workings.’<sup>283</sup> By 17 March, however – less than a month later – head office had instructed Flynn and his officials to ‘proceed as soon as practicable to take all areas of deposit by way of Notice of Intention and subsequent proclamation.’<sup>284</sup> In November of the same year, Flynn asked the project engineer for copies of any section 17 notices that might have been served on the Ōtūkou owners and enquired whether plans were in train to have the quarry area surveyed.<sup>285</sup> The engineer responded that no action had been taken towards a survey and (as we have seen) that he could find no record of any section 17 notice to the owners.<sup>286</sup>

The following April, in response to a further query from the Māori Trustee, the acting district commissioner of works at Whanganui finally confirmed to him that the MOW did intend ‘to take the area covered by the R.9 rock

deposit’ (that is, the Ōtūkou quarry).<sup>287</sup> However, it was not until August 1967 that Gibson requested the commissioner’s approval to go ahead with the taking. He noted that ‘[t]hese deposits will not be acquired under the power provisions of the Act but under Section 17’ and asserted that the latter would give owners a right of objection.<sup>288</sup>

In the meantime, there had been an exchange between the commissioner of works and his district commissioner in Whanganui on the subject of the amount of land to be taken. The latter had apparently submitted, in October 1966, a draft notice of intention to take an area of ‘approx. 86 acres’ (just under 35 hectares) for the quarry. Ngāti Tūwharetoa, on behalf of the Ōtūkou owners, expressed concern at ‘the increasing areas required for the scheme’. The commissioner in Wellington questioned the necessity of taking such a large area for the quarry.<sup>289</sup> A much smaller area (17 acres 1 rood 0 perches, or just under 7 hectares) was eventually settled on but it was not until 3 October 1968 that a ‘notice of intention to take’ was gazetted. The notice indicated that a plan of the area to be taken had been placed in the Tūrangi Post Office.<sup>290</sup> Around three weeks later, the notice also appeared in the *Turangi Chronicle*, and a copy of it was sent, under covering letter, to the Māori Trustee’s office in Whanganui. At the end of the letter was a distribution list which included 37 Māori names plus the Tūwharetoa Trust Board and the district commissioner of works in Whanganui. We must assume that each of those named also received a copy of the notice and letter, although few of the Māori names appear recognisable as Ōtūkou residents and some recipients lived as far away as Christchurch, Porirua, and Marton.<sup>291</sup>

As we saw earlier, the notice prompted the district commissioner of works to query whether the provisions of the Public Works Act 1928, section 18(b) had been satisfied, to which Gibson responded in the affirmative.<sup>292</sup>

The notice had indicated that ‘persons affected by the taking’ had the right of objection. Philip Cleaver’s evidence says Rawinia Konui was adamant that the owners were strongly opposed to the taking of the quarry because of the existence of the urupā. Mr Cleaver does concede, however, that it is unclear whether the owners ever made a formal objection to the taking.<sup>293</sup> An internal



MOW memorandum dated 19 December 1968 stated that no objections were received by the department.<sup>294</sup> Mrs Curran implied in her evidence to us that there had been an attempt at strategic ‘damage control’ on the part of the tangata whenua, in relation to this and other takings:

I know the Crown were talking about the land being taken under the PWA and I think that the Trustees knew that the Government would use the Act so our uncles had to work out something so that not all the land was taken away and to save at least some of our land.<sup>295</sup>

Notices confirming the taking were published in the *New Zealand Gazette* of 20 February 1969 and the *Turangi Chronicle* of 13 March 1969. Also taken at this time was nearby land being used as a metal pit.<sup>296</sup>

Why did the MOW decide to take the land, rather than just continue to extract material? Departmental correspondence from 1966 relating to a possible lawsuit over royalties for pumice extracted from a different block (Rangipō North 6c) may shed some light on the MOW’s thinking. Seeking advice about the Rangipō situation, Gibson received a reply from head office which he interpreted as meaning that an outright taking of land was preferable to merely entering, to avoid, in his words, ‘possible Royalty claims from Maori owners.’<sup>297</sup> But the commissioner of works quickly responded to correct his interpretation:

As I understand it the intention of Head Office’s instructions to take the metal deposits was not to avoid payment of royalties but to give the Crown *exclusive* rights to the materials. Section 17 only gives the Crown the right to extract metal. It does not stop any other person from doing the same. [Emphasis in original.]<sup>298</sup>

As a rider, the commissioner added: ‘In any case taking the land does not preclude an owner from making a compensation claim on a royalty basis’. He did, however, support Gibson’s contention that ‘where it is obvious that we have a substantial requirement for material from a particular source then we should take it in preference to

occupying it.’<sup>299</sup> As we have seen, compulsory taking was the course adopted in the case of the Ōtūkou quarry.

There then followed the question of compensation for the taking. In October 1970, the Māori Trustee’s valuer assessed the Ōtūkou land to be worth \$175, with interest payable for the period during which the quarry had already been in use.<sup>300</sup> The final payment was \$234.80, which included interest of 5 per cent per annum for the period from the date of entry.<sup>301</sup>

Meanwhile, Māori in the area had been complaining that work at the quarry (and at a nearby metal pit) was causing pollution of their waterways. Silt and other material was finding its way into the Wairehu Stream and from there into the Maungamutu Stream and on into Lake Rotoaira, causing contamination and discoloration.<sup>302</sup> In February 1967, the Rotoaira Trustees’ lawyer wrote to the Minister of Works to complain of the negative effects on the fishing qualities of the lake and also, it was suggested, on the spawning of trout. He requested prompt action ‘to institute permanent remedial measures.’<sup>303</sup> We have no indication of any response.

It is not clear at what point quarrying ceased. When Gibson had first spoken about the work, in September 1964, he had indicated that the most intensive period of extraction was likely to be during the first few months, with 100,000 cubic yards of rock being needed before March 1965 and the quarry likely to operate 24 hours a day.<sup>304</sup> From internal memoranda it would appear that the main period of use was from 1965 to 1967, during which time rock was quarried ‘for base course on SH 47 and various TPD access roads.’<sup>305</sup> The expected end date had initially been given as late 1970,<sup>306</sup> but in December 1973, the district commissioner noted that the TPD project’s need for the quarry was ‘coming to an end.’<sup>307</sup> The records suggest that extraction after 1967 was less intensive and possibly intermittent.

On 29 August 1979, the district commissioner asked whether the resident engineer had need of the land for any other purpose and indicated that an urgent response would be helpful ‘as Head Office and Forest Service are on my hammer.’<sup>308</sup> The engineer’s response being negative, a memorandum of the following March proposed

transfer to the Forest Service, presumably with a view to them extracting material for maintaining forestry roads. It noted that a special valuation had been carried out on 14 January 1980, which had assessed the land's value at \$1,500. That valuation was based 'on the surface land only', and did not include the value of the rock.<sup>309</sup>

Some months passed before the Forest Service made known its rejection of the valuation and said it was no longer interested in the quarry. Matters were then left in abeyance until 1985. On 13 August of that year, the MOW district land purchase officer and district property officer wrote a joint memorandum to the commissioner of works in Wellington, recommending that the quarry be returned to the Māori owners. The memorandum noted:

The trustees [apparently of the Lake Rotoaira Forest Trust] on behalf of the Maori Owners have submitted a proposal, which is supported by the Minister of Maori Affairs, that the land be returned.<sup>310</sup>

By this time, the valuation had increased to \$5,000. However, the memorandum commented that the Crown had 'taken what it required' in return for the payment of 'very little compensation' and noted that the R9 quarry was now 'considered to be a liability to the Crown'.<sup>311</sup> The memorandum therefore proposed the return of the land to the former owners 'at nil monetary consideration'.

In 1988, most TPD assets were transferred to the Electricity Corporation of New Zealand, but this did not include either the Ōtūkou quarry or the nearby metal pit, which were held aside pending further consideration of what to do with them.<sup>312</sup> By 1992, both areas seem to have been held by the Department of Survey and Land Information, which in that year received inquiries from New Zealand Forest Managers (described as 'a forest management company contracted to the Ministry of Forestry to manage the Rotoaira Forest') and Works Consultancy Services.<sup>313</sup> Both areas were subsequently transferred to the department's successor agency, Land Information New Zealand, with the intention of them being disposed of as 'surplus lands'.<sup>314</sup> At the time of our hearings,

claimant counsel told us: 'it appears that the lands remain unreturned'.<sup>315</sup>

#### **(4) Were the Crown's post-1964 actions at Ōtūkou Treaty-compliant?**

Despite the danger to Ōtūkou Marae during the blasting, as made evident by Mrs Curran's testimony about debris raining down on it, we witnessed for ourselves that the building has fortunately survived.<sup>316</sup> There are also residents living on the land immediately adjacent to the marae (but outside the block occupied by the quarry). We do not know, however, whether these residents include the members of the families that were relocated in 1964.

There was no indication, when the families left their homes that year, that some of their land would later be taken. Officials had spoken only about the extraction of material, and the relocations were to be temporary. Furthermore, it is not at all clear why the Crown needed to take the land when it did because, as we have seen, the evidence points to a slowing of extraction after the end of 1967, and hence a reduced need for the quarry's resources. A taking in such circumstances is entirely at odds with the commissioner of works' reasoning that Crown ownership was preferable where there was 'a substantial requirement for material from a particular source'.<sup>317</sup> The commissioner's other argument was that the taking was not to avoid paying royalties but to ensure exclusive Crown rights to the material. However, that argument carries an internal inconsistency in that it implies Crown anxiety that others might be interested in acquiring rights – and hence that the material might have a market value. That the transfer of the 17-odd acres (close to 7 hectares) was not by agreement with the owners seems self-evident from the fact that it was carried out by means of a compulsory taking.

Claimant counsel would seem to be in error, though, in stating that the Crown needed to meet the requirements of section 22 of the Public Works Act 1928 in carrying out the taking.<sup>318</sup> Section 10 of that Act makes clear that section 22 largely did not apply in the case of native land (which was instead dealt with under sections 102 to 106 in part IV). Furthermore, by the time the taking was



Ōkahukura, the meeting house at Ōtūkou. Despite the quarrying taking place nearby, the meeting house survived.

proclaimed and executed, there was no longer a requirement to serve notice on the owners themselves; rather, it was to be served on the Māori Trustee.<sup>319</sup> We note in passing that the latter legislative change seems to us a tacit admission on the part of the Crown that its regime with respect to multiply-owned Māori land had become unworkable, particularly in situations where there were time constraints: it was simply too difficult to contact, individually, all the owners involved. While on the one hand the new provision could be seen as protective, to make sure that the Māori Trustee was tasked with looking out for Māori interests, it was also an attack on Māori rangatiratanga. Although the Māori Trustee no doubt did his best to protect Māori interests (as evidenced by Cater's efforts in relation to Ōtūkou), Māori themselves were now set at one remove from administering their own land. This

was neither supportive of Māori rangatiratanga nor was it giving the land the same protection as European land. After 1 April 1963, any action involving multiply owned land had to go through the Māori Trustee; they could not deal with it themselves. The Act was directive, not permissive.

In return for their loss, all that the people of Ōtūkou have so far received – apart from temporary housing – is the \$234.80 paid in 1971 as compensation for the compulsory taking of their land. They received no compensation for any damage done to the land in the period before the taking; no remedial work has been carried out on it; and, as we have seen, the Māori Trustee's efforts to obtain royalties for the rock extracted met with firm resistance. Nor has any account been taken of the distress caused them. Furthermore, it would seem from the evidence noted

earlier, that work at the quarry also affected the Wairehu Stream, which in turn damaged stocks of freshwater kōura and trout and also affected Lake Rotoaira.<sup>320</sup>

In relation to compensation, the Public Works Act 1928 section 45(1) stipulates that any claim for damage must be submitted within ‘a period of twelve months after the execution’ of the works giving rise to the damage. However, the Court of Appeal has ruled that damage ‘does not, on its face, extend to claims in respect of material taken’. For the latter, said the court, the maximum time allowed should be six years, as provided for under section 4(1)(d) of the Limitation Act 1950 which deals with ‘[a]ctions to recover any sum recoverable by virtue of any enactment.’<sup>321</sup> In the case of Ōtūkou, we note that the land was no longer in Māori ownership when the works ceased, because the compulsory taking came into effect on 20 February 1969. Nevertheless, an internal MOW memorandum acknowledged that the taking did not stop an owner ‘from making a compensation claim on a royalty basis.’<sup>322</sup> In line with the spirit of that acknowledgement, and in light of the particularly disadvantaged position of the people at Ōtūkou (which we will address further in our section on prejudice), we are strongly of the view that any limitation of time should be waived. It would be unconscionable if the Crown sought to raise the Limitation Act to avoid paying what it should have paid long ago.

After the Public Works Amendment Act 1962 took effect on 1 April 1963, the only person who could make a claim for compensation, in the case of multiply-owned Māori land, was the Māori Trustee.<sup>323</sup> We have no firm information on whether the Māori Trustee did, in the end, file a formal compensation claim for damages in respect of Ōtūkou, but we have already noted that soon after quarrying first commenced, he indicated his intention to do so and sought the MOW’s cooperation in supplying data. That cooperation was refused, as we shall discuss further below. He also made repeated approaches to the MOW to try to ascertain whether the land was to be taken. In 1966, the Ministry finally admitted to him that it was indeed intending to take the land compulsorily, but then more than two years elapsed before the taking was effected. We regard this mixture of obstructiveness and obfuscation as

inexcusable. Indeed, that the Ministry itself realised the need to improve its performance is suggested by its issuing, in May 1970, a new set of TPD-related instructions for its personnel. Those instructions included the following:

The District Land Purchase Officer must be provided with details of the following to enable him to negotiate claims for damage to the land:

- (a) Spoil taken or washed away;
- (b) Damage to crops, roads, buildings, etc, etc, by traffic or through any other cause;
- (c) An assessment of the value of timber . . . before trees are felled;
- (d) An accurate record of all metal extracted.<sup>324</sup>

Although an appendix to the instructions indicated that royalties were to be paid only where there was external demand for the material extracted – that is, ‘outside of requirements for government or local authority works’ – it again stressed that ‘[a]n accurate record of all metal extracted’ was to be kept, ‘to enable the District Land Purchase Office to assess compensation claims.’<sup>325</sup>

We will return to the matter of royalties shortly. Let us first consider the matter of claiming compensation for injury and damage.

Even before the Ōtūkou land was compulsorily taken, it had clearly been damaged by the extraction of the rock – as evidenced by the testimony of the witnesses who spoke before us. Section 17 of the Public Works Act 1928 stated, as we have seen, that ‘reasonable compensation’ was to be paid ‘for any injury done to or material taken from the land entered upon’. In the case of Ōtūkou, the first point to be made in terms of injury is that this was a special place. Here was a site that had held tūpuna remains. It had also been renowned as a commanding position from which signals could be sent to whanaunga in the area. In short, it was place of traditional importance and a wāhi tapu.<sup>326</sup>

Furthermore, we are not convinced that it was necessary to quarry in the precise location that was chosen. When drawing up the draft notice of intent to take, in October 1966, the district commissioner of works identified an area of 86 acres (just under 35 hectares) that he

sought to secure for the quarry. This suggests that the andesite deposit was not limited to the area in which the extraction had actually occurred. We can understand that quarrying from the cliff-face was the engineers' preferred option but might it not have been possible for the Crown to secure the material from some other part of the deposit, without disturbing the burials? Granted that officials may not have been aware of the burials prior to the October 1964 meeting with the Ōtūkou residents, but there seems to have been no wavering, subsequently, from the plan to proceed with quarrying at precisely that spot. If damaging the site was avoidable, then that too, in our view, is a factor to be weighed in the calculation of any compensation paid.

Turning now to the rock itself, it is difficult to see how a claim for compensation could avoid a consideration of how much material had been removed. That the claimant should be held responsible for providing this data seems to us unreasonable: it was the MOW that was overseeing the extraction, not the claimants, and we are at a loss to know how the claimants would come by the information if not from the department. This was indeed acknowledged at one point in an internal MOW communication. Writing in 1966, in relation to the Rangipō North 6C claim, the commissioner of works told Tūrangi staff:

If the information is readily available, as I assume it is, I find it difficult to justify our refusal to advise an owner of land how much pumice we are removing from it under statutory powers.<sup>327</sup>

We agree – and we would add that in the case of Ōtūkou, the Crown must surely have known how much material was being removed, because it seems that contractors were involved in the extraction and the information would have been needed to assist in calculating how much the contractors were to be paid. We note, for example, that such records were kept in relation to metal extracted by contractors at a metal pit designated G11, with the evidence indicating that there was a separate file for each contract.<sup>328</sup>

There remains the question of what the material itself

was worth, and that brings us to the matter of royalties. According to the MOW, the requirement to pay royalties hinged on whether it could be established that there was a non-government market for the material that was quarried. The case of Rangipō North 6C, mentioned earlier, is relevant here. When that case came before the Court of Appeal, in 1979, the judgment delivered by Justice Richardson upheld the Supreme Court's ruling that section 29(1)(c) of the Finance Act (No 3) 1944 relates only to compensation for the taking of land, not material. He also noted that section 17 of the Public Works Act 1928 does not set any ceiling on the amount of compensation payable and added that, in assessing what was reasonable, the following factors should be taken into account:

- ▶ the potential use of metal from the land at any time;
- ▶ the wishes of the Crown to secure a supply of metal as distinct from its special needs;
- ▶ the nature and definition of the public works for which metal was taken; and
- ▶ the hypothetical market assessment of the value of the metal in that location (and taking into account expectations as to the likelihood that the particular public work would proceed[,]) which were formed before it was authorised to proceed, and the use made of metal previously taken from the land).<sup>329</sup>

The court's observation about the absence of a ceiling highlights that large amounts of money were potentially at stake. This becomes evident if we make a simple calculation: supposing even a small royalty of just five cents per cubic yard were payable, then using Gibson's lowest estimate of the quantity of rock to be extracted from Ōtūkou (750,000 cubic yards), the amount owing would be \$37,500. That figure contrasts markedly with the \$234.80 paid for the land.

In Treaty terms, the events after 1964 gave rise to a number of Treaty breaches. On the subject of active protection, we repeat what we said in chapter 1 – namely, that it requires honourable conduct by, and fair processes from, the Crown. In our view, these were singularly lacking in the Crown's post-1964 actions over the Ōtūkou



Metal pit to the north of the Ōtūkou school site. The pit was abandoned after quarrying had finished.

quarry. Lacking, too, was evidence of the good faith we would expect from the Crown and its agents in dealing with tangata whenua 'on the ground' (and indeed with the Māori Trustee in his role as their representative). We have also noted that the 1962 amendments to the Public Works Act 1928 completely deprived Māori of agency in matters concerning their multiply-owned land, which to our mind constitutes a breach of the principle of equity. We believe the Crown's actions over the rock extraction and quarry taking also transgressed the principle of mutual benefit, in that the Crown derived considerable benefit from the venture but the claimants almost none – indeed, as we now go on to set out, they suffered harm.

#### **(5) Overall prejudice at Ōtūkou**

Looking now at the Ōtūkou quarry case study as a whole and turning our attention to the prejudice involved, we see it as substantial. The residents had to move, at very

short notice, for the duration of the quarrying which, they were told, would be 'until the end of 1970'. In the event, the disruption seems to have been more permanent. Then land was taken, in addition to the rock already removed. Very little compensation was paid for the land – and no royalties or compensation for the material taken. At the time of our hearing, more than 40 years after quarrying first began, the claimants still did not have their land back and they were still suffering the consequences of the damage caused. Furthermore, while we acknowledge that the quarrying and land-taking were carried out as part of the wider TPD scheme, which might have brought overall benefit to the area including an improvement in roading, we note that some Māori around Ōtūkou and Pāpakai still do not have affordable electric power: in evidence, Matthew Howell of Ngāti Hikairo recalled being sent an estimate of the cost of connection when he moved into a house near Pāpakai marae. He did not tell us when this



Two kuia stand by metal pit workings north of the Ōtūkou School site. The pits have been closed since 1977.

had occurred but the figure cited to him at the time was \$7,000.<sup>330</sup> (We will look at the TPD scheme in greater detail in chapter 14.)

#### (6) Ōtūkou case study recommendations

In line with the principle of redress, we believe the land at Ōtūkou should not only be returned but it should be returned in a usable condition. In addition, there should be compensation for the damage and destruction caused to the land and to ancestral remains, and recognition of the distress caused. Further, in light of the Court of Appeal's judgment in *Minister of Works and Development v Hura*, it is our view that the Crown now owes a debt of honour in respect of any unpaid royalties on metal or rock extracted. Not to make such payment would in itself be a breach of the Crown's Treaty duty to act in good faith.

Specifically, we recommend that as soon as practicable, the Crown:

- ▶ make appropriate and generous recompense (not necessarily limited to a monetary sum) to those most directly affected by the injury done in the course of carrying out the quarrying operations;
- ▶ notwithstanding any time limits imposed by legislation, make appropriate and generous recompense to the former owners of all land at Ōtūkou used for quarrying or metal extraction (including part Ōkahukura 2B2), or their successors. Failing such, the appropriate hapū, in respect of all royalties not paid – such payment to include interest, and to be made separate from any quantum paid by the Crown in relation to the settlement of any wider group of claims encompassing the locality;
- ▶ return to the former owners or their successors, at no cost to the recipients, all land at Ōtūkou used for quarrying and metal extraction and declared surplus in 1979 (that is, the areas designated R9 and G11),

as recommended as long ago as August 1985 with the support of the Minister of Māori Affairs of the time;<sup>331</sup> and

- ▶ clean up and make safe, at the Crown's own expense, the above two areas of land affected by the quarrying and gravel extraction.

We would note that these recommendations in the Ōtūkou case also have implications for a number of other TPD-related quarries and metal pits in the inquiry district, all involving takings of materials. From Maori Land Court records, it would appear that the old Otukou school site, now designated Okahukura 2B2DE, has been returned to the successors in Okahukura 2B.

### 10.6 OVERALL CONCLUSIONS

The taking of Māori land by the Crown for public works using the compulsory acquisition powers of successive Public Works Acts is a topic that has been pursued in a succession of Tribunal reports to the point that, if it were a field, the ground could be said to have been 'worked to a fine tilth'.

From the *Te Maunga Railways Land Report* (1994), the *Ngai Tahu Ancillary Claims Report* (1995), and the *Turangi Township Report* (1995), through to *He Maunga Rongo* (2008), *Tauranga Moana* (2010), and the *Wairarapa ki Tararua Report* (2010), successive Tribunals have considered the Crown's powers under such legislation and the way it has used them with respect to Māori and Māori land.<sup>332</sup>

These Tribunals have tested the laws and their administration against the actual terms of the Treaty and the Treaty principles of reciprocity, partnership, active protection, and equal treatment. They have developed, reviewed, and settled an overall position on these matters, which we affirm.

The Crown, from the 1990s onwards, has been moving in the direction of acquiring land under tenures other than freehold. Hundreds of properties have been transferred to Treaty settlement entities and leased back to the Crown or its surrogates. Waikato University lands, for example, have been returned to Tainui, and court houses

and police stations in Queenstown and Christchurch are now owned by Ngāi Tahu.<sup>333</sup> Public sector activities are thus carried out on land leased by the Crown from Māori entities post settlement. Clearly, the policy that the Crown found compelling before the 1980s – namely that it must absolutely and without any scope for negotiation take the freehold (even though the power to take leases had long existed) – is no longer compelling at all. What was previously regarded as 'unreasonably fettering the Crown' apparently no longer 'fetters the Crown'. We think it is time that the Crown's submissions to this Tribunal more closely reflect the policy positions it adopts in Treaty settlement negotiations.

The Crown has also been involved in an expanding dialogue about legislative reform. Land Information New Zealand, working with other Crown agencies and with stakeholders including local government and Māori, initiated a major review of the Public Works Act 1981. A substantial discussion document was released in December 2000 and public consultation took place over a six month period.<sup>334</sup> Seventeen hui and six public meetings were held and 278 submissions were received.<sup>335</sup> The submissions were analysed by Land Information New Zealand, and a survey of submissions was released.<sup>336</sup> The intention of the Crown, at the point where the Minister of Land Information penned the preface to the summary of submissions in August 2001, was to bring new legislation to parliament. This has not yet been done. However, the review documents were in the public arena by the time the Tauranga Moana and Wairarapa ki Tararua Tribunals reported in 2010.<sup>337</sup>

*Tauranga Moana* adopted a path of summarising the existing jurisprudence of the Tribunal and focused on applying Treaty principles to local takings. *Wairarapa ki Tararua* followed the same path and, in addition, provided a detailed and comprehensive set of recommendations for legislative change.<sup>338</sup>

On the basis of the National Park evidence, the manner in which land has been taken, and the failures to return land that is no longer required, we underline the importance of the primary recommendation made by the Wairarapa ki Tararua Tribunal, namely that new public



works legislation 'should be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.'<sup>339</sup> The new legislation should be consistent with Te Ture Whenua Māori Act 1993 and recognise and protect the special relationship between Māori and their lands. It should also provide guidelines on which lands should remain with Māori in perpetuity, and which lands may be bought and sold or taken for the public good.

The Treaty jurisprudence in relation to public works takings is well set out and carefully summarised by the previous Tribunals. *Wairarapa ki Tararua* provides guidelines for legislative change. We do not intend to work the ground further. The time has come for the Crown to take the next step: to address the source of the problem, and revise the Public Works Act 1981. In the end nothing less will do, so significant is this legislation in relation to the guarantee contained in article 2 of the Treaty of Waitangi.

#### Notes

1. James Mitchell, 'Quantitative Study of Maori Land Alienation and Management in the National Park Inquiry District: Summary' (commissioned summary report, Wellington: Waitangi Tribunal, 2006) (doc D11(a)), p 3. The percentages are calculated from the data in the land history alienation database (LHAD) provided by the Crown Forestry Rental Trust.
2. The highways are State Highways 1, 4, 41, 46, 47, 47A, 48, and 49.
3. Other Acts include Land Acts, Native Land Acts, Public Works Acts, Scenic Reserve Acts, and the Soil Conservation and Rivers Control Act. See Cathy Marr, *Public Works Takings of Maori Land, 1840-81*, Waitangi Tribunal Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1997) (doc A15), especially pp 63-79, 133-163.
4. These were entered into the Wai 1130 hearings as part of the Wai 575 Claims Cluster Steering Committee, 'Te Taumarumarutanga o Ngati Tuwharetoa: In the Shadow of Ngati Tuwharetoa' (confidential commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc G17), pp 564-573.
5. The LHAD database identifies lands as 'Uncompensated' or 'Compensated.' We are aware that compensation was not paid, in full or in part, in all cases and have used the heading 'Compensation payable.' Compare this with Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 855.
6. Counsel for Tamakana Council of Hapū and others, closing submissions, 23 May 2007 (paper 3.3.40), pp 176-177
7. Ibid, p 175
8. Ibid
9. Counsel for Ngāti Hikairo ki Tongariro, closing submissions, 28 May 2007 (paper 3.3.42), p 98; paper 3.3.40, p 176
10. Paper 3.3.40, p 176; counsel for Ngāti Tuwharetoa, closing submissions, 7 June 2007 (paper 3.3.43), p 323
11. Counsel for Ngāti Waewae, closing submissions, 28 May 2007 (paper 3.3.41), p 101; paper 3.3.40, p 193
12. Paper 3.3.41, pp 100-101; paper 3.3.40, p 176; paper 3.3.43, p 324
13. Paper 3.3.42, p 101; paper 3.3.40, p 176
14. Paper 3.3.41, p 101
15. Ibid; counsel for Ngāti Hikairo, closing submissions, 15 May 2007 (paper 3.3.30), p 136
16. Paper 3.3.41, p 136
17. Paper 3.3.40, p 176
18. Paper 3.3.41, pp 100-101
19. Paper 3.3.42, pp 105-107; paper 3.3.41, pp 102-104
20. Paper 3.3.40, p 185
21. Ibid
22. Ibid, pp 181-182, especially paras 774-776
23. Ibid, p 183
24. Paper 3.3.42, pp 127-128; paper 3.3.41, p 104
25. Philip Cleaver, 'The Taking of Maori Land for Public Works in the Whanganui Inquiry District, 1850-2000: Summary' (commissioned summary report, Wellington: Waitangi Tribunal, 2006) (doc A36(a)), p 13; paper 3.3.40, p 185
26. Ibid, pp 185-186
27. Counsel for Ngāti Hinewai, closing submissions, 14 May 2007 (paper 3.3.18), pp 62-63
28. Paper 3.3.40, p 184. Compare paper 3.3.41, p 110.
29. Paper 3.3.41, p 105
30. Ibid, p 106
31. Paper 3.3.40, p 191
32. Ibid
33. Paper 3.3.43, ch 14; counsel for Ngāti Tūrangitukia, closing submissions, 14 May 2007 (paper 3.3.26), pp 2-10
34. Paper 3.3.43, p 324
35. Paper 3.3.26, pp 24-25
36. Whakapumautanga Downs, brief of evidence, 26 April 2005 (doc G4), pp 2-4; Rangikamutua Downs, brief of evidence, 2 October 2006 (doc G40), p 5
37. Document G4, p 3
38. Document G40, p 5
39. Paper 3.3.41, p 101
40. Paper 3.3.42, p 160
41. Ibid, p 114
42. Ibid, p 105
43. Ibid, p 114
44. Ibid, p 98
45. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 11, p 3
46. Ibid
47. Ibid, ch 12, p 29
48. Ibid, pp 33-34

49. Paper 3.3.45, ch 12, p 5; Waitangi Tribunal, *Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), p 285; Waitangi Tribunal, *Te Maunga Railways Land Report* (Wellington: Brookers Ltd, 1994), pp 81–82
50. Paper 3.3.45, ch 11, pp 5–6
51. *Ibid*, p 6
52. *Ibid*, pp 7–8
53. *Ibid*, p 12
54. *Ibid*, p 15
55. *Ibid*, p 10
56. *Ibid*, p 9
57. *Ibid*, p 10
58. *Ibid*, p 11
59. *Ibid*, p 12
60. *Ibid*, pp 15, 16
61. *Ibid*, p 17
62. *Ibid*, p 16
63. *Ibid*, p 18
64. *Ibid*
65. *Ibid*, p 24
66. Presiding officer, memorandum-directions following the sixth hearing of 18–21 September 2006, 29 September 2006 (paper 2.3.50), p 3; paper 3.3.45, ch 11, pp 20–23
67. Paper 3.3.45, ch 11, p 4
68. *Ibid*, p 5
69. *Ibid*, pp 14–15
70. *Ibid*, pp 10–11
71. Counsel for Ngāti Waewae, submissions in reply, 6 July 2007 (paper 3.3.53), pp 3, 20–21
72. *Ibid*, p 3
73. Counsel for Ngāti Hikairo ki Tongariro, submissions in reply, 6 July 2007 (paper 3.3.57), pp 7–8
74. *Ibid*, p 8
75. *Ibid*
76. Counsel for Ngāti Hinewai, submissions in reply, 2 July 2007 (paper 3.3.47), p 2
77. *Ibid*, p 2 is responding to Crown counsel (paper 3.3.45), ch 1, p 12.
78. Paper 3.3.47, p 2
79. *Ibid*
80. Counsel for Ngāti Hikairo, submissions in reply, 6 July 2007 (paper 3.3.52), p 2
81. Paper 3.3.57, p 2
82. *Ibid*
83. *Ibid*, p 6
84. Paper 3.3.53, p 22
85. Paper 3.3.57, pp 20–21
86. *Ibid*, p 6
87. *Ibid*, pp 20–21
88. *Ibid*, p 7
89. *Ibid*
90. *Ibid*, p 9
91. Waitangi Tribunal, *Turangi Township*, p 378; paper 3.3.57, p 9
92. Paper 3.3.53, pp 21–23
93. *Ibid*, p 22
94. Paper 3.3.57, pp 10, 12. They link this requirement to section 18 of the Public Works Act 1928.
95. *Ibid*, p 12
96. *Ibid*, p 13
97. *Ibid*, pp 13–14
98. *Ibid*, pp 14–15
99. Construction could begin in advance of taking: in this instance work was under way in 1891 and the formal taking was in 1895: see C W Hursthouse, 'Report on Roads', 2 September 1891, AJHR, 1891, C-1A, pp 21–22.
100. Two of the larger blocks, 14.4 hectares and 8 hectares respectively, were taken in May 1962 from Rangipō North 4C on State Highway 1, north of Waiōuru, and are recorded in LHAD as uncompensated. We are unable to ascertain why no compensation was paid.
101. The Court made orders for payment of £1,302 for Tawhai North and £419 for Mahuia B on 18 February 1914. Those for Tawhai North did not reach the owners until 1924. Payment for a substantial portion of Mahuia B was delayed until 1943. Paula Berghan, 'Block Research Narratives of the Tongariro National Park District 1865–2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A5), pp 24–25, 340. There is no evidence that interest was paid on any of the delayed payments. See also Robyn Anderson, 'Tongariro National Park – An Overview Report on the Relationship Between Maori and the Crown in the Establishment of the Tongariro National Park' (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2005) (doc A9), p 133.
102. Trevor Mallard, 'Government Announces Protection for Taurewa Station', <http://www.beehive.govt.nz/node/32867>, press release, 5 April 2008
103. Negotiations with pastoral runholders who occupied the Waiōuru lands took place during the 1930s. Cabinet, in September 1939, approved the taking of the Waiōuru lands for defence purposes, under the Public Works Act 1928. Philip Cleaver, 'The Taking of Maori Land for Public Works in the Whanganui Inquiry District: 1850–2000' (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc A36), pp 115–117.
104. The first land for the Waiōuru Training area, amounting to 51,600 acres, was taken by notice in the *New Zealand Gazette*: 'Land taken for defence purposes', 16 November 1939, *New Zealand Gazette*, 1939, no 138, p 3062. The first training camp had been held at Waiōuru in 1937 while the land was still leased for farming. Source: Ministry of Defence Property Directorate 2008-G Pennyfather. Although much of the Waiōuru defence land is outside our district, the takings canvassed in our report plus the 1961 takings (see doc A36, p 151) gives a total area over 142,100 acres or 56,850 hectares.
105. A portion of Rangipō North 6C and the whole of Rangipō–Waiū 1B.
106. 'Land, and leasehold estate or interest in land, taken for public works', 7 July 1942, *New Zealand Gazette*, 1942, no 68, p 1886
107. The published history of the 28th (Māori) Battalion gives us a feel

for the times: Wira Gardiner, *Te Mura o te Ahi: The Story of the Maori Battalion* (Auckland: Reed, 1992).

108. The area of the first block was 46.6 hectares and the second block was 9.2 hectares. Both are shown in Crown Forestry Rental Trust, 'Maps of the National Park Inquiry District – A Thematic Overview Map Book to support the Waitangi Tribunal Hearings, 2005 (doc A48), pl 9.

109. Tony Nightingale and Paul Dingwall, *Our Picturesque Heritage: 100 Years of Scenery Preservation in New Zealand* (Wellington: Department of Conservation, 2003), pp 5–9

110. 'Land in block X, Hunua Survey District, Taupo West County, taken for scenery-preservation purposes', 15 June 1911, *New Zealand Gazette*, 1911, no 51, pp 1994–1995 (doc A36, p100). Cleaver is unable to explain the smaller size, or the exclusion of Crown land, since the Public Works Department file has either been lost or destroyed.

111. Document A36(a), pp 12–13

112. Edwin Bold was appointed as a land purchase officer in 1908 and held that position for 23 years. We have no information about his non-appearance on this occasion.

113. Document A36, p 101

114. See chapter 14 and John Martin, *People, Politics and Power Stations* (Wellington: Electricity Corporation of New Zealand and Historical Branch of the Department of Internal Affairs, 1998).

115. Tony Walzl, 'Hydro-Electric Issues: The Tongariro Power Development Scheme' (commissioned research report, Wellington: Waitangi Tribunal, 2005) (doc A8), pp 13–16

116. Alexander Gibbs and Partners were engaged to carry out these investigations: *ibid*, p 14.

117. 'Authorising the Minister of Electricity to construct and use works in connection with the utilisation of water power from the Wanganui, Tokaanu, Tongariro, Rangitikei, and Wangaeahu Rivers for the generation of electrical energy', 29 October 1958, *New Zealand Gazette*, 1958, no 66, p 1463. Orders in Council were regularly used in the 1920s, 1930s, and 1940s to licence electric power boards, mining companies, and farmers to use rivers and streams to generate electricity. In the 1950s, they were used to authorise the Minister of Electricity to construct and use hydroelectric power schemes. The Order in Council of 20 October 1954, which authorised the use of northern South Island lakes and rivers for these purposes, was one of the prototypes for the Tongariro order: 'Authorizing the Minister in Charge of the State Hydro-electric Department to construct and use works in connection with the utilization of water power from Lakes Rotorua and Rotoiti, and the Buller and Wairau Rivers, for the generation of electrical energy', 20 October 1954, *New Zealand Gazette*, 1954, no 66, p 1686.

118. Document A8, pp 121–123

119. *Ibid*, pp 148–149. These negotiations were part of a larger package which included Tūrangi township and Lake Rotoaira as well as the TPD structures, canals, and storage lakes.

120. *Ibid*

121. The largest of these, close to 400 hectares, was Waimanu 2D, which was crossed by the Wairehu canal: 'Land taken for the development of water power (Tongariro Power Scheme)', 18 July 1968, *New*

*Zealand Gazette*, 1968, no 50, p 1344; 'Land taken for the development of water power (Tongariro Power Scheme)', 19 August 1968, *New Zealand Gazette*, 1968, no 53, p 1401. We received no evidence to explain why the full 400 hectares was taken or what the balance of the land was used for.

122. The parcels were taken, as survey proceeded and *Gazette* notifications were organised in 1974 (17 parcels taken), 1979 (eight parcels taken), and 1980 (14 parcels taken).

123. 'Land taken for the generation of electricity', 5 April 1974, *New Zealand Gazette*, 1974, no 38, p 736; doc A8, pp 142–148; D Macdonald for district commissioner of works to commissioner of works, Wellington, 'Outstanding Matters Relating to Legalisation of Tongariro Power Development Installations' and schedule of property, 9 April 1987, ABWN 889 w5021 92/12/1/6, Archives New Zealand, Wellington, pp 1–11 (Marian Horan, comp, 'Document Bank to "Tongariro Power Development: Selected Issues"', 41 vols (document bank, Wellington: Crown Law Office, 2005) (docs A51(a)–(qq)) (doc A51(k)), vol 11, pp 71–81)

124. Document A8, pp 128–132

125. Six of the seven takings were from Ōkahukura blocks and the seventh, a metal pit, was taken from Rangipō North 6C. The LHAD data base was prepared by the Crown Forest Rental Trust and provided in document G17, pp 570–571.

126. Document A36, pp 272–274

127. *Minister of Works and Development v Hura* [1979] 2 NZLR 279 (CA)

128. 'On 24 February 1969, a total area of 94 acres 2 roods 39 perches was taken for a metal pit and quarry at Otukou': document A36, p 296. On page 297 Cleaver says, 'The lands required for Otukou metal pit and quarry were taken by a proclamation signed by the Governor-General on 23 January 1969'. The following reference was given: 'Land taken for a quarry and for a metal pit', 23 January 1969, *New Zealand Gazette*, 1969, no 9, pp 266–267. This proclamation detailed that the metal pit contained only areas from Ōkahukura 2B2 and Ōkahukura 2. However, the plan of the metal pit shows that it also included land from Ōkahukura 2B1A (SO 27029, Wellington Land District).

129. Document A5, p 65

130. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua: Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004); Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006); Waitangi Tribunal, *He Maunga Rongo*; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010); Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010) are the reports on the Gisborne, Hauraki, central North Island, Wairarapa ki Tararua, and Tauranga Moana claims respectively.

131. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, p 628

132. Waitangi Tribunal, *The Hauraki Report*, vol 3, p 1053

133. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, p 628

134. Waitangi Tribunal, *The Hauraki Report*, vol 3, p 1055
135. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, pp 629–630; Waitangi Tribunal, *The Hauraki Report*, vol 3, pp 1056–1057
136. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, pp 629–630
137. Coates, 25 November 1927, NZPD, 1927, vol 216, p 537 (Waitangi Tribunal, *The Hauraki Report*, vol 3, p 1057)
138. Waitangi Tribunal, *The Hauraki Report*, vol 3, pp 1057–1058
139. *Ibid*, p 1058; Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, p 630
140. Document A15, pp 133–134
141. Public Works Amendment Act 1935, s 2(1)
142. Section 16(2) specified how the rent would be paid.
143. See, for example, the Defence Emergency Regulations 1939, reg 6. Marr notes that normal protections were set aside in the interests of national security, on the understanding that remedies would be made after the war: doc A15, p 157.
144. *Ibid*, p 155
145. Compare document A36, p 298.
146. Public Works Amendment Act 1962, s 7
147. Document A15, p 159. The same Act provided for 20-metre esplanade reserves when land fronted onto a lake or waterway.
148. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, p 631; Waitangi Tribunal, *The Hauraki Report*, vol 3, pp 1058–1059
149. Te Ture Whenua Māori Act 1993, s 134. See, especially, section 134(1)(c).
150. Te Ture Whenua Māori Act 1993, s 134(3)(c)
151. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 873
152. Waitangi Tribunal, *Tauranga Moana*, vol 1, p 273; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 819
153. Waitangi Tribunal, *Tauranga Moana*, vol 1, p 273
154. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 759
155. *Ibid*, p 799
156. Waitangi Tribunal, *Tauranga Moana*, vol 1, p 292
157. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 796
158. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 3, pp 1442–1444
159. Land Information New Zealand, *Review of the Public Works Act: Issues and Options* (Wellington: Land Information New Zealand, 2000); Land Information New Zealand, *Review of the Public Works Act: Summary of Submissions* (Wellington: Land Information New Zealand, 2000); Waitangi Tribunal, *Tauranga Moana*, vol 1, p 304
160. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 789
161. The first four criteria are set out in Waitangi Tribunal, *Tauranga Moana*, vol 1, p 273. For the fifth criterion, see pp 268, 286–292, 304. Compare Waitangi Tribunal, *Turangi Township*, p 365; Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995* (Wellington: Brooker's Ltd, 1995), p 11; and Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, pp 796, 801–802.
162. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 796
163. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, p 648
164. LHAD database provided by the Crown Forestry Rental Trust. We have insufficient evidence to determine if compensation was payable for all or some of the lands taken for the North Island main trunk railway.
165. The *Tauranga Moana* report notes that leaseholds were considered for airports from the 1930s and quarries and water reservoirs from the 1950s: Waitangi Tribunal, *Tauranga Moana*, vol 1, p 297.
166. *Ibid*, p 147
167. *Ibid*, pp 147–148; Native Purposes Act 1943, s 7; Maori Affairs Act 1953, s 436
168. The *Tauranga Moana* report, which reaches similar conclusions, considers the technical aspects of valuation: Waitangi Tribunal, *Tauranga Moana*, vol 1, pp 439–448, 482–483.
169. Paper 3.3.45, ch 11, p 4
170. Waitangi Tribunal, statement of issues for the Tongariro National Park Inquiry, December 2005 (claim 1.4.2), pp 126–127
171. Paper 3.3.41, pp 100–101
172. LHAD database provided by the Crown Forestry Rental Trust. This contains 135 entries with a total area of 5,983 hectares.
173. Whanganui Māori, for example, took up a subscription at Hiruharama in December 1873 and contributed £38 5s towards the formation of the road from Hiruharama to Tongariro: *Te Waka Maori o Niu Tirani*, vol 10, no 3 (19 February 1874), p 29.
174. Early survey maps provide evidence of existing roads. See, for example, Moka Apiti and Crown Forestry Rental Trust, 'National Park Overview Mapbook, Part 2: A District Overview Map Book to Support Waitangi Tribunal Proceedings' (map book, Wellington: Crown Forestry Rental Trust, 2006) (doc A48(a)), pl 26, which differentiates between native roads and formed government roads.
175. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 836
176. *Ibid*, p 838
177. *Ibid*; doc A15, pp 37–38
178. Waimarino, purchased in 1887, was one of the largest: see Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A43).
179. Compensation would have applied had the road takings exceeded five per cent of any block. This was not the case in National Park.
180. Waimarino 4B2 was 285.2 hectares, taken in 1911; Mahuia B was 334.4 hectares and Tawhai North was 1,209.7 hectares, both taken in 1913: see LHAD database as provided in doc G17, p 565.
181. Peter Clayworth, "Located on the Precipices and Pinnacles": A Report on the Waimarino Non-Seller Blocks and Seller Reserves' (commissioned research report, Wellington: Waitangi Tribunal, 2005) (doc A35), pp 156–160
182. The evidence presented to the Whanganui inquiry is that there were face-to-face meetings with Crown agents and an area of 366 acres (148 hectares) containing kāinga and mahinga kai was returned

in January 1912: Brent Parker, brief of evidence, 9 May 2010 (Wai 903 ROI, doc 017); doc A35, p 156.

- 183.** Both takings were on 13 July 1942: 749.9 hectares from Rangipō North 6C and 1,811 hectares from Rangipō–Waiū 1B. See LHAD data base as provided in doc G17, p 568.
- 184.** The tourist corridor in this instance was the North Island Main Trunk Railway.
- 185.** Document A36, pp 82–84. See also Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 829–830.
- 186.** Document A36, p 84; Findlay, 23 November 1910, NZPD, 1910, vol 153, p 891
- 187.** See doc A36, pp 89–90.
- 188.** Peter McBurney, ‘Scenery Preservation and Public Works Takings (Taupo–Rotorua), c1880s–1900’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A38), p 99
- 189.** Documents G4, G40; doc A5, pp 59–63, 65–66; T J Hearn, ‘Crown Land Purchasing in the National Park Inquiry District, 1900 to 2000’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc H1), pp 85–90; doc A9, pp 152–153
- 190.** Paper 3.3.45, ch 11, pp 19–25
- 191.** Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 846–853, esp p 853
- 192.** The Māori land surrounding the puna to the west of the State highway which supplied water for the hatchery was an essential component for the scheme. There were other lands to the east of the highway and adjacent to the Tongariro River which could have been considered as an alternative to the Downs whānau river flats in which the hatchery was built.
- 193.** See, especially, the 1925 and 1926 correspondence between Morehu Downs and the Native Minister reproduced in document A5, pp 59–62.
- 194.** Document A5
- 195.** Ibid, pp 339–340
- 196.** Ibid, p 21
- 197.** Ibid, p 22
- 198.** Document A35, p 153. Waimarino village was located in the south-east corner of this block.
- 199.** See the sections on Rangipō North and Rangipō–Waiū in document A5, pp 214–302.
- 200.** Document G17, pp 224, 241
- 201.** Ian Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), p 61; map 11: ‘Nga Wahi Kai Manu (Bird Snaring Areas)’ (doc G17, p 147)
- 202.** Paper 3.3.45, ch 11, pp 12–13; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 832
- 203.** Waitangi Tribunal, *Tauranga Moana*, vol 1, p 297
- 204.** Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 801
- 205.** Document A35, pp 157–160
- 206.** Document A36, p 120
- 207.** Paper 3.3.45, ch 11, pp 12–13, para 36
- 208.** By the time the TPD was constructed in the 1960s, there was another option available and this was considered. See below for the Ōtūkou case study.

- 209.** Cleaver was unable to find evidence that they were notified: doc A36, p 123.
- 210.** Ibid, pp 123–125
- 211.** Details of the takings can be found in document A5, p 175. For details of the compensation paid for three of the seven properties see Ministry of Works, memorandum regarding TPD – R9 quarry G10 and G11 metal pits, 13 August 1985 (Crown counsel, comp, supporting documents to Crown memorandum 3.2.59 regarding Ōtūkou quarry, 2006 (doc D13), pp 6–9). There are no claims or evidence that the other four properties were not treated in similar fashion.
- 212.** Document A8, p 128
- 213.** *Minister of Works and Development v Hura* [1979] 2 NZLR 279 (CA)
- 214.** Document A36, p 298. The Crown addressed the matter of metal taken from the Ōtūkou quarry when it made its closing submissions but provided no further information about the metal pits: paper 3.3.45, ch 11, p 16.
- 215.** Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 796
- 216.** Claim 1.4.2, p 126
- 217.** Ibid; paper 3.3.41, p 101
- 218.** Arthur Parish, brief of evidence, 15 September 2006 (doc F25); Robert Severne, brief of evidence, 6 October 1906 (doc G49)
- 219.** Document A15, pp 15–16, 38–45
- 220.** Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 798
- 221.** Ibid
- 222.** Public Works Act 1928, s 35; see also Russell Davies, *History of Public Works Acts in New Zealand, Including Compensation and Offer-Back Provisions* (Wellington: Land Information New Zealand, 2000), p 50
- 223.** Waitangi Tribunal, *Tauranga Moana*, vol 1, pp 300–301
- 224.** Either in ownership nominated by the applying authority or determined by the Māori Land Court: Waitangi Tribunal, *Tauranga Moana*, vol 1, p 298.
- 225.** Ibid, pp 298–299; doc A15, p 150
- 226.** Land Information New Zealand, among other tasks, administers the Land Act 1948 and the Public Works Act 1981.
- 227.** Land Information New Zealand undertook an internal review of its standards and guidelines relating to the disposal of public works land, gifted lands, and land held for Treaty settlements: Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, pp 760–761.
- 228.** Land Information New Zealand, *Issues and Options*
- 229.** Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 801
- 230.** Paper 3.3.45, ch 11, pp 6–8
- 231.** Land Information New Zealand, *Issues and Options*, especially ch 7, tbl 7.2
- 232.** Paper 3.3.45, ch 11, pp 5–6. The Crown and the claimants are in substantial agreement about requirements for the taking of lands, but not the return of lands no longer required.
- 233.** For more detail on Lake Ōtamangākau, see document A8, p 144.
- 234.** Lake Moawhango is partly inside and partly outside the National Park inquiry district. The portion inside was purchased in the 1890s: doc A48, p 5.

235. Waitangi Tribunal, *Turangi Township*, p 336
236. Minutes of a meeting between Ngāti Tūwharetoa and Ministry of Works officials, Tokaanu, 20 September 1964, ABZK 92/12/67/6, Archives New Zealand, Wellington, p 1 (Tony Walzl, comp, 'Supporting Papers for "Hydro-Electricity Issues: The Tongariro Power Development Scheme"' and "Hydro-Electricity Issues: The Waikato River Hydro Scheme"', 2 vols (supporting papers, Upper Hutt: Walghan Partners, 2005) (doc A8(a)), vol 1, p 376)
237. *Ibid*, p 2 (p 377)
238. *Ibid*
239. *Ibid*, p 3 (p 378)
240. A W Gibson to commissioner of works, 'Tongariro Power Development – Maori Land Otukou Pa', letter summarising 1 October 1964 meeting between Ngāti Tūwharetoa representatives and Ministry of Works personnel, 7 October 1964 (doc D13, pp 76–77).
241. Mr Hura is not listed in the Tokaanu minute book or the partition order for Ōkahukura 2B2, dated 15 March 1934: Tokaanu Native Land Court minute book 25, 15 March 1934, fols 206–208.
242. Minutes of meeting between Ngāti Tūwharetoa land owners and Ministry of Works officials, 20 September 1964, ABZK 92/12/67/6, Archives New Zealand, Wellington, p 7 (doc A8(a)), vol 1, p 382)
243. *Ibid*, p 18 (p 393)
244. A W Gibson, project engineer, to commissioner of works, 'Tongariro Power Development – Maori Land Otukou Pa', letter summarising 1 October 1964 meeting between Ngāti Tūwharetoa representatives and Ministry of Works personnel, 7 October 1964, p 1 (doc D13, p 76)
245. *Ibid*
246. *Ibid*
247. *Ibid*, pp 1–2 (pp 76–77)
248. *Ibid*, p 2 (p 77). The school was adjacent to Pāpakai Pā and, according to the evidence of Daisy Curran, was renamed Te Rato.
249. West, resident engineer, to district officer, Māori Affairs Department, Whanganui, 25 September 1964, AAVN 869 W3599 box 242 54/19/24/2, Archives New Zealand, Wellington, p 1. On 26 April 2006, the Crown indicated it was intending to submit in evidence, 'essentially as a document bank', two Ministry of Works files containing material on land acquisition at Ōtūkou. See Crown counsel, memorandum concerning socio-economic issues and the May hearing week, 28 April 2008 (paper 3.2.59), pp 5–6. Missing from the material filed (we presume unintentionally, since there was no indication that the Crown's intention was to file only selected documents) was this document from Mr West, since located.
250. Plan attached to West, resident engineer, to district officer, Māori Affairs Department, Whanganui, 25 September 1964, AAVN 869 W3599 box 242 54/19/24/2, Archives New Zealand, Wellington, p 1; doc A48, pl 23
251. Ministry of Works, Whanganui, voucher no 3803, to Māori trustee, Whanganui, 26 January 1971 (doc D13, p 31)
252. West, resident engineer, 'Tongariro Power Development: Otukou Pa', 11 December 1964 (doc D13, p 68)
253. Hineumu Daisy Curran, brief of evidence, 28 September 2006 (doc G20), p 9. Daisy was born at Ōtūkou Marae, lived below the Huimako Bluff, and went to Ōtūkou School.
254. RT West, resident engineer, to medical officer of health, Whanganui, 9 October 1964, AATC W3457 box 506 92/11/25/1, Archives New Zealand, Wellington (Tony Walzl, comp, 'Supporting Documents to "Environmental Impacts of the Tongariro Power Development Scheme"', 18 vols (supporting documents, Wellington: Crown Forestry Rental Trust, 2006) (docs E12(b)–(k)) (doc E12(j)), vol 9, p 4818)
255. 'Ōtūkou Maoris: Bodies Exhumed and Returned', *Taumarunui Press*, 10 November 1964 (doc E12(j)), p 4817). Te Upoko a Taitaia marae was relocated to Pāpakai in 1962: *Te Ao Hou*, no 41 (December 1962) (doc G53), p 25.
256. See, for example, minutes of meeting between Ngāti Tūwharetoa and Crown officials, 'Tokaanu tailrace', 24 September 1966, MA 1 5/5/206, Archives New Zealand, Wellington, pp 4–5 (doc A8(a)), vol 1, pp 40–41); minutes of meeting between owners and Crown officials, 'Tokaanu swampland', 16 July 1966, MA 1 5/5/206, Archives New Zealand, Wellington, pp 3–4 (doc A8(a)), vol 1, pp 48–49); solicitor for the claimants to Minister of Public Works, 'Claim to compensation', tbl B: description of lands affected, 1946, MA 1 19/13/1 pt 2, Archives New Zealand, Wellington, pp 6, 16, 22 (doc A8(a)), vol 1, pp 162, 172, 178); solicitors for the claimants to Minister of Works, 'Claim to compensation, 1959, tbl B: description of lands affected, MA 1 19/13/1 pt 2, Archives New Zealand, Wellington, p 26 (doc A8(a)), vol 1, p 193z); minutes of meeting between owners' committee and Crown officials, 24 September 1964, ABZK 92/12/24/1, Archives New Zealand, Wellington, p 4 (doc A8(a)), vol 1, p 375d); minutes of meeting between Tūwharetoa Māori land owners and Ministry of Works officials, 20 September 1964, ABZK 92/12/67/6, Archives New Zealand, Wellington, p 17 (doc A8(a)), vol 1, p 392); PL Laing, commissioner of works, to Minister of Works, 18 September 1967, AANU 7740 W5159/60 21/75/2 pt 1, Archives New Zealand, Wellington, p 1 (Tony Walzl, comp, 'Supporting Documents to "Environmental Impacts of the Tongariro Power Development Scheme"', 18 vols (doc E12(h)), vol 7, p 3292); chief executive officer to assistant general manager, New Zealand Electricity Department, 28 July 1970, AANU 7740 W5159 21/75/1 pt 3, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 2, p 803); FR Askin, commissioner of works, to general manager, New Zealand Electricity Department, 'Tongariro Power Development: archaeological work', 25 June 1970, AANU 7740 W5159/59 21/75/1 pt 3, Archives New Zealand, Wellington, p 1 (Tony Walzl, comp, 'Supporting Documents to "Environmental Impacts of the Tongariro Power Development Scheme"', 18 vols (doc E12(g)), vol 6, p 2785); secretary, New Zealand Historic Places Trust, to commissioner of works, 6 April 1970, AANU 7740 W5159/59 21/75/1 pt 3, Archives New Zealand, Wellington, pp 1–2 (doc E12(g), pp 2786–2787).
257. RS Dowsing, resident engineer, to district commissioner of works, Whanganui, 18 January 1978 (Crown counsel, comp, supporting documents to Crown memorandum 3.2.59 regarding Ōtūkou quarry, 2006 (doc D12), p 21)
258. Document A36, p 298
259. Edwynna Moana, brief of evidence, 4 September 2006 (doc F3), p 6

- 260.** District commissioner of works, Whanganui, to project engineer, Tūrangi, 23 October 1968; extract from *New Zealand Gazette*: ‘Notice of intention to take land in block 1, Pihanga Survey District, Taumarunui County, for a quarry and for a metal pit’, 2 August 1968, *New Zealand Gazette*, 1968, no 61, p 1706 (doc D13, pp 39–40)
- 261.** Project engineer, Tūrangi, to district commissioner of works, 30 October 1968 (doc D13, p 38)
- 262.** Under section 6 of the Public Works Amendment Act 1962, notice of the *taking* of any land for public works purposes was indeed, from 1 April 1963, to be served on the Māori trustee. However, the amendment does not appear to have affected provisions relating simply to entry.
- 263.** Resident engineer to district commissioner of works, Whanganui, 10 December 1965 (doc D13, p 59)
- 264.** Paper 3.3.45, ch 11, p 14
- 265.** *Ibid*
- 266.** A W Gibson to commissioner of works, ‘Tongariro Power Development – Maori Land Otukou Pa’, letter summarising 1 October 1964 meeting between Ngāti Tūwharetoa representatives and Ministry of Works personnel, 7 October 1964, p 1 (doc D13, p 76)
- 267.** West, resident engineer, to Konui and Morgan, 8 and 10 December 1964 (doc D13, pp 69–71, 75)
- 268.** Flynn, district commissioner of works, Whanganui, to resident engineer, Taumarunui, 25 February 1965 (doc D13), p 62; Harris, land purchase officer, to legal, not dated, c February 1965 (doc D13, p 63)
- 269.** Document G20, pp 7–8
- 270.** Flynn, district commissioner of works, Whanganui, to registrar, Whanganui Māori Land Court, 3 August 1965; Flynn to resident engineer, Taumarunui, 25 February 1965 (doc D13, pp 61, 62)
- 271.** Margaret Hilda Alington, *Unquiet Earth: A History of the Bolton Street Cemetery* (Wellington: Wellington City Council and the Ministry of Works and Development, 1978), p 170
- 272.** *Ibid*, p 160
- 273.** Redmer Yska, *Wellington: Biography of a City* (Auckland: Reed, 2006), p 195
- 274.** Document A8, p 126; A W Gibson to commissioner of works, ‘Tongariro Power Development – Maori Land Otukou Pa’, letter summarising 1 October 1964 meeting between Ngāti Tūwharetoa representatives and Ministry of Works personnel, 7 October 1964, p 1 (doc D13, p 76)
- 275.** Document G20, p 8
- 276.** *Ibid*, p 9
- 277.** *Ibid*, pp 9–10
- 278.** Minutes of meeting between Ngāti Tūwharetoa and Ministry of Works officials, ‘Tongariro Power Development’, 20 September 1964, ABZK 92/12/67/6, Archives New Zealand, Wellington, pp 2, 7 (doc A8(a), vol 1, pp 377, 382)
- 279.** Flynn, district commissioner of works, Whanganui, to Māori trustee, Whanganui, 16 December 1964 (doc D13, p 66)
- 280.** JE Cater, district officer, to district commissioner of works, 15 December 1964 (doc D13, p 67). In saying this, the MOW official was presumably relying on section 29 of the Finance Act (No 3) 1944 which set out the basis for assessing compensation for land takings for public works – and in particular section 29(1)(c) which ruled that where there was effectively only one purchaser, a market could not be deemed to exist.
- 281.** Flynn, district commissioner of works, Whanganui, to Māori trustee, Whanganui, 16 December 1964 (doc D13, p 66)
- 282.** Russell Kirkpatrick, Kataraina Belshaw, and John Campbell, ‘Land-Based Cultural Resources and Waterways and Environmental Impacts (Rotorua, Taupo and Kaingaroa), 1840–2000’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A58), p 410
- 283.** District commissioner of works to JE Cater, district officer, Whanganui, 22 February 1965; JE Cater to district commissioner of works, Whanganui, 12 February 1965 (doc D13, pp 64, 65)
- 284.** Flynn, district commissioner of works, Whanganui, to project engineer, 19 March 1965 (doc D12, p 96)
- 285.** District commissioner of works, Whanganui, to resident engineer, 8 November 1965 (doc D13, p 60)
- 286.** Resident engineer to district commissioner of works, Whanganui, 10 December 1965 (doc D13, p 59)
- 287.** Acting district commissioner of works to district officer, Department of Māori Affairs, Whanganui, 12 April 1966; JH Dark for Māori trustee to district commissioner of works, 10 March 1966 (doc D13, pp 57, 58)
- 288.** A W Gibson, project engineer, to commissioner of works, Wellington, 29 August 1967, ABZK 92/12/67/6 pt 3, Archives New Zealand, Wellington, p 3 (doc A8(a), vol 1, p 418). A right of objection is not specifically mentioned in section 17 of the Act but the October 1968 ‘notices of intention to take’ did indeed state that ‘persons affected by the taking’ had a right of objection.
- 289.** Commissioner of works to district commissioner of works, Whanganui, 5 April 1967 (doc D12, p 84)
- 290.** Extract from *New Zealand Gazette*: ‘Notice of intention to take land in block I, Pihanga Survey District, Taumarunui County, for a quarry and for a metal pit’, 2 August 1968, *New Zealand Gazette*, 1968, no 61, p 1706 (doc D13, p 40). The area was described as Part Ōkahukura 2B2.
- 291.** Project engineer to Māori trustee, Whanganui, 21 October 1968, and distribution list (doc D12, pp 73–75)
- 292.** Project engineer to district commissioner of works, Whanganui, 30 October 1968 (doc D13, p 38)
- 293.** Document A36, p 298
- 294.** District commissioner of works, Whanganui, to commissioner of works, 19 December 1968 (doc D12, p 68)
- 295.** Document G20, p 6
- 296.** Extract from *New Zealand Gazette*: ‘Taking land for a quarry and for a metal pit’, 23 January 1969, *New Zealand Gazette*, 1969, no 9, pp 266–267 (doc D13, p 40)
- 297.** Project engineer to commissioner of works, 7 November 1966, ABZK 92/12/67/6 pt 3, Archives New Zealand, Wellington (doc A8(a), vol 1, p 423)
- 298.** District commissioner of works to project engineer, 21 November

- 1966, ABZK 92/12/67/6 pt 3, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 424)
299. Ibid
300. JE Cater, district officer, to district commissioner of works, 9 October 1970 (doc D13, p 35)
301. Ministry of Works, Whanganui, voucher no 3803, to Māori trustee, Whanganui, 26 January 1971 (doc D13, p 31). From 1 November 1964 to the date of settlement (27 January 1971) was '6 years 88 days', as the payment voucher carefully recorded.
302. HK Payne to chairman, Rotoaira Trust, 7 December 1966, 25 January 1967, AANU 7740 W5159 21/75/1 pt 2, pt 3, Archives New Zealand, Wellington, pp 1-2 (doc A8(a), vol 2, pp 801-802, 808-809); 'Battle over Lake Rotoaira "Pollution"', *Taranaki Daily News*, 1 February 1967 (doc A8(a), vol 2, p 807)
303. Hadfield Peacock Tripe & Feist to Minister of Works, 3 February 1967, AANU 7740 W5159 21/75/1 pt 3, Archives New Zealand, Wellington, pp 1-2 (doc A8(a), vol 2, pp 805-806)
304. Minutes of meeting between Tūwharetoa Māori land owners and Ministry of Works officials, 20 September 1964, ABZK 92/12/67/6, Archives New Zealand, Wellington, pp 2, 7 (doc A8(a), vol 1, pp 377, 382)
305. 'Appendix 1: sources of materials where land taking action is complete', attached to B Dekker, project engineer, to resident engineer, 10 July 1974 (doc D12, p 13)
306. A W Gibson to commissioner of works, 'Tongariro Power Development - Maori Land Otukou Pa', letter summarising 1 October 1964 meeting between Ngāti Tūwharetoa representatives and Ministry of Works personnel, 7 October 1964, p 1 (doc D13, p 76)
307. District commissioner of works to resident engineer, 6 December 1973 (doc D13, p 27)
308. ES Charrott, district commissioner of works, to resident engineer, 29 August 1979 (doc D13, p 26)
309. Senior land purchase officer and assistant district property officer to district commissioner of works, 27 March 1980, pp 1-3 (doc D13, pp 16-18); officer in charge, Rotoaira Forest, New Zealand Forest Service, to district commissioner of works, 10 March 1980 (doc D12, p 9)
310. Land purchase officer and district property officer to commissioner of works, 13 August 1985, pp 1-4 (doc D13, pp 6-9)
311. Ibid, pp 3-4 (pp 8-9). The latter comment may have been a reference to the resident engineer's view that an expensive new crushing plant would be needed if extraction was to continue.
312. Document A36, pp 300-301
313. Works Consultancy Services Ltd to B Bonisch, Department of Survey and Land Information, 2 October 1992; New Zealand Forest Managers to district solicitor, Department of Survey and Land Information, 28 September 1992 (doc D12, pp 2, 3). Each entity sought to acquire the lands in question, possibly by means of a lease, with Works Consultancy Services suggesting that if leases were agreed to, they could be 'transferred with the freeholding should the areas be revested in local Maori'.
314. Document A36, pp 300-301
315. Paper 3.3.42, p 122
316. The removal of another whareniui, Rangikapuaia, from Te Upoko o Taitaia marae, had occurred in 1962 so cannot have been related to the quarrying: see *Te Ao Hou*, no 41 (December 1962), p 25 (doc G53).
317. Beale, district commissioner of works, to project engineer, 21 November 1966, ABZK 92/12/67/6 pt 3, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 424)
318. Paper 3.3.42, pp 118-120
319. Public Works Act 1928, s104(7) (as amended by Public Works Amendment Act 1962, s 6)
320. Document G20, pp 9-10; Russell Kirkpatrick, Kataraina Belshaw, and John Campbell, 'Summary of "Land-Based Cultural Resources and Waterways and Environmental Impacts (Rotorua, Taupo and Kaingaroa), 1840-2000"' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2004) (doc A58(a)), pp 34-35
321. *Minister of Works and Development v Hura* [1979] 2 NZLR 279 (CA)
322. Beale, district commissioner of works, to project engineer, 21 November 1966, ABZK 92/12/67/6 pt 3, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 424)
323. Public Works Act 1928, s104(2) (as amended by Public Works Amendment Act 1962, s 6(1))
324. Ministry of Works, notes on 'Tongariro Power Development, entry on to land', May 1970, ABZK W5472 box 337 92/12/67/6/34 pt 1, Archives New Zealand, Wellington, p 3 (Marian Horan, comp, 'Document Bank to "Tongariro Power Development: Selected Issues"', 41 vols (doc A51(t)), vol 20, p 25)
325. Ministry of Works, app A: 'Entry on to Land for the Purpose of', not dated, ABZK W5472 box 337 92/12/67/6/34 pt 1, Archives New Zealand, Wellington, p 1 (doc A51(t), p 27)
326. Ngāti Hikairo ki Tongariro, amended statement of claim, 12 August 2005 (claim 1.2.17(a)), p 76
327. Commissioner of works to project engineer, 7 April 1966, ABZK 92/12/67/6 pt 3, Archives New Zealand, Wellington (doc A8(a), vol 1, p 427)
328. Dekker, project engineer, to district commissioner of works, 9 July 1973 (doc D12, pp 52-53)
329. *Minister of Works and Development v Hura* [1979] 2 NZLR 279, 283 (CA)
330. Matthew Howell, brief of evidence, 4 September 2006 (doc F1), pp 7-8
331. Land purchase officer and district property officer to commissioner of works, 13 August 1985, pp 1-4 (doc D13, pp 6-9)
332. The *Turangi Township Report* and *He Maunga Rongo* are of particular relevance, dealing as they do with lands and projects in close proximity to our inquiry district.
333. The Tainui Treaty Settlement was legislated in 1995 and the Ngāi Tahu Settlement in 1997.
334. Land Information New Zealand, *Issues and Options*. Chapter 7 deals with 'issues of particular interest to Maori' and table 7.2 on pages 60 and 61 summarises Waitangi Tribunal recommendations.



335. Almost one-third of these were from whānau, hapū, and iwi. The remaining two-thirds were from a wide spectrum of agencies and individuals.

336. Land Information New Zealand, *Summary of Submissions*.

See especially chapter 8, pp 75–81, for an overview of the Treaty of Waitangi and Māori issues submissions from Māori and non-Māori.

337. Waitangi Tribunal, *Tauranga Moana*; Waitangi Tribunal, *Wairarapa ki Tararua*

338. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, pp 801–802

339. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 801

#### Page 718: Table 10.1

Source: Document G17, pp 564–573

#### Page 719: Table 10.2

Source: Document G17, pp 487–489, 564–573

#### Page 727: Map 10.2

Source: Document A48, bk1, map of lands taken for public works

#### Page 735: Prison Lands

1. Paper 3.3.26, p 2. Areas around the periphery of the prisons have been bought, sold and exchanged since the 1930s but the total area has remained in the order of 9,000 to 10,000 hectares.
2. Hautu was founded in 1922 and Rangipō in 1925, initially as camps for prisoners involved in road building. Prisoners were housed in small, temporary camps, close to the workplaces. Robert Severne and Arthur Parish were former prison officers who gave evidence to the Tribunal: Robert Severne, brief of evidence, 6 October 2006 (doc G49); Arthur Parish, brief of evidence, 15 September 2006 (doc F25). BL Dallard, the controller of prisons in the 1920s, provided material for Arthur Parish and was the author of *The Development of the Prison System* (Wellington: Honorary Justices Association, 1934). See document F25, pp 42–43.
3. These policies, developed in English prisons such as Dartmoor, were introduced to New Zealand from the 1910s onwards. Areas of pumice land were to be cleared, broken in, and cultivated by ‘well-conducted and trustworthy prisoners’ and then made available for general farming activities: Edgar Baldock, ‘The New Zealand Prison System’, *Journal of Criminal Law and Criminology*, vol 29, no 2 (1938), pp 219–220.
4. In a condition known as ill-thrift, the deficiencies seriously inhibited growth in sheep and cattle: see docs F25, G49.
5. Document A5, pp 214–220
6. Document G49, p 4
7. Ibid, p 5
8. Ibid, p 6
9. Ibid, p 8

#### Page 736: ‘My Dad told me that once . . .’

1. Tūroa Karatea, brief of evidence, 28 September 2006 (doc G26), p 15

#### Page 737: The Order in Council

1. ‘Order in Council’, 29 October 1958, *New Zealand Gazette*, 1958, vol 3, p 1463

#### Page 738: Kōwhai Flat Takings for the National Trout Centre

1. Paula Berghan, comp, ‘Supporting Papers for “Block Research Narratives of the Tongariro National Park District”’, 15 vols (supporting papers, Wellington: Crown Forestry Rental Trust, 2004) (doc A5(a)), vol 7, p 2938
2. Nohopapa Whataiwi to the Native Minister, 23 March 1926 (doc A5(a), vol 7, p 3105)
3. Rangikamutua Downs, brief of evidence, 2 October 2006 (doc G40), p 5

#### Page 755: Ngaiterangi Smallman on Offer-back Rights

1. Document G19, p 7

#### Page 756: Wairarapa ki Tararua Recommendations

1. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 2, pp 801–802

