CHAPTER 12

WELLINGTON

12.1 Principal Data

12.1.1 Estimated total land area for the district

The estimated total land area for district 12 (Wellington) is 2,967,726 acres.

12.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 12 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 78 percent in 1860, 35 percent in 1890, 23 percent in 1910, and 7 percent in 1936 (or 38.2 acres per head according to the 1936 population figures provided below).

12.1.3 Principal modes of land alienation

The principle modes of land alienation in district 12 were:

- New Zealand Company purchases;
- Crown purchases; and
- purchases under the Native Land Court.

12.1.4 Population

The population of district 12 was approximately 4000 to 5000 in 1840 (estimated figure), 1965 in 1891 (estimated from census figures), and 4924 in 1936 (also estimated from census figures).

12.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district run inland from the mouth of the Whangaehu River towards the Kaimanawa Range and on to a point in the Kaweka Range. From there, the boundary runs south following the Kaweka, Ruahine, Tararua, and Rimutaka Ranges to the coast at a point on the western side of Palliser Bay.

The landscape falls into three principal zones running more or less north to south: the dune belt, the coastal plain, and the forest, which runs up into the mountains. The dune belt (some three to six miles in width) was covered in natural vegetation, some of which was edible. However, the numerous swamps and lagoons along this strip were probably a more important source of food. The second zone, the coastal plain, was a narrow strip of flats and dune ridges divided by westward flowing rivers. This region, in particular the land north of the Kukutauaki Stream on the Kapiti Coast, was highly prized by Maori as an abundant supply of natural food resources, including eels and other fish, and for its fertile soil for cultivation. It was also greatly valued by Pakeha from the 1850s for stock-rearing and cultivation. Lake Horowhenua was a valuable source of fish and flax for Maori, as were the streams running into the coast and the foreshores themselves. In general, permanent Maori settlements were located around the Whanganui-a-Tara and Porirua Harbours, along the fertile Kapiti Coast and the lower reaches of the main rivers (the Manawatu, Rangitikei, Ohau, Waikawa, and Otaki), or inland near the larger bodies of fresh water, such as Horowhenua and Papaitonga. This inland forest zone running to the mountain crests was visited by Maori for bird-snaring and gathering building materials and medicinal and decorative plants. The mainly forested Manawatu Plains contained clearings for the cultivation cycle.

12.3 Main Tribal Groupings

The descendants of Tara, known as Ngai Tara, have been identified as the first occupants of the region and came from the east coast to settle at Te Whanganui-a-Tara and up towards Manawatu. The tribal lands of Ngai Tara met those of Rangitane (also from the east coast) near Kapiti. While intermarriage and shared ancestry established a close interweaving of these groups, Rangitane gradually established themselves as the pre-eminent group, defeating Ngai Tara in a series of battles in the first half of the eighteenth century. Ngati Apa (originally from the Bay of Plenty) settled at the Rangitikei River, north of Rangitane, and Muaupoko (described as a 'tribe of somewhat mixed descent'[1]) flanked Rangitane to the south. Kahungunu, originally from the east coast, also moved south and settled in Wairarapa and the Hutt Valley, among other places, intermarrying with Ngati Ira descendants (another group of east coast origins, which later caused confusion for European identification of 'Kahungunu'). Aspects of the relationship between Ngati Ira and other tribal groups such as Ngai Tara have yet to be fully established.

Earlier Maori patterns of settlement in the area were disrupted between 1820 and 1840 by the invasion of northern tribes from Kawhia Harbour and Taranaki. In 1819, Ngati Toa (led by Te Rauparaha) joined with Ngapuhi and Ngati Raukawa

1. G L Adkin, *Horowhenua: Its Maori Placenames and Their Topographic and Historical Background*, Wellington, Department of Internal Affairs, 1948 (cited in R Anderson and K Pickens, *Wellington District: Port Nicholson, Hutt Valley, Porirua, Rangitikei, and Manawatu*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p 5)

Figure 21: District 12 (Wellington)

(from Maungatautari) in a migration down the west coast. Sections of Ngati Mutunga, Ngati Tama, and Te Atiawa also provided military support and accompanied Te Rauparaha to Kapiti. Relations between resident and migratory Maori were strained at best, with warfare often resulting, particularly as the relationship between Ngati Toa and Ngati Apa deteriorated. Although Te Rauparaha and Ngati Toa asserted wide authority in the region, Te Atiawa and Ngati Raukawa were allied with Ngati Toa, and also acted in their own right. Relationships and boundaries between these tribes were changing throughout this period.

Tensions between local and invading Maori reached crisis point at Waiorua in 1824, when earlier resident Maori groups unsuccessfully attempted to regain control of Kapiti Island from the more recent arrivals. Ngati Toa, in particular, credit their authority in this general region, as well as later migration by other northern tribes into the area, to this victory. Also, following an invasion of Wellington Harbour in 1824, Ngati Mutunga settled at Waikanae, later also occupying land from Te Aro to Kaiwharawhara, while Ngati Tama established themselves at Ohariu in 1824 and later Tiakiwai. Further along the coast, Ngati Raukawa continued to arrive in the Kapiti area in increasing numbers from 1825. By 1827, Ngati Mutunga and Ngati Tama had driven Ngati Ira from the shores of Whanganui-a-Tara. In 1835, the two northern tribes migrated to the Chatham Islands and 'gifted' their land at Waikanae and Whanganui-a-Tara to Te Atiawa kinsmen.[2] Fighting developed between Ngati Raukawa, Ngati Apa, and Muaupoko, in particular, in this area. The battle of Haowhenua in 1834, largely between migrant tribes on the Kapiti Coast, resulted in a further rearrangement of tribal relationships, with somewhat indeterminate boundaries.

By the late 1830s, Horowhenua was occupied largely by Te Atiawa to the south of the Kukutauaki Stream (Waikanae), while Ngati Raukawa had settled predominantly to the north at various locations from Otaki to Manawatu. Muaupoko, the original occupiers of Horowhenua, were still established there. Following attacks by Ngati Raukawa, the Raukawa leader Te Whatanui elected to shelter and protect remaining Muaupoko in an area around the western and northern sides of Lake Horowhenua, where they were flanked on all sides by Ngati Raukawa hapu. The relationship between Muaupoko and Raukawa has been described by observers at the time as a curious, 'semi-independent' relationship.[3] Te Atiawa also settled at Waikanae, where they intermingled with some Ngati Toa. Some Rangitane were in the north of the district.

The relationship between original occupiers and invading Maori, as well as questions of right-holdings and boundaries among the incoming northern tribes, which were still rapidly changing at the time of white settlement, requires clarification.

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2. Anderson and Pickens, p 24
3. E O'Donnell, *Te Hekenga: Early Days in Horowhenua; Being the Reminiscences of Mr Rod McDonald*, Palmerston North, Bennet and Co, 1929, p 36 (cited in Anderson and Pickens, p 146)

12.4 Principal Modes of Land Alienation

12.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

Three deeds of sale were negotiated by the New Zealand Company in the Cook Strait region in 1839. The first was with Te Atiawa at Te Whanganui-a-Tara for all the land from Sinclair Head and Cape Turakirae converging inland to the Tararua Range, including the islands of the harbour. The second was with Ngati Toa at Kapiti for all the land from 43½ degrees south latitude in the South Island to an imaginary line commencing at approximately 41½ degrees south on the east coast and running north-west to the mouth of the Mokau River. The final deed with Ngati Apa, Te Atiawa, and Rangitane at Queen Charlotte Sound was for much the same land as was in the Kapiti deed.[4] Twenty million acres of land were alleged to have been acquired in this transaction in return for goods variously valued from £360 to £9000. An 1840 select committee found that the company's agents had paid a portion of the £17,000 of the goods loaded on the company ships for the 20 million acres claimed in the southern districts (which works out to be a purchase price of about 1176 acres per pound or 59 acres per penny).[5] The highest reasonable estimate of the company's rate of payment for the 71,900 acres eventually arbitrated and awarded by FitzRoy in 1844 and 1845 (which did not include Nelson, as indicated in volume ii, chapter 3) has been set at threepence per acre.[6] 'Tenths' were also theoretically reserved for Maori in these deeds.

Following inquiries by the Land Claims Commission in 1842, Commissioner William Spain indicated that he would recommend a grant for only a portion of the company's claim at Port Nicholson (in keeping with the Crown's 1840 agreement to award the company four acres for every pound spent on colonisation). Believing that Maori were willing to carry through with the sale of some land, Colonel William Wakefield agreed to offer 'compensation', especially to those Maori who had missed out on the initial payments in 1839, at levels to be agreed with the Protectors of Aborigines and an arbitrator (Spain). Consequently, £300 'compensation' (at rates much lower than Maori requested) was paid to Te Aro occupants, while Maori at the smaller Kumutoto and Pipitea Pa each received £200 and those at Tiakiwai Pa received £30.[7] In February 1842, Spain 'compensated' some 300 Ngati Raukawa from both sides of the Manawatu with goods of an unspecified amount, but he disallowed the Porirua purchase (allegedly transacted at Kapiti), requiring it to be renegotiated later.

Spain also investigated a series of small private claims relating largely to land at Kapiti and Porirua, some of which were upheld while others were disallowed.[8] These included claims by George Young, David Scott, and Robert Tod that they had

4. Statement by Anderson, Anderson and Pickens, p 19
5. D Moore, 'The Origins of the Crown's Demesne at Port Nicholson, 1839–1846', 3 pts, 1995 (Wai 145 rod, doc e3), pt 1, p 126
6. Ibid, pp 126–127
7. Anderson and Pickens, p 36
8. Ibid, pp 32–34

purchased between ¾-acre and three-acre parcels of land from individual rangatira at Kumutoto and Pipitea. Richard Barrett and Worser Heberley also claimed sites by virtue of marriage.[9] Larger transactions were made for the tapu of the land (as opposed to a purchase as such) by the Reverends Thomas Bumby and John Hobbs for a chapel site at Te Aro Pa.[10]

As well as company 'compensation' payments, Crown officials secured the peaceful occupation of Wellington lands by promising native reserves of one-tenth of all lands granted to the company, a trust fund for Maori purposes of 15 to 20 percent of proceeds of the sale of Crown lands, and the protection of pa and gardens that Maori did not wish to sell. In 1846 and 1847, Governor Grey employed military force to evict Ngati Toa and allied groups from disputed land in the Hutt Valley. In 1847, the McCleverty 'exchanges' were negotiated with Te Atiawa, whereby the tribe relinquished claims to some of the Wellington 'tenths', and some cultivations, in return for reserves in the Hutt Valley and further afield. In 1848, the company was granted 209,572 acres (less Maori reserves), which included the 71,960 acres arbitrated and awarded by FitzRoy, as well as lands within the company's 'exterior boundary' surveyed in 1844.

12.4.2 Pre-1865 Crown purchases

In February 1847, Governor Grey reopened negotiations with Ngati Toa for the purchase of the Porirua district, which was considered vital to the security of the Wellington and Kapiti Coast settlements. Eight Ngati Toa chiefs signed the deed on 27 January 1848 for 68,896 acres from Kenepuru, running to Porirua, Pauatahanui, and Horokiri and extending as far as Wainui, inland to Pouawa and up to Pawakataka, for which they received £2000, as the first instalment of the £6000 price.[11] Three large, contiguous blocks together estimated to comprise 10,000 acres (with undefined boundaries) were excepted from the sale.[12]

In May 1849, following the renegotiation of block boundaries, Ngati Apa agreed to accept £2500 for the 225,000-acre block between the Rangitikei and Turakina Rivers and north of the Whangaehu River. One 30,000-acre reserve between the Whangaehu and Turakina Rivers, 2500 acres in smaller blocks, eel fishing rights in any lake, and the right to cultivate Te Awahou for the next three years, were reserved for Ngati Apa.[13]

Following a delay of almost a decade, negotiations resumed in the late 1850s with Ngati Toa and Ngati Awa in respect of the Waikanae block. This comprised 60,000 acres from Poauwa to Pawakataka, east to 'land sold previously by Ngati Kahungunu', and north to Waikanae. A deposit of £140 was paid for the block, which was variously calculated to contain between 76,000 and 96,000 acres. The full payment

9. Moore, p 57
10. Ibid, p 58
11. Anderson and Pickens, p 46
12. Ibid, p 47
13. Ibid, p 63

of £3200 was rejected by Te Atiawa, and negotiations collapsed. In November 1858, a deed was drawn up for 34,000 acres in the southern part of the block (which excluded Te Atiawa land). Ngati Toa received £800 and 250 acres of reserves.[14]

In November 1858, an initial payment of £400 was made to Ngati Raukawa for 37,000 acres at Te Awahou, just north of Manawatu (around Foxton). Dissent from within Ngati Raukawa regarding the price offered for the land led to its increase to £2500. When payment was dispersed among Maori, this was reduced to £2335. A second deed signed in May 1859 listed, but left undefined, those areas in the block that were to be excepted from the transaction.

In June 1859, 30,000 acres of the Ngati Toa land were purchased by the Crown for £850. The land was situated south of the Whareroa block in Wainui and Paekakariki and had originally been reserved from the Porirua sale for Ngati Toa. Of the 30,000 acres, only 787 acres were reserved for Maori (that is, less than 3 percent).[15] Purchasing continued within the Whareroa and Wainui blocks in July 1859. Confusion consequently arose, however, over exactly what land the Crown had purchased there. This matter was not settled until 1873, when the Waikanae–Ngarara block (which included Whareroa and Wainui within its boundaries) passed through the Native Land Court.

In May 1862, Papakowhai at Porirua was acquired from 13 leading members of Ngati Toa for £210.[16]

In February 1864, a deposit of £100 was paid for the Muhunoa block situated south of Horowhenua (with the purchase price set at £1100). An important eel fishery, Lake Ororokare, and 500 acres were reserved for the vendors.[17]

In mid-1864, the Ahuaturanga block in the upper Manawatu was purchased from Rangitane–Ngati Apa descendants for £12,000. Its boundaries ran east of the Oroua River to a point due west of the Manawatu Gorge. The eastern border ran along the foothills of the Tararua and Ruahine Ranges. Reserves were marked on the accompanying map but not defined within the deed itself.

In December 1864, following six years of negotiations under the control of Featherston, the superintendent of Wellington province, some 1500 Ngati Apa, Rangitane, Ngati Raukawa, Ngati Toa, and Te Atiawa were present at Parewanui to finalise the Rangitikei–Manawatu deed. Dissenting Ngati Raukawa refused to attend the gathering. A lump sum of £15,000 was handed over, while dissident Ngati Raukawa largely refused a £2500 payment to them as an ‘act of grace’. On 22 October 1869, following further delays as the views of dissident groups were heard by the Native Land Court, it was declared that native title over the Rangitikei–Manawatu block (250,000 acres) had been extinguished, except for those portions awarded to Maori. These were an initial court award of 5500 acres to Ngati Raukawa for their interests in the north bank of the Manawatu at the sale of Te Awahou, as well as 4500 acres awarded to Ngati Kauwhata, 1000 acres to Ngati

14. Ibid, p 79
15. Ibid, pp 83–84
16. Ibid, p 89
17. Ibid, p 94

Kahoro and Ngati Parewahawaha, 500 acres to Te Kooro Te One's people, and 200 acres to Wirihirai Te Angiangi (with a 21-year restriction on alienation).[18]

12.4.3 Pre-emption waivers

There were no pre-emption waiver purchases in district 12.

12.4.4 Confiscations

There were no confiscations in district 12.

12.4.5 Purchases under the Native Land Acts (Crown and private as indicated)

(1) *Private purchases*

Unofficial leases of customary land developed on the coast from before 1840 and extended inland to the grassland areas as pastoralism spread. Many of these began to be formalised, or the land sold, during this period. For example, most of the Porirua reserves (the Taupo, Haukopua, Motuhara, and Hongoeka blocks) were informally leased by Ngati Toa in the 1850s. Quarrels over the distribution of rent money encouraged the owners to put the blocks through the Native Land Court after 1865. For example, the Taupo block went through the court in 1874, and in 1883 the large Taupo 1 block was sold to James Walker, the existing lessee, because the people no longer lived on the land and wished to pay their debts. Other parts of the Taupo block were vested in the Public Trustee, leased, and eventually sold. Other portions of the Ngati Toa lands were initially under restrictions against alienation, except for a 21-year lease, but the restrictions were progressively lifted and the land sold.[19] The company 'tenths' and the McCleverty awards also passed through the court after 1868 and were awarded to named owners; restrictions were progressively removed from many sections and the land sold. A similar pattern applied to most of the reserves made within private or Crown purchases (see vol ii, ch 7). It was not possible to research and include here the hundreds of private purchases made in this district.

(2) *Principal Crown purchases*

In 1872, 45,675 acres from the Paraekaretu block (north-east of the Rangitikei block) was purchased by the Crown for four shillings an acre. A small area at Ngapuna, as well as 150 acres between Lakes Namunamu and Ngaruru were excluded from the sale, and part of the block known as Tupui–Paretao was reserved. Between 1874 and 1881, James Booth (the purchasing officer) purchased 51 of the 100 blocks (a total purchase of approximately 157,085 acres): 32,233 acres in 1874;

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18. Ibid, p 134
19. For a detailed discussion of these events, see R Anderson, 'National Overview of Wellington Region', report commissioned by the Crown Congress Joint Working Party, 1992, pp 76–84.

42,534 acres in 1875 (including Manawatu–Kukutauaki 3 for 2.7 shillings an acre); 26,604 acres in 1876 (from three blocks making up Kukutauaki 7 for 8.4 shillings an acre); 1250 acres in 1877; 9761 acres in 1878; 4035 acres in 1879; and 42,669 acres in 1881 (from Manawatu–Kukutauaki 2 for 5.8 shillings an acre). According to the land purchase agents, Maori were able to have 'whatever reserves they had asked for', and these were normally close to their settlement areas.[20] In practice, however, the areas reserved were small, and some blocks had no reserves made at all.

In 1874, the Government completed the purchase of the Muhunoa block. It offered Raukawa of Horowhenua £1050 to extinguish their claim to the block of land comprising 1300 acres within the southern boundary of Horowhenua. Certain reserves exempted from the transaction were to be surveyed between Lake Papaitonga and the sea.

In January 1874, 19,600 acres of land known as Maunganui (in the Ngarara block, south of the Kukutauaki Stream) were purchased from Te Atiawa by the Government for £600 (leaving 29,500 acres in Atiawa hands). In February 1874, a further £200 was paid to Wi Parata of Atiawa to extinguish his and his family's claim to Maunganui. In 1891, Crown purchases totalling nearly 9000 acres were made (including Ngarara West, sections 24 to 29, and Ngarara West c, part of section 41). Few purchases of significance were made by the Crown in the Ngarara block after this date.

In 1884, the Crown proclaimed as subject to Crown pre-emption the Otairi block (north of Rangitikei), although some 29,000 acres are thought to have been privately purchased from this block from 1880 to 1882 despite this proclamation. In 1883, the Crown announced its interests in two subdivisions of the block, amounting to approximately 19,000 acres. The Crown also proclaimed the Mangoira–Ruahine block (estimated at 35,660 acres) situated north of the Manawatu (possibly in the Ruahine Range).

In 1884, the Crown purchased Otamakapua 2 (104,522 acres north of the Manawatu), with the exception of three sections totalling 1460 acres, for approximately £53,955.

In 1886, following the subdivision of Horowhenua, the Crown purchased an area of 4000 acres to the east of Lake Horowhenua, on which the township of Levin was later established. The Wellington and Manawatu Railway Company also acquired block 1, a long strip running roughly north and south and containing 76 acres, from Kemp and Muaupoko, who gifted the land to the company. Kemp received shares in the company, also described as a gift. Kemp's lawyer, Sievwright, acquired block 10 (comprising 800 acres) in payment of debt owed to him by Kemp.

In the late 1880s, the Crown purchased 21,881 acres from the Te Kapua block, north of Rangitikei.

In October 1893, an area of 1500 acres known as the 'State farm block', or block 9, was purchased by the Government for £2000. In 1899, the Government

20. Anderson and Pickens, p 208

purchased block 6, containing 4363 acres, in Horowhenua, also acquiring 1035 acres in 1900 (Horowhenua 3E5, Horowhenua 6A, Horowhenua 6B, and Horowhenua 6C), as well as two sections at the lake shore (37 and 38) in Horowhenua 11B; 101 acres (Horowhenua 7A) in 1908; 1088 acres (Horowhenua 11B42C1) in 1927; and less than an acre (part of Horowhenua 9A2) in 1929.

In 1894, the Crown purchased 11 subdivisions of the Awarua block (north of Rangitikei), amounting to 142,475 acres, and in 1896 it purchased a further 52,283 acres from the same block.

By 1910, Maori retained approximately 615,180 acres, or approximately 23 percent, of the district.

(3) *Post-1910*

With respect to post-1910 purchases, the Wellington research district fell within the Ikaroa Maori Land Board district, which also included the South Island. Annual returns of alienations through the land boards do not specify block names, and an exhaustive search of all files would be necessary to establish which of the board's alienations fell within the Wellington district, although most would have (since only very small areas of land remained in Maori ownership in the South Island in 1900). The total amount of land alienated between 1910 and 1939 (estimated with the use of the maps reproduced at the start of this volume) was 427,321 acres.

12.4.6 Examples of land taken for public purposes

Public works takings in the Wellington district included numerous parcels of land taken by the Crown and local bodies principally for the purposes of railways and roading, with some additional takings made for airfields, public buildings, gravel pits, and bridges. Some of these takings were formal acquisitions under the various Public Works Acts, while others were purchases made under the pressure of possible compulsory acquisitions. Exhaustive research would be necessary to determine the level of compensation paid (if any) or if the land remained dedicated to the purpose for which it was taken. For a further discussion of public works national policy and law, see volume ii, chapter 11. Examples of takings in this district include:

- In 1872 to 1876, a series of parcels of land was taken from the Te Atiawa reserve at Petone (reserved sections Hutt 1, 2, and 3) for railway construction. Compensation was reasonably substantial, being in the order of £50 per acre.[21]
- In the 1920s, land of an unknown quantity was taken for roading from the two Waikanae blocks, Ngarara West a3c and Ngarara a32c2, with £75 compensation paid to Maori.
- In 1939, 300 acres at Paraparaumu (of which 250 acres were Maori land) were gazetted for an airport, following which £4397 2s 4d compensation was paid to the owners.

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21. See 'Report on Wellington Lands', report commissioned by the Crown Congress Joint Working Party, pp 19–22

12.4.7 Land takings for payment of rates

It is not clear how much land along the west coast passed out of Maori control under section 109 of the Rating Act 1925, although numbers of small, and often uneconomic, sections of land were sold by the Public (or Maori) Trustee, usually on application by the local bodies. For a discussion of the national policy and law regarding the rating of Maori land, see volume ii, chapter 19.

12.4.8 Other alienations

In the 1880s, the Wellington and Manawatu Railway Company made numerous purchases of Maori land in the Horowhenua district, totalling some 33,000 acres, via the terms of the Railways Construction and Land Act 1881. In 1908, when the line was nationalised, land still in the company's possession was vested in the Crown.

The Kapiti Island Public Reserve Act 1897 declared Kapiti Island a public reserve, vesting about 750 acres in the Crown. By 1904, the Crown had acquired about 3000 acres of the 4900-acre island, the rest remaining in Maori hands. Subsequent sections were purchased on the island up until 1965.

The Lake Horowhenua Act 1905 conveyed to the Crown the rights to the surface of Lake Horowhenua, while preserving general Maori ownership and fishing. In 1914, following difficulties between resident Maori and Pakeha regarding rights to the lake, an opinion was obtained from the Crown Law Office that Maori had no claim to any part of the lake bed. Through subsequent amendments to the 1905 Act and by other means, the Crown incrementally increased its rights to the lake and surrounding area. The Reserves and Other Lands Disposal Act 1956, however, returned the bed of the lake, the islands in the lake, and other identified areas to Maori ownership.

12.5 Outcomes for Main Tribes in the Area

Notwithstanding the advantages some of the tribes obtained from an alliance with the British against Ngati Toa, the control established by Grey in 1846 and 1847 saw all Wellington groups thereafter negotiating with the Government at some disadvantage. By the 1850s, Te Atiawa, Ngati Toa, and other groups had been largely displaced from the growing town of Wellington, in which they – or at least their chiefs – had been promised substantial participation. Their control of harbours, foreshores, and maritime trade had been reduced to a fraction of the pre-1840 levels.

By the end of the nineteenth century, all tribes had seen the bulk of their lands pass into private hands or to the Crown via the individualisation of titles and large block or piecemeal sales.

Reserves that had initially been inalienable (save by short lease) had mostly been individualised and alienated (some through perpetual leases at peppercorn rents).

By 1900, no substantial tribal patrimony remained, although Muaupoko and Ngati Raukawa managed to retain some lands around Lake Horowhenua and Otaki–Ohau. Much of this land was leased, and reserved lands were eroded over subsequent decades.

Compulsory public works takings removed more, increasingly scarce, Maori land. Although compensation was often substantial in respect of the Crown's takings (for example, the Paraparaumu Airport), this is less certainly the case in respect of acquisitions by local bodies, Maori land boards, and the Maori Trustee. Large blocks in the north-east of the Wellington district were acquired for forestry purposes in the 1960s.

12.6 Examples of Treaty Issues Arising

12.6.1 New Zealand Company purchases and related agreements

(1) *New Zealand Company purchases*

Contemporary accounts of the transaction between the company and Te Atiawa at Te Whanganui-a-Tara raise questions about the validity of the purchase. First, the interpreter, Barrett, had difficulty comprehending the contents of the deed (including the 'tenths' system) and was incapable of translating the real meaning of the sale to Maori.[22] Secondly, Barrett's own doubts that all Maori owners had been consulted about the purchase were ignored by the company, which insisted that Te Aro people were a subordinate section of Te Atiawa and therefore bound by the decisions of the senior chiefs but would in any case be compensated once the transaction was completed.[23] Subsequently, Maori at Lambton Harbour (particularly Maori resident at Te Aro, Pipitea, Kumutoto, and Tiakiwai Pa) and in the Hutt Valley protested that they had not sold the land, nor had the company paid them for it, because the purchase goods had been unfairly divided.[24] Colonel Wakefield's whole strategy of 'buying the land' first from the 'overlord' chiefs, then 'completing' the purchases by making payment to the 'resident' groups, presupposed a view of Maori land law that is highly problematic.

The validity of the second deed, signed with Ngati Toa at Kapiti Island, is challenged by the assertion that Ngati Toa and the company held widely divergent views on their understanding of the deed.[25] The company maintained that Ngati Toa had intended to sell the localities listed in the deed, while Ngati Toa chief Te Rauparaha maintained that he had intended to strengthen rather than weaken Maori title to the areas identified and had intended to alienate only portions of the land within the boundaries indicated by the deed. With regard to the third deed, signed

22. J Miller, *Early Victorian New Zealand: A Study of Racial Tension and Social Attitudes, 1839–52*, London, Oxford University Press, 1958, p 26 (cited in Anderson and Pickens, p 19)
23. P Burns, *Fatal Success: A History of the New Zealand Company,* Auckland, Heinemann Reed, 1989, p 116 (cited in Anderson and Pickens, p 20)
24. Anderson and Pickens, p 25
25. This assertion was made by Anderson, Anderson and Pickens, p 21

at Queen Charlotte Sound, it has been revealed that the payment goods were distributed between the 30 Maori who signed the deed by means of a scramble on the deck of the company vessel *Tory*.[26]

The reservation and allocation of 'tenths' in New Zealand Company purchases was also problematic. Although the company selected a tenth of the planned Wellington subdivision to be held in trust for the benefit of the chief families of the tribe (a policy that was endorsed in the November 1840 agreement between the Crown and company), the system proved incomprehensible and unacceptable to Maori. Many pa were not reserved for Maori, and the selection of some reserves (which had been allocated to Maori by ballot) required that Maori move to lands traditionally occupied by different whanau.[27]

In May 1841, following Maori resistance to settler surveying in the Hutt Valley, Te Aro, and Porirua (lands Maori claimed they wished to retain), the Spain commission was instructed to inquire into the company's claim to the Cook Strait region to determine the lands the British subjects had obtained, the payments made, and the fairness and legality of those transactions. Despite the fact that hearings, which began in May 1842, revealed that the company's purchase in Port Nicholson was not recognised by Maori as described in the purchase deeds, the Crown and Spain accepted that the purchase was valid but incomplete. In January 1843, the inquiry shifted towards an arbitration to secure a binding Maori agreement to the sale of the company's settlements (the total area of these still being obscure). Spain agreed to allow 'compensation' to be paid to Maori who had missed the original payment, in order to fulfil the dual requirement of establishing title and acquiring land for settlement. Spain and the sub-protector, George Clarke junior, had taken the view that the Maori communities had bound themselves in advance to accept the arbitration. Maori were not given the option of refusing what the arbitrator (Spain) finally determined.

In May 1843, despite pressures from the company, Spain secured company agreement that Maori retain their pa, cultivations, and urupa as separate from those lands for which compensation would be paid. In 1844, Governor FitzRoy reiterated that Maori 'title' to these would not be regarded as extinguished by the company deeds. Actual occupation was usually essential for Maori to retain ownership, although FitzRoy include fallowed gardens in the areas of Maori occupation.[28]

When compensation was finally paid to Maori in June 1844, Port Nicholson Maori were induced to accept the payments by a 'combination of implicit and explicit threats on the part of officials including Spain, Clark and FitzRoy',[29] who warned that the lands had already been built upon and would not be returned. Stressing the allegedly worthless nature of the land in Te Aro (which was in fact a valuable area in the heart of the town), FitzRoy pressured Te Aro Maori to accept

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26. Anderson and Pickens, pp 21–23
27. Ibid, pp 23–25
28. Ibid, p 35
29. P Adams, *Fatal Necessity: British Intervention in New Zealand, 1830–47*, Auckland, Auckland University Press, 1977, pp 191–192. This is one of several sources cited in Anderson and Pickens, p 35.

compensation of £300. When Te Puni's people refused the £30 compensation for their land, the money was placed in a bank on their behalf. The Waiwhetu people reluctantly accepted £100 compensation and the promise of reserves after Spain warned them that the land would be taken in any case and the money spent on their behalf.[30] Other instances similarly demonstrate that offers of compensation were reluctantly accepted when it was made clear that the land would go to Europeans with or without Maori consent.[31]

(2) *The Hutt Valley*

Despite assertions by Maori in the Hutt Valley that they had not sold their land, officials continued to attempt to secure a purchase under the misconception that much of the valley was 'unoccupied wasteland' and that Ngati Toa acceptance of compensation was all that was required to establish a purchase because other occupants of the valley were subordinate to Ngati Toa.

When FitzRoy made an award to the company in May 1845 for 71,900 acres in Port Nicholson and the Hutt Valley, it was unclear exactly which land was to go to the company and which was to remain with Maori.[32] The Government attempted to persuade Ngati Rangatahi to vacate the Hutt, however, stating that it would pay compensation to them but would not recognise their claim to the land. In 1846, when Maori returned to warn off settlers in the Hutt Valley, newly appointed Governor Grey retaliated with a demonstration of military power that had devastating consequences for resident Maori and has been described by an official historian as a 'hasty and ill-considered act which put [Grey] irretrievably in the wrong'.[33] Be that as it may, Maori resistance provided Grey with a justification for proclaiming martial law over the area, a move that reflected the Colonial Office's increasing commitment to colonisation and hardening attitude to the rights of Maori. With a view to future expansion to the north, Grey ordered the construction of a military road through the Hutt. This ran through the disputed land, as well as land that belonged to the tribes.

(3) *The McCleverty exchanges*

McCleverty was instructed by Grey to complete the exterior boundary survey of the company's lands at Port Nicholson and to ascertain what lands belonged to Maori under the definition of pa, cultivations, and sacred places. As a result, a number of sections were taken out of company 'tenths' and awarded to individual hapu in return for land Maori occupied for cultivation (largely the most desirable lands), which was required to complete the settlement. In this transaction, Maori agreed to relinquish good, small blocks near the harbour for larger outlying and often inferior

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30. R V Tonk, 'The First New Zealand Land Commissions, 1840–45', MA thesis, University of Canterbury, 1986, p 23 (cited in Anderson and Pickens, p 38)
31. D A Armstrong and B Stirling, 'A Summary History of the Wellington Tenths, 1839–88' (Wai 145 rod, doc c1), p 181 (cited in Anderson and Pickens, p 38)
32. Anderson and Pickens, p 40
33. I Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832–1852*, Wellington, Government Printer, 1968, p 245 (cited in Anderson and Pickens, p 43)

blocks, which they were theoretically to select (although indications are that this occurred only in some cases). By a third series of deeds negotiated by McCleverty in 1847, Maori agreed to give up further disputed cultivations for 'certain other lands'. Their reasons for doing so are currently debated by claimants and the Crown; it is suggested on the one hand that Te Atiawa accepted land because they had little choice and, on the other, that Maori are alleged to have accepted the arrangement because they felt it was genuinely satisfactory and secured them land that had previously been in their occupation but that had also been claimed by Ngati Toa and their recent allies.[34] Nevertheless, the effect was to all but destroy the basis upon which the tenths system was supposed to operate and to remove Te Atiawa from all but a very small share in the growing town.

(4) *Grey's award*

Governor Grey's award to the company of 180,000 acres in 1848 expanded the company's initial grant area by including land regarded as Crown demesne. The basis of the Crown's title to this demesne is not clear. If it is deemed to have arisen from the additional payments of 1844 and the McCleverty exchanges of 1847, it involved explicit or implicit undertakings by the Crown, over seven years, of making Maori reserves, taking a Crown endowment for Maori purposes, and using a portion of the Crown's land fund (from the resale of the land) for Maori purposes. Eventually all of these were abrogated or heavily reduced, Governor Grey taking many of the tenths to endow the schools and hospitals; Maori reluctantly relinquished much of their valuable land in Wellington in exchange for certain reserves in the Hutt Valley and more remote areas. But the schools and hospitals soon became mainly settler institutions, and Maori were increasingly marginalised in the town in which they were supposed to be major participants.

(5) *Wellington 'tenths'*

The Crown's disposition of Wellington 'tenths' and the McCleverty awards increased the marginalisation of Wellington Maori. Most of the reserves subsequently went through the Native Land Court and many were sold. Others passed to the Public (later Maori) Trustee and were let on perpetual lease. As a result, the concept of tribal endowment, a patrimony for the descendants of the 1840 owners of the land, was undermined and vitiated.

12.6.2 Crown purchase of Porirua

The validity of the process by which the Crown purchased the disputed Porirua district in 1847, and the deed itself (which was signed in 1848), could be questioned on four counts. First, with Te Rauparaha and other leaders incarcerated at the time of the negotiations, it is doubted whether the signatories represented the full and willing consent of Ngati Toa to the alienation of the territory. It has been noted that

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34. Anderson and Pickens, pp 48–50

the deed did not state that the signatories were acting on behalf of the tribe.[35] Secondly, the signatories apparently neglected to distribute the 1847 payment farther than themselves. Thirdly, the boundaries of the land to be excluded from the sale were not surveyed and records vary on the total amount of land reserved.[36] Fourthly, the reserves were inadequate, the Porirua reserves being small and eroded for railway construction and the inland reserve being of little use for anything except stock pasturage (it was let for this purpose).

12.6.3 The Rangitikei–Turakina purchase

In the Rangitikei–Turakina purchase in the late 1840s, an attempt was made by the Crown to speed up the purchase process and avoid disputes over Ngati Apa's interests in the interior by leaving the inland boundaries of the deed undefined. The large scale of the purchase reflected the Crown's growing concern that Maori would never sell the freehold of land if leaseholding became entrenched and gave them a regular source of income.[37] Furthermore, despite indications that McLean had genuinely attempted to identify the legitimate sellers and obtain their full consent to the sale, he nevertheless failed to accommodate the interests of many individuals and communities in his reserve allocations. While McLean had been directed to 'reserve such tracts for the Natives as they may now or at a further time require',[38] much of his effort was directed towards limiting the reserves, apparently because he believed that the position of Maori would be improved if they reacquired land under Crown-granted title.[39] Furthermore, the later purchase of the south bank of the river from Ngati Apa vendors in 1864 involved a repudiation of the Government's tacit recognition of Ngati Raukawa's overriding authority there, which was acknowledged in the Rangitikei–Turakina block purchase.[40] Finally, when the inland boundary of the purchase was negotiated in 1850, McLean reported that a 'considerable enlargement' of the block had been ceded 'without further remuneration', although there was Maori consent to the fixing of the block boundary by natural features.[41]

12.6.4 Waikanae

The negotiations in the 1850s for the 60,000-acre Waikanae block revealed that the Government had failed to resolve problems of 'numerous conflicting claimants', as well as the extent of the reserves and the final price. Following Te Atiawa's withdrawal from the negotiations, the Government proceeded with its purchase of

35. Statement by Anderson, Anderson and Pickens, p 46
36. Serrantes to Colonial Secretary, 27 March 1848, AJHR, 1861, c-1, p 247 (cited in Anderson and Pickens, p 46)
37. Anderson and Pickens, p 58
38. Dommett to McLean, 12 December 1848, AJHR, 1861, c-1, p 251 (cited in Anderson and Pickens, p 59)
39. Anderson and Pickens, p 60
40. Ibid, p 63
41. Donald McLean, diary, 6 September 1850, Maori notes, 19 July–12 October 1850, ms 1229, ATL; McLean to Colonial Secretary, 17 September 1850, Donald McLean papers ms 32 (3A), ATL (cited in Anderson and Pickens, pp 66–67)

the southern portion of the land known as Whareroa or Matahuka (a block of 34,000 acres).[42] Despite 250 acres of reserves being marked out, it appears that this purchase was not accepted by Te Atiawa, who objected to the northern boundary. There does not appear to have been a deed relating to this purchase.

12.6.5 Muhunoa

Ngati Raukawa, at Otaki, threatened to repudiate the sale of the Muhunoa block, complaining that they had not received any portion of the down-payment. Walter Buller (the resident magistrate assisting Featherston in the sale) denied Government responsibility and stated that the land was sold, arguing that the distribution of payment was a matter for Maori to resolve among themselves.

12.6.6 Rangitikei–Manawatu

When Ngati Apa handed over all the Rangitikei–Manawatu lands to the Government for sale, Ngati Raukawa and Rangitane rejected their right to do so. In return, Featherston, the superintendent of Wellington province, refused to pay rents to Ngati Raukawa and Rangitane until their disputes were resolved. The non-selling tribes argued that this undermined their position in subsequent land negotiations.[43] Furthermore, the Government refused to acknowledge that Ngati Apa interests had been satisfied in the 1847 to 1849 Rangitikei–Turakina deed and contended that Ngati Raukawa did not have status in the area by right of conquest, which was a reversal of the Government's earlier stance during the Te Awahou negotiations in the late 1850s.[44]

The exclusion of the Rangitikei–Manawatu block from the jurisdiction of the Native Land Court in the Native Land Acts of 1862 and 1865 incensed Ngati Raukawa, who were confident that an examination of title would support their claim. Featherston misled Ngati Raukawa and Rangitane in maintaining that it was usual for blocks on which down-payments had been made to be excluded from the operation of the Act, and that the Rangitikei–Manawatu lands were 'virtually in the hands of the Commissioner'.[45]

Featherston contended that it was the responsibility of Maori to decide how the purchase payments would be divided and by whom, while the allocation of reserves would be entirely his own doing. The reserves had not been finally agreed to before the deed was signed.

The authenticity of many signatures on this deed have been questioned – in particular, the methods of Buller are called into question by Ngati Raukawa allegations that he gathered signatures from Maori with no interest in the block and by

42. Anderson and Pickens, p 80
43. Ibid, p 93
44. Featherston to Richmond, 14 November 1866, ma 13/69b, pp 8–9 (cited in Anderson and Pickens, p 107)
45. 'Further Papers Relative to the Manatu Block', AJHR, 1866, a-4, no 6, encl 1, p 15 (cited in Anderson and Pickens, p 99)

further allegations that forgeries and bribery (not necessarily of Buller's doing) also played a part in the negotiations.[46]

Despite receiving advice to the contrary from J C Richmond (the Native Minister), Featherston refused adequately to accommodate the interests of the non-sellers in the terms of the purchase agreement.[47]

Ngati Raukawa argued that the Native Land Court's finding that they had no overriding rights was a misreading of both history and principles of customary usage.[48] The court's finding, which was to have implications for the remaining dissident claims, has been described as a 'thorny issue' concerning 'whether the court was correct in that interpretation of customary usage or whether its findings were made in response to the political imperative to confirm Featherston's purchase'.[49] There is little doubt that Ngati Raukawa were the dominant group at the time of their heke into the area, but Muaupoko groups, much older occupants, also remained on the land. The relationship between these peoples had not matured before white settlement began to enter the area and land purchase negotiations commenced for rights that were still unsettled in 1840 and that had evolved somewhat between 1840 and the 1860s. The '1840 rule' was varied by the Native Land Court judges to reflect the improved position of Ngati Apa (especially) since 1840, relative to Ngati Raukawa. The decision may or may not have adequately reflected real rights on the ground at the time, but it did not fully reflect Ngati Raukawa's position at 1840 and was inconsistent with the court's judgments in the Chatham Islands and Northern South Island, for example. The issue of whether the court should have given greatest weight to the situation before the musket wars, at 1840, or at the time it heard the case is a matter for consideration by the Waitangi Tribunal.

12.6.7 Kukutauaki

By the spring of 1872, the Government had attained support from all tribes that the disputes over land title should be referred to the Native Land Court. The Government was of the opinion that no surveys for Native Land Court hearings were to be made against the will of any occupants, despite its determination to buy the land. In a similar vein, the opinion was expressed that the Government could not force the court upon Maori if they were determined to oppose it. When the Native Land Court hearings began at Foxton on 5 November 1872, however, they were opposed by Major Kemp and Kawana Hunia. The Government's unwillingness to advise the court as to the appropriate action resulted in the judges deciding to proceed with hearing Ngati Raukawa evidence. Muaupoko agreed to re-enter the hearings only when they lost support from other tribes and feared they would lose their title to the

46. Native Land Court, Otaki, 25 March 1868, *Wellington Independent*, Hadfield papers, ms 139 (30), ATL (cited in Anderson and Pickens, p 105)
47. Richmond to Featherston, 21 November 1866, ma 13/70, pp 6–7 (cited in Anderson and Pickens, p 108)
48. Parakaia and others to Williams, 2 May 1868, ma 13/73B, pp 1–2, NA Wellington (cited in Anderson and Pickens, p 123)
49. Statement by Anderson, Anderson and Pickens, p 135

land. The subsequent denial of Muaupoko's request for adjournment represents a shift in the Government's original attitude that the court should not be forced upon Maori determined to oppose it.[50]

Consistent with its finding at the rehearing of the Himatangi judgment in 1869, the court at Foxton rejected conquest as a basis for Raukawa title in its finding on Kukutauaki. In 1840, Ngati Raukawa was undoubtedly one of the dominant tribes in the area. The 1872 judgment (in particular, the finding that the land was occupied by Raukawa with the acquiescence of the original occupiers) has been described by one historian as a 'contrived judgement' based on a 'far-fetched interpretation of historical evidence', which distorted the tribal situation in 1840 to fit the realities of patterns by 1872.[51] Questions remain as to whether this was a political judgment. Nevertheless, in March 1873, the court granted Ngati Raukawa title to Kukutauaki, on the basis of occupation, but did not grant them title to the Horowhenua block.

12.6.8 Horowhenua

Government inaction regarding boundary disputes between Muaupoko (in particular, Hunia and Kemp) and Ngati Raukawa in Horowhenua (which had not been helped by the fact that the Government had allowed Kemp to retain arms from the war) eventually resulted in the dispute being referred to the Native Land Court early in 1872.

At the Horowhenua hearing, which began on 11 March 1873, Ngati Raukawa conceded that Muaupoko had a right to land allocated to them by Te Whatanui (some 20,000 acres) but asserted that Raukawa had title to land north and south of Muaupoko boundaries at Horowhenua. In its finding, however, the court would not acknowledge the claim of Raukawa title by virtue of conquest and allowed them title to only 100 acres of land, thereby disadvantaging Te Whatanui's hapu. Muaupoko were awarded title to the 20,000 acres and an additional 30,000 acres to the north and south of this block, which Ngati Raukawa had long occupied. The court awarded this title specifically to Kemp, despite protests from the wider Muaupoko community.

In relation to the earlier finding in favour of Ngati Raukawa occupation of the Kukutauaki district (see above), the finding against Ngati Raukawa in Horowhenua made little sense. A degree of scepticism arises from the evidence regarding the impartiality of the judges on this occasion, and a corresponding suspicion that the court was acting not judiciously but rather expediently.[52] In particular, Ngati Raukawa's title, which, on the basis of the court's own previous principles, should have been all but guaranteed to them by virtue of occupation, was jeopardised by threats from Kemp (of Ngati Apa and Muaupoko) that he would retaliate and shed blood if he were not awarded title. The Government did not take effective action at the time to disarm Kemp and Hunia, despite requests and petitions to do so. In the opinion

50. Anderson and Pickens, p 196
51. Statement by Pickens, Anderson and Pickens, p 201
52. Statement by Pickens, Anderson and Pickens, p 217

of at least one writer, in awarding title to Muaupoko the authorities wanted to avoid further conflict with Kemp and 'compensate Kemp for his services to the Crown' as a distinguished military commander.[53]

Despite constant and numerous requests from Ngati Raukawa, the Government was unwilling to grant a rehearing because of the implications this might have for the Kukutauaki and other cases already settled from which land had been acquired and used. The Government also advised Ngati Raukawa that it was unable to reopen the hearing because six months had passed since the time of the hearing, despite the fact that Raukawa appeals had been made well within this time-frame with no response. Unable to retrace its steps without significant disruption in its land purchasing, the Government set aside the question of a rehearing. In short, it appeared that Ngati Raukawa were denied a rehearing for reasons of Government expediency.

Despite the fact that the Horowhenua decision was examined by the Native Affairs Committee in 1892 and 1894 and that the Legislative Council's Native Affairs Committee in 1896 (all of which strongly favoured Ngati Raukawa's claim) recommended a rehearing, subsequent governments refused to let the 1873 decision be reconsidered. From around 1900, the Native Affairs Committee made no subsequent recommendations, despite Ngati Raukawa's continuing requests for a rehearing.

In November 1886, when the Horowhenua block was subdivided, an administrative error meant that Ngati Raukawa were granted ownership of both the reserves identified in the deed and the extra 132 acres created by a shifted boundary. Muaupoko appealed the loss of 132 acres from their land, and following a rehearing in 1912, the Native Appellate Court awarded the 132 acres to Raukawa. In the court's opinion, Ngati Raukawa had conquered and occupied that territory. Therefore, after more than 40 years the 1873 decision had been reversed, although only in relation to the 132 acres in question, not the rest of Horowhenua.

Muaupoko (or elements thereof) were adversely affected by the fact that, under the 1886 subdivision of Horowhenua, rights were conferred on persons listed on the deed of sale (namely, Hunia and Kemp), who were given the right to sell without reference to others.[54] The court itself subsequently recognised the severe loss to Muaupoko that this created, noting that the people listed by the tribe were intended to be trustees, not owners. The Government then legislated to ensure that Horowhenua blocks were inalienable until such problems could be resolved. The subsequent sale of block 11, known as the 'State farm block', in October 1893, however, raises questions. Despite the Government's promise that it would consult with Muaupoko before it completed the purchase, Muaupoko protested that they had not been consulted nor had they received any purchase money.[55] It was later revealed in the Supreme Court that the Government had made an offer on the land, despite the uncertain title and Government assurances that no payments would be made until

53. O'Donnell, p 142 (cited in Anderson and Pickens, p 214)
54. Anderson and Pickens, p 261
55. Ibid, p 264

the interests of the beneficiaries had been protected. However, while the Horowhenua Commission found that the Crown had purchased the block knowing that it was trust property, no rebuke was issued, nor was any recommendation made that the land be returned. Instead, the commission suggested that the purchase be validated by the Horowhenua Block Act 1896.

By means of the Native Land Court Amendment Act 1891, block 12 was declared Crown land, despite the fact that there appeared to be little reason for its compulsory purchase. Furthermore, the costs of the process were offset against the value of the land. The block was valued for the purposes of purchase at £1619 5s, but once costs were deducted, the 82 owners of the block were left with £348 and a few coins.[56]

Block 14, 1200 acres of Kemp's personal property in Horowhenua, was also acquired through questionable means. Buller, Kemp's lawyer, invested money in the land before it was established whether the land was held in trust by Kemp or owned by him. In subsequently attempting to prove that Kemp was the owner and not the trustee of the land, Buller was also able to legitimise his own actions in investing in the land. On succeeding, Buller was seeking to charge Kemp for the legal proceedings, leaving Kemp some £7000 in debt. Following Kemp's death in 1898, Buller had the land auctioned and bought it himself, clearing Kemp's debt and leaving 'a little more' for Kemp's family.[57]

12.6.9 Ngarara

In 1887, the 29,500 acres of the Ngarara (Waikanae) block remaining in Maori hands were partitioned and the bulk of the land awarded to a list of some 40 owners from Te Atiawa, with Wi Parata's name at the top of the list. Disputes arose within the tribe about the legitimacy of Wi Parata's title. On the basis of the re-hearing, which commenced in January 1890, Wi Parata became the single largest owner of land that had previously been held in common by the tribe. This is one example of a great many throughout New Zealand in which the listing of a limited number of names of owners in varying proportions of shareholding in what was a tribal patrimony became highly problematic.

12.6.10 Lake Horowhenua

In 1905, and following the recommendation that Lake Horowhenua and its surrounds be preserved under the Scenery Preservation Act 1903, the Government indicated the desire to obtain the consent of the Maori owners before the lake could be secured. A meeting between the Government and Muaupoko later that year resulted in an agreement (or, in Pickens' words, a 'set of decisions imposed on the owners'[58]) that Pakeha were to use the surface of the lake while Maori ownership

56. Ibid, pp 267–268
57. Ibid, pp 270–271
58. Ibid, p 273

and fishing rights were to be preserved. This agreement subsequently formed the basis of the Horowhenua Lake Act 1905. The clause relating to Muaupoko rights and mana over the lake was not mentioned in the Act, however, while the land required for boatsheds was increased from nine acres in the agreement to 10 acres in the Act. Muaupoko sensed that their title to the lake was under some threat and requested in vain that the legislation be repealed. By around 1911, on the other hand, Pakeha resentment that fishing rights on the lake were confined to Maori was beginning to show. Consequently, in 1914 an opinion was obtained from the Crown Law Office to the effect that the lake had 'possibly' once belonged to the adjoining (Maori) landowners but that currently there was no Maori claim to any part of the lake bed.[59] Furthermore, the office advised that the 1905 Act had not prohibited European fishing of the lake but that Maori and Pakeha alike required a licence for trout fishing there. Through subsequent legislation, the authority of the Hokio Drainage Board was gradually extended until the preservation included the lake and one-chain strip surrounds, which had not been agreed to or mentioned in the 1905 Act. Whether intended or not, a substantial and strategically placed area of land was thereby removed from Maori control.

In 1926, despite Muaupoko opposition, activity around the lake by the Hokio Drainage Board left a much depleted source of eel and flax resources. With the lake level lowered, Pakeha farmers around the land extended their fences to the new water's edge, thereby obtaining extra land. When Muaupoko attempted to fence off their flax around the lake shores, they were told that the domain board was the vested owner, not the tribe. An inquiry into title by the Department of Lands and Survey in 1931 declared the land to be Crown owned as a result of the 1905 Act, while recognising the restriction on the title laid out in the Act. A committee of inquiry was held in July 1934 to investigate the matter further, at which Muaupoko asserted that they had never given up ownership of the 'chain strip'. Some measure of compromise was established, although title remained undefined in any legal sense, and Maori persistently requested that both the drained area between the strip and the water's edge and the control of the chain strip be returned to Maori. In the 1950s, a new series of meetings, deputations, and representations to the Government began. The resulting Reserves and Other Lands Disposal Act 1956 stated (among other things) under section 18(2) and (3) that the bed of the lake, the islands in the lake, the drained area, and the one-chain strip, as well as the bed of the Hokio Stream and the one-chain strip along (part) of the northern bank of the stream, were, and had always been, owned by Maori.

Despite the provisions of the 1956 Act, there is an ongoing grievance for Maori in the area with regard to the destruction of fisheries, the loss of flax production, the loss of mana, and the fact that resident Maori cannot restrict access despite their ownership of the resource.

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59. 'Horowhenua Lake: The Question of Fishing Rights', ma accession w2459, 5/13/173, NA Wellington (cited in Anderson and Pickens, p 275)

12.6.11 Foreshores and inland waterways

Maori have received little or no compensation for the loss of foreshore seafood and river and lake fish as the result of coastal development and interference with natural waterways. It is arguable that Maori customary title still applies in much of the foreshore between the high- and low-water marks (see vol ii, ch 3).

12.6.12 Native Land Court alienations

By the individualisation of titles and the piecemeal purchase of interests, and by the progressive removal of restrictions on the alienation of reserves, Maori were left with insufficient land for enduring participation in the new economy. Many reserves were too small to be economic or have become so by partition and fractionation of title.

12.6.13 Post-1910 alienations

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

12.7 Additional Reading

The following are recommended for additional reading:

Robyn Anderson and Keith Pickens, *Wellington District: Port Nicholson, Hutt Valley, Porirua, Rangitikei, and Manawatu*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996;

Penny Ehrhardt, *Te Whanganui-a-Tara: Customary Tenure, 1750–1850*, Waitangi Tribunal Research Series, 1992, number 3;

Richard Boast, *The Foreshore*, Waitangi Tribunal Rangahaua Whanui Series (first release), November, 1996;

Jane Luiten, 'An Exploratory Report Commissioned by the Waitangi Tribunal on Early Crown Purchases: Whanganui ki Porirua', report commissioned by the Waitangi Tribunal, 1992 (Wai 52 rod, doc a4);

Duncan Moore, 'The Origins of the Crown's Demesne at Port Nicholson, 1839–1846', report commissioned by the Waitangi Tribunal, 1995 (Wai 145 rod, docs e3–e5); and

Alan Ward et al, 'Crown Congress Joint Working Party Historical Report on Wellington Lands', report commissioned by the Crown Congress Joint Working Party, 1992 (Wai 145 rod, doc a4).

See also the evidence on the record of documents for the Wellington tenths claim (Wai 145).