

Chapter 4

Compulsory Land Alienations in the Rohe Potae

Varieties of Compulsion

Maori owners in the Rohe Potae must have felt that many types of land alienation were practically compulsory, regardless of how they were technically described. For example, as already seen, the vesting of much land in Maori Land Boards for lease or sale became compulsory after 1907. Maori also lost many of the essential features of ownership with leased land through, for example, Maori Land Board control and perpetual leases. Bennion has described the legislative advantages created for Crown purchasing as virtually a form of compulsion.¹⁷⁰ Forms of compulsion linked to leases and sales have been described in more detail in previous chapters. Moreover, as will be seen in the next chapter, measures introduced in association with land development schemes also had compulsory features that reduced the level of the Maori owners' effective ownership of the land.

There were also a series of compulsory measures associated with Maori Land Council/Board administration. Legislation in 1902 and 1910, for example, enabled Native township lands to be vested in the Councils/Boards. Compulsory provisions were also passed that enabled land to be compulsorily vested in Councils/Boards for leasing as a result of unpaid rates - for example, the Native Land Rating Act 1904. The Maori Land Claims Adjustment and Laws Amendment Act 1904, section 3, also provided that certain lands over which the government had taken over survey mortgages to prevent sale could be vested in the Councils.

The government passed further compulsory measures in the Maori Land Settlement Act Amendment Act 1906. This enabled Maori land to be compulsorily vested in a Maori Land Board where there was a problem with noxious weeds or where the Minister felt the land was not properly occupied by Maori. The Native Land Claims Adjustment Act 1910, section 5, also enabled the government, on the recommendation of the Native Land Court, to declare any portion of Native land not exceeding in any one case five acres as a site of a factory, or

¹⁷⁰ Bennion, *Maori Land Court...*, p 40

for religious, charitable or educational purposes to be vested in a Maori Land Board. This provision was used in 1911, to vest three acres in Kinohaku East in the Waikato-Maniapoto Maori Land Board as a school site, for example.¹⁷¹

The Native Land Court system had already resulted in much compulsory alienation of land to pay survey and other costs. The Stout-Ngata commission estimated in 1907 that Ngati Maniapoto had seen nearly 40,000 acres of land alienated for survey costs, quite apart from surveys where cash had been paid.¹⁷² Many owners felt this was a form of compulsion as the Crown initiated many Court proceedings after undertaking secret purchasing. Under the Native Land Act 1909, the Crown took over the cost of surveys, but they were placed as an equitable charge on the land.

Until at least the 1940s, Pakeha demands for the government to open Maori land to general settlement, by compulsory measures if necessary, provided a constant pressure on Maori decision making concerning land. As will be seen, the threat of having land taken by compulsory means was a constant factor when Maori were being asked to consider other forms of land use - such as placing their land in land development schemes or making land available for leasing. This had already happened under the Liberal government early in the century, when pressure was applied to have Maori land treated the same as South Island estates broken up for closer settlement.

In 1907 the Stout-Ngata commission had responded to such pressure by explaining that although legislative provisions enabled European-held estates to be acquired compulsorily for close settlement, in those cases the owners were first able to select for themselves up to one half of a maximum 1000 acres of first class land or 2000 acres of second class land or 5000 acres of third class land. If the same provisions were applied to Maori land, then very little would be surplus for settlement.¹⁷³ Despite such arguments, the demands continued.

In 1929 even the district Maori Land Board president and Maori Land Court judge recommended in his capacity as chair of an enquiry that if Maori were unwilling to sell

¹⁷¹ NZ Gazette, 1911, p 2490, notice dated 7 August 1911

¹⁷² AJHR, 1907, G-1b

¹⁷³ AJHR, 1907, G-1c, p 9

'unutilised' land then the compulsory provisions of the Lands for Settlement Act 1925 should be considered.¹⁷⁴ A further similar campaign for compulsory measures appears to have been associated with land required for returned servicemen following the Second World War. Such undercurrents of demands for ever increasing compulsory measures constrained Maori choices over land use. Indeed, compulsory measures continued in various legislation right into the 1960s.

In fact, after the 1930s, as sales declined, compulsory measures had become more significant as a form of alienation. The effects were compounded as the overall quantity of Maori land remaining had become much smaller. Compulsory provisions were put in place for a variety of reasons, and long standing provisions continued, such as those for land declared infested with noxious weeds (the Noxious Weeds Act 1950), for example. The continued fragmentation of title through the Maori Land Court also resulted in legislation regarding 'uneconomic interests' which resulted in further alienations: the Maori Affairs Act of 1953 provided for the sale of 'uneconomic' interests to the value of £25 while in 1955 the Maori Reserved Land Act enabled the Maori Trustee to sell Maori land which by reason of its size, configuration and quality could not be profitably used.

Public Works Takings

Another type of compulsory alienation concerned Maori land taken for various public works purposes. More detail on public works takings of Maori land can be found in a previous report.¹⁷⁵ The government had already developed a body of public works legislation when the Rohe Potae compact was negotiated in the 1880s. In 1885 Ballance discussed the proposed route of the main trunk railway with Wahanui and other leaders in the district. He explained that now they had agreed to allow land to be used for the railway, the government proposed to acquire it in the normal way for land needed for public purposes.

Ballance promised that the government intended to deal with Maori precisely as they dealt with Europeans, 'The law is the same in both cases'. He went on to explain that the

¹⁷⁴ AJHR, 1929, G-7

¹⁷⁵ Marr, C, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), May 1997, pp 22-23

government would pay for land required, but only after the owners were determined through investigation of title. Then the matter would go to arbitration and the owners would be paid for the amount of land taken for the railway: payment would be entirely dependent on when the owners were prepared to go and prove title to their land. The government also needed to acquire land in the same way for the roads required to connect with the railway. 'All the Government asks is for the land for the railway and for roads, and they shall pay a fair price for it'.¹⁷⁶ In fact, as has been shown elsewhere, by this time various public works provisions were discriminatory towards Maori.¹⁷⁷

Ballance insisted that individual Maori would be required to prove ownership through Native Land Court investigation, even though Maori had made it clear that they did not want the Court operating in that way in the Rohe Potae. Perhaps the meeting accepted Ballance's argument because he was also promising more power to Native Committees, and these were expected to take more of a role in determining ownership. Whatever the situation, public works provisions regarding Maori land had begun in the 1860s as part of a confiscatory wartime policy and were inherently deficient in ordinary protections.¹⁷⁸ It is likely therefore that if Maori of the Rohe Potae had understood the compulsory nature of these provisions they would have been much less agreeable to the railway.

Instead most of the concern in 1885 appears to have been about the damage road and railway building might cause, the question of what would be included in payment, and the degree of Maori participation in decision-making over road routes. Maori explained to Ballance that they were concerned that traditional food sources, such as eel swamps and berry trees, might be destroyed in the process of rail building. They reminded him too that when valuable timber was cut they wanted to be paid for it. They were already concerned that the road already being built from Kawhia to Alexandria was not taking their interests into account, and requested that it be extended from Alexandria to Kopua to enable them to provide access to their own good land.¹⁷⁹

¹⁷⁶ notes of meeting, AJHR, 1885, G-1, pp 22-23

¹⁷⁷ Marr, *Public Works Takings*

¹⁷⁸ Marr, *Public Works Takings*

¹⁷⁹ AJHR, 1885, G-1, p 23

It has not been possible in the time available to fully research the extent to and manner in which public works takings in connection with the railways and roads were actually applied in the Rohe Potae. Ballance had clearly promised that land taken would be paid for, but the situation was more complex than that. This has been described in more detail in the Public Works Takings report.¹⁸⁰ In brief, by 1885, Maori land could be taken for roads and railways under two sets of provisions: the main public works provisions for which compensation was generally payable, and the Crown right to take up to five percent of lands without compensation. The provisions and protections concerning both types of taking were complicated, confusing and often inconsistent. They were also essentially discriminatory towards Maori. The protections that did apply required close supervision or constant recourse to legal redress, neither of which seemed to happen very often. In addition, local authorities were heavily involved with roading; much of the taking seems to have been at their instigation, and inadequately supervised by central government. Further complications arose as to how takings would be applied across partitions with some owners suffering disproportionately to others.¹⁸¹

The provisions enabling taking authorities to take a percentage of Maori land without compensation for roads and railways meant that by the 1880s the Governor could, at any time, take and lay off for public purposes lines of public road or railway of up to five percent of any Maori lands that had gone through the Maori Land Court. This could occur from the date of the certificates of title or memorials of ownership, and was operative for fifteen years from the date of the memorial or certificate. In 1894 this taking right was extended to customary land not yet investigated by the Court. Provisions for takings without compensation were included in both Native Land Acts and Public Works Acts, which were not always consistent with each other. The complicated provisions often confused observers and participants, including taking authorities. Local authorities in particular appeared to believe that Maori land generally could be taken as required without payment.¹⁸²

It seems that provisions for taking a percentage of Maori land without compensation, and general provisions for taking with compensation for railways and roads, were both applied in

¹⁸⁰ Marr, *Public Works Takings*

¹⁸¹ Marr, *Public Works Takings*, p 62

¹⁸² Marr, *Public Works Takings*

the Rohe Potae. It is not easy to reach research conclusions, as it is not always clear under which provisions land was being taken or whether owners had been consulted. In some cases the authorities appear to have taken up to the five percent limit without compensation and then taken more under general provisions. Even the land taken for the railway, about which Ballance had made clear promises, seems to have been subject to confusion and lack of good faith on the part of government. Justice Smith researched the history of the agreement in 1946 for an inquiry regarding liquor licensing.¹⁸³ He found that when land was taken for the railway, the Public Works Department made some initial attempts to pay compensation for the land by attempting to arrive at out-of-Court consent agreements with the owners. This failed because much of the land had not been through the Native Land Court, and so it was difficult to determine how to pay the small amount involved to the many owners likely to have interests. A relatively small sum of £123.10s was agreed, but very little of it was paid out.¹⁸⁴ The situation was still confused in 1891 when a senior Native Department official commented that it may have been better if the Public Works Department had not made any such attempts at all. It was decided to allow Wilkinson to try and effect some settlements that had already been agreed, as long as this was 'without interference with his more important land purchase duties'.¹⁸⁵

Wilkinson informed the government at this time that Maori owners wanted compensation monies put towards the cost of surveys. The government was determined that ownership and compensation should be decided at an individual level and, as happened with other takings of Maori land, it immediately became apparent that it was difficult to pay small amounts of compensation to large numbers of owners. The most convenient alternative was to simply use the provisions that enabled up to five percent of Maori land to be taken without compensation. This apparently happened in many cases for the railway land, in spite of the promises made by Ballance.

Smith found that in some cases Maori owners were happy to gift their share of the land for the railway, but in many other cases compensation was sought but never paid. Nor was any attempt made to reduce survey fees as the alternative Wilkinson had outlined. In 1903 the

¹⁸³ Smith report, AJHR, 1946, H-38, app C, report on Liquor Licensing

¹⁸⁴ Smith report, AJHR, 1946, H-38, app C, p 374

¹⁸⁵ Memo, T W Lewis to Native Minister, 15 April 1891, cited in Smith report, AJHR, 1946, H-38, app C, p 374

Public Works Department sought legal advice as to whether compensation had to be paid for land taken for the railway. The Solicitor General advised that under the legal provisions under which the land was taken, the department did not have to pay compensation. When Maori owners made claims for compensation in 1911 and again in 1923, the government refused on those grounds. In 1946, Smith deduced from the documents that very few Maori had ever been paid compensation for the land taken.¹⁸⁶

It seems as though in practice these compulsory provisions without compensation could be applied over much longer than might be expected, another type of fallout from the delays inherent in the Native Land Court process. For example, in Ohura South, title to one part was decided in 1892 but not actually registered until 1913.¹⁸⁷ The Public Works Department took advantage of this to apply provisions for taking land without compensation. Chief Justice Stout decided that the Department had 15 years in which to take land after 1913, the year the title was registered.¹⁸⁸ In this case, after complaints, the Native Department intervened and the Public Works Department agreed to contribute £5 towards the cost of fencing along the road land taken under the provision. The provisions for taking land without compensation for roads and railways did not end until 1927, as a result of Sir Apirana Ngata's influence.¹⁸⁹

The situation regarding the taking of land for roads and the railway has been obscured in the early years of the Rohe Potae because officials were careful to play down the compulsory aspects of takings, and to emphasise the predicted advantages of the roads or railway. In some cases it seems Maori did not fully understand the land was even being taken under public works provisions. Officials were at pains to explain that roads were necessary in developing the land and sought owner cooperation. Contracts for building the road were often awarded to owners whose land the road crossed, providing welcome cash that they well have been regarded as payment for the land even though technically it was not - and this helped to avoid open resistance. In 1897, for example, the Te Kuiti to Awakino road was being built. The road line was taken right through the cultivations of Maori owners, including Tawhaki

¹⁸⁶ Smith report, AJHR, 1946, H-38, app C, pp 379-380

¹⁸⁷ MA1, 22/1/18

¹⁸⁸ *Gazette Law Report*, v 14, p 523

¹⁸⁹ letter Ngata to Buck 9 February 1928, Sorrenson, M P K (ed) *Na To Hoa Aroha, From Your Dear Friend: The correspondence between Sir Apirana Ngata and Sir Peter Buck*, vol 1, pp 68-72

Takiaho. When the owners asked for the road line to be altered, as often happened, this was rejected on grounds that any alteration would be too expensive and circuitous. Surveyor C W Hursthouse did not believe that the owners needed work as they claimed, but he recommended them being given it on their own land anyway, 'to tone things down', and this was endorsed by the Survey Office.¹⁹⁰

In some cases, Maori owners clearly wanted roads and therefore assisted with them, although right from the beginning there was seemingly widespread concern that roads were being built to assist Pakeha rather than Maori. With the Crown system of secret purchasing and partitioning, and land being cut off for charges such as surveys, and with the general confusion and delays in titles, it may have been difficult to identify what was being taken under public works provisions. As purchasing and settlement progressed however and certainly by the turn of the century, the takings of land for roads and railway purposes was becoming a definite grievance. The amount of land taken without compensation was often put forward as part of the reason for non payment of rates in the following years, as described in the next chapter.

The compulsory taking of land under public works provisions appears to have involved a substantially smaller amount of land in the Rohe Potae than was alienated by other means. Nevertheless it seemingly had a significant impact on the relations between Rohe Potae iwi and the Crown because it did appear to be such an extreme contradiction of partnership principles inherent in the Treaty and the Rohe Potae compact. The legacy of the mistrust and bitterness caused by this can be seen, for example, in attempts to build a road from the Taharoa block to Kawhia. The Taharoa area was farmed by Maori who refused to take any part in government projects, including land development schemes. They had held on to their land but lived in considerable poverty and their farms remained largely isolated even into the 1950s. When the government tried to put in a road through in the 1940s, there was so much suspicion of government motives that survey pegs were removed and three women who challenged the surveyors were taken temporarily into police custody.¹⁹¹

¹⁹⁰ memo of 5 July 1897, C W Hursthouse to Surveyor General Wellington, LS1/1342, no 36452/5

¹⁹¹ correspondence re road building 1943, and *Weekly News* article on isolation of 4 July 1951, MA1, 22/1/269
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Extra Public Works Powers

Aside from the two types of taking under public works provisions, Maori Land Boards were also given compulsory powers concerning laying out roads on vested lands. It is not clear at this stage how these powers were applied. They were apparently intended to overcome title problems in order to assist Maori to derive an income from the land, but the use of the powers and the extent of consultation with Maori remain possible issues for further examination. More is known about general public works provisions, which had gradually been extended over time to enable local authorities and central government to undertake works such as drainage, harbour improvements and the provision of amenities such as schools, recreation reserves and public buildings.

The growth of tourism by the turn of the century also appears to have been a factor in stimulating government interest in legislating for taking land for scenery protection. At this stage the government had little concept of protecting sustainable ecosystems, apart from perhaps with the early National Parks. Many areas required for scenic protection were simply beauty spots that could be observed by or used as rest spots for travellers. The Scenery Preservation Act 1903 extended powers to take land for scenic purposes. By this time settlers had destroyed the scenic nature of much of the land suitable for farming. Land left to Maori, frequently unsuitable for farming, often contained some of the best scenery remaining.

There was some confusion over early takings of Maori land for scenery preservation after 1903, but Rohe Potae Maori did lose land. In 1908, for example, part of the Orahiri block was taken for a scenic reserve under the Scenery Preservation Act and a 1906 amendment. The taking was made on the recommendation of the Auckland Scenery Preservation Board made at a Board meeting of 17 February 1908, and three acres were gazetted as taken a month later. There is no mention of consultation with Maori on file.¹⁹² 1910 validating legislation to clear up confusion over early scenery preservation takings did not necessarily help Maori. In 1912 part of Kinohaku West block along the coast of Kinohaku Inlet was being considered as a scenic reserve. When the owner requested land in exchange this was refused on the grounds

¹⁹² LS1/1307, no 207

that there was very little Crown land in the locality, and it would in 'all probability be required for public purposes'.¹⁹³

Management of their land by the Maori Land Board and then the Maori Trustee seems to have created greater problems for Maori owners over public works takings. As the Board or Trustee was considered the legal owner of the land for the purpose of the taking, Maori owners found themselves even further sidelined from participation in the taking process. For example in 1947, when Maori land in Otorohanga township was being considered for a recreation reserve, the owners testified that they were told the matter was between the Town Board and the Maori Land Board: they had no standing in the matter, and did not have to be given any notice of taking.¹⁹⁴

By the 1930s, public works legislation had extended provisions concerning land takings to include electric power, drainage, water supplies, town planning, river control, and forestry purposes. General issues arising from such takings include the extent of consultation with owners, the extent Maori concerns and interests were taken into account, the amount of compensation paid and any offer backs or revestings if the land was subsequently not required after its use (or otherwise) for public works. More research is required into individual cases of takings to determine the extent and pattern of such issues.

Meanwhile it is difficult to determine statistics relating to takings, and these do not appear to have been officially collated. It seems too that some public works takings were technically described as 'compulsory sales', and those may well have been included in overall Crown 'purchase' statistics. The Stout-Ngata commission found that by 1907 only some 110 acres had been taken in the Rohe Potae for public purposes or scenic reserves.¹⁹⁵ But it is not clear how these figures were arrived at, and they do not seem to take into account, for example, takings for roads and the railway by that time. No other sources of public works takings statistics have been found for the district.

¹⁹³ memo Chief Surveyor to Under Secretary of Lands, 22 March 1912, LS1/1309, box 545

¹⁹⁴ correspondence, 1947, MA1, 54/16/5, accn w2490

¹⁹⁵ AJHR, 1907, G-1b, p 10

In 1928 the Public Works Act became the major public works legislation, albeit with numerous amendments for over half a century until revised and replaced by the Public Works Act of 1981. In addition to the main 1928 Act, which contained general taking powers and procedures, there were numerous other Acts which gave taking powers for specific purposes or organisations. Public works provisions continued to cover many traditional areas such as roads, harbours, land development, railways, electricity, defence, irrigation, drainage, national parks and scenic reserves, forestry mining and tourism. In addition, the practice continued of passing special Acts for particular purposes which could contain land taking powers, sometimes affecting Maori land.

Public works provisions relating to Maori land also continued in various Maori Affairs-related legislation such as Maori Purposes Acts and Maori Trustee legislation. Compulsory provisions concerning idle and unoccupied Maori lands remained in force (for example, in the Maori Purposes Act 1950), and provisions relating to taking Maori land infested with noxious weeds (the Noxious Weeds Act, also in 1950). As new developments took place, new provisions were enacted to enable land to be taken. For example, for aerodromes from the 1930s, for motorways from the 1950s, for state housing and slum improvement from the 1940s and for the growth in hydro power from the 1950s. New town planning provisions made an increasing impact on Maori land, not only enabling outright takings for reserves but also restricting ownership rights in matters such as opportunities for land use. Indeed, key town planning legislation in 1948 and 1953 had a profound effect on Maori land while containing no special acknowledgement of Maori interests.¹⁹⁶ The impact of all this legislation on particular takings in the Rohe Potae requires further research.

¹⁹⁶ for more detail on the general impact of public works provisions on Maori land see Marr, *Public Works Takings*