

## CHAPTER 7

# CONCLUSION

### 7.1 INTRODUCTION

This report's main function has been to provide an overview history of land alienation in Hawke's Bay. While some firm conclusions can be drawn from the available evidence, many others are offered as representing, at this stage, a preliminary view. This report is released as a draft, in the anticipation that many submissions will be made in response to it. These submissions will, hopefully, help to correct any inaccuracies, offer different approaches to the issues discussed, and posit different explanations of events than those recounted in this report. Also, this report has used the research completed by others as its main source material. Therefore, any conclusions made are, in a number of cases, reliant on the research completed by those authors, and are reliant on a correct interpretation of their research having been made. Finally, it is difficult to be conclusive due to the unbalanced nature of the sources. Official records form, for most part, the base source for this report. Explanations of Maori action, therefore, are taken from the opinions of Europeans, often with vested interests of their own to protect. Despite these limitations, a number of strong points can be made about the interaction of Maori and the Crown in Hawke's Bay, and the ways in which Hawke's Bay land was alienated from the former to the latter.

### 7.2 THE PEOPLE

Chapter 1 of this report was based largely on the research of historians Angela Ballara and Patrick Parsons. Hawke's Bay Maori have usually been labelled as Ngati Kahungunu. While this is a correct assumption in many ways, it does not altogether explain the composition of Hawke's Bay Maori. It appears clear that the iwi and hapu of Hawke's Bay, as they were in 1850, were descended from both ancient and migrant people. While most groups identified a Ngati Kahungunu tipuna as their eponymous ancestor, they also recounted their links to various ancient peoples as well. At 1850, autonomous hapu were the operative groups in Maori society; the population of Hawke's Bay Maori did not identify or act as one iwi. Some groups at 1850, such as Ngati Pahauwera, Ngati Te Whatuiapiti, and Rangitane, contained many associated hapu, who sometimes acted with common purpose. Groups such as Ngati Hineuru could claim descent from the ancestors of neighbouring iwi, in this case, Ngati Tuwharetoa. On the whole, the groups with claims before the Tribunal today reflect the complex situation of group and sub-group identities as at 1850. Most claims have been brought on behalf of many hapu, but indicate that the represented hapu maintain autonomy from the wider groups. The present-day issue of which groups have a mandate to act autonomously – that is, act in an independent fashion in order to determine their social, economic, and political needs – must draw on the historical interpretation of which groups of Maori in Hawke's Bay have acted autonomously in the past.

### **7.3 EARLY UNDERSTANDINGS**

What Maori understood of European colonisation in 1850 forms part of the focus of chapter 2. From the written evidence available, it appears that Maori wanted the settlement of a large population of Europeans in Hawke's Bay. It was equally clear that Maori made this decision based on a desire to take part in the development of the new social and economic climate the settlers would generate. From chapter 2, some conclusions can be drawn in relation to what Maori understood about land. Although Hawke's Bay Maori did not have as much contact with Europeans as some Maori in other parts of New Zealand, the contact they did have was both vital and varied. Whalers, traders, missionaries and pastoralists all interacted with Hawke's Bay Maori enough to provide them with information about European forms of land ownership and land alienation. Perhaps the most important contact was the missionary William Colenso. Prior to McLean's arrival he cautioned Maori about the dangers of alienating large blocks of land. Instead, he advised them to lease their lands, or, if they had to sell, to retain large reserves for their future benefit. The concept of permanent alienations of land, therefore, had been discussed with Maori prior to McLean's arrival in 1850. European concepts of land alienations, of course, differed from the traditional Maori understanding, as it was practised by them prior to the arrival of Europeans. Nevertheless, Maori had had the opportunity, prior to McLean's arrival, to consider and debate the merits of leasing, selling, or retaining their land.

## **7.4 THE FIRST PURCHASES**

When McLean arrived, however, the option of leasing land was denied. Chapter 3 has explained in some detail how the first three Crown purchases of Maori land were conducted. Discussion in this chapter has focused on the negotiations that took place over boundaries, price, and reserves; and whether the consent of all owners was obtained. Not much deference was paid to Colenso's advice, since the Crown purchased 629,000 acres, but only 10,000 acres was specifically reserved in the deeds of sale. There were three factors which qualified this situation. First, McLean negotiated hard to limit the number and size of reserves for Maori. Secondly, Maori later intimated that not all the reserves promised in oral negotiations ended up in the written deeds, and thirdly, it may have been thought, by both Maori and McLean, that it was not necessary to provide large reserves, because a further 2,000,000 acres of Hawke's Bay land existed. This view, however, fails to account for those hapu directly affected by the large alienations.

## **7.5 1850s CROWN PURCHASING**

The ways in which the Crown purchased a further 900,000 acres of Hawke's Bay in the 1850s, the first deeds of which were signed in January 1854, require close scrutiny. Despite having sufficient knowledge of how Maori customary ownership worked, and of how public debate was necessary in order to gain the consent of all the owners to alienate land, the Crown purchasers, under the supervision of McLean, chose to enter into secret deals with chiefs. The leading protagonist, Ngati Te Whatuiapiti chief Te Hapuku, had explained the limits of his power to McLean in 1851: 'the land is not entirely mine, it is the property of this man and that man; mine is merely handing it over to Mr McLean'.<sup>1</sup> The secret deals resulted in the alienation of land to which many of the customary owners had not consented, and, because chiefs sold outside their immediate domain, it led to an escalation of inter-hapu rivalry. The Crown manipulated the rivalry in order to secure more land. Some of the initial secret deals were validated with further deeds years later. Yet the Crown argued at the later negotiations that repudiation of the former deed was not an option. This tactic of purchasing the rights of Maori in stages was a constant feature of Crown purchases in Hawke's Bay.

The Crown's actions, however, have to be viewed within a context of competing desires and obligations. The ability of Maori chiefs to determine their own destiny, has to be measured against the Crown's obligations to conduct fair and just purchases. Each purchase, therefore, has to be examined carefully in order to ascertain its particular circumstances. Chapter 3 has found that the secret deals of 1854 and 1855 were improper on a number of levels, but that the circumstances of

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1. Te Hapuku and others to Governor Grey, 3 May 1851, translation printed in AJHR, 1862, C-1, p 312

the purchases of 1856 to 1859 are more complicated, largely because of the eruption of fighting in 1857 between two factions of Hawke's Bay Maori, the Heretaunga Ngati Kahungunu hapu, and those hapu associated with Ngati Te Whatuiapiti. While the Crown's actions undoubtedly played a part in the war, and the Crown was able to benefit from the war as the chiefs of both sides sold contested land, the chiefs also have to be held accountable for their actions.

The question of who was responsible for the adequate provision of reserves requires an answer also. Of the 1,500,000 acres purchased, only an estimated 21,000 acres was stated as reserved in the deeds of sale – about 1.5 percent. Furthermore, by 1862 the Crown had purchased at least 5000 acres from these reserves. Two reasons why the amount was so low have been offered in chapter 3. The first is that the Crown purchasers and Maori, on occasion, misunderstood each other's intentions and obligations during purchase negotiation talks. The result, as illustrated by the examples of Te Whanganui-a-Orotu and the Mohaka River, was that areas were left undefined, with Maori believing they were not included in sales, yet the Crown or other authorities assumed ownership. A more common occurrence, however, was that promises made by the Crown were simply not honoured. Hawke's Bay land history is littered with examples of Maori believing that they had reserved land which was not recorded in the deed; as well, even some of those reserves that did make it into the deeds, were not acknowledged as such for decades, if ever. Generally, Maori reserved land so that it could be permanently retained in their possession. The Crown failed to ensure that this happened. As stated above, the Crown played an active part in the alienation of some of the reserves made; at times, against the wishes of other customary owners, and in violation of the provisions of the sale deed.

Other tactics used by the Crown purchasers during this period appeared to have unsavoury aspects. Crown purchaser G S Cooper, for instance, when negotiating purchases of land, manipulated Maori who fell into debt: 'they have no alternative but to continue selling their lands as a means of obtaining supplies which have now become necessary to their existence', he told McLean in November 1856.<sup>2</sup> Writing privately to McLean in March 1857, Cooper was more explicit. He proposed to 'suspend purchases and starve the Natives into compliance'.<sup>3</sup> The Crown's purchases took place under conditions which favoured itself. For example, the Crown maintained a monopoly in the market, and this control extended to preventing Maori from entering into leases with settlers. By 1860, however, Maori were using a traditional form of controlling each other, a policy called the Whata of Te Herenga, to halt land sales. Backed by a powerful runanga, itself influenced by the King movement, Hawke's Bay Maori stopped selling land to the Crown. In

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2. Cooper to McLean, 29 November 1856, AJHR, 1862, C-1, p 323

3. Cooper to McLean, 30 March 1857, Private, McLean Papers, folder 227, ATL, cited in Ballara and Scott, Introduction, p 101

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defiance at the law prohibiting direct leases between Maori and Europeans, they actively sought to enter such agreements.

### **7.6 THE NATIVE LAND COURT ERA**

Chapter 4 has picked up on this Maori initiative. It shows how Maori intended to fund the runanga from the proceeds of renting lands in the Ahuriri–Heretaunga Plains. Europeans were keen to utilise the land, but preferred, on the whole, to own the land themselves, rather than be subject to Maori landlords. A group of them, backed by the Hawke’s Bay Provincial Council, wished to see the plains developed more intensively, and did not expect that to occur if Maori continued to lease lands to a few pastoralists, and on an insecure legal basis. In 1865 the general government’s answer to this, and to a number of things, was to constitute the Native Land Court. Charged with the function of investigating into and adjudicating on the customary Maori ownership of land brought before it, the court should have been beneficial to both Maori and the settlers. With secure and legal title to their land, initially Maori entered into legal leases and obtained higher rents, yet they did not take an active and long-term part in the settlers’ development of Hawke’s Bay. This was due to the many failings of the Native Land Court. Instead of being a responsible body which investigated the customary history of land in a thorough, open, and rigorous fashion, the court became, for Hawke’s Bay Maori, an untrustworthy and unfair institution, which failed to carry out its functions to the satisfaction of Maori. The court became an instrument for the permanent alienation of Maori land. Although the amount of land, 150,000 acres, that was alienated in the Ahuriri Plains during this period was considerably lower than that of the 1850s Hawke’s Bay Crown purchases, its monetary value and capacity to provide Maori with high annual rental payments, made it extremely important. It is important to remember also, that blocks throughout Hawke’s Bay, altogether totalling an estimated 400,000 acres, were alienated between 1866 and 1873. These alienations can be attributed mainly to the failings of the court during this period.

Many of the failings of the Native Land Court have been detailed in chapter 4, and in Dr Phillipson’s appendix II. The major problems were:

- (a) the court’s refusal to award Crown grants to more than ten owners for a block;
- (b) the court’s refusal to make judgements based on a full investigation of the customary ownership of blocks;

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- (c) the court's practice of making judgements using only the evidence heard in court, regardless of how insufficient or contestable this was;
- (d) the court's failure, at times, to observe legislation that was valid when judgments were delivered;
- (e) the court's failure to correctly ascertain that the surveyed boundaries of the land fairly represented the understanding Maori had, prior to delivering judgments;
- (f) the court's procedure of allowing just one person's application to force the hearing of a block in court;
- (g) that the 10 or fewer grantees were considered joint tenants instead of tenants in common, and/or trustees for the tangata o waho;
- (h) the excessive costs of the system;
- (i) the lack of an adequate re-hearing and appeal process; and
- (j) the court's occasional failure to place restrictions on the alienability of land when asked to do so.

The alienation of the Heretaunga block, detailed in chapter 4, provides an explanation of most of these problems. It, and the other case studies, show how certain Hawke's Bay merchants and settlers allowed and encouraged chiefs to accumulate debts, in order to apply pressure on them to then sell their land. The merchants, aided by interpreters who rarely just interpreted, but instead acted for the merchants, plied the grantees with alcohol, offering them bribes, and issuing them with threats. The merchants applied constant pressure in order to cajole Maori into signing deeds of conveyance, regardless of their willingness or not to part with their shares.

Government officials did very little to aid Maori during this period. In fact McLean, Ormond, and others stood to gain financial advantage from the alienation of Maori land. Although a commission of inquiry, made up of two Maori and two Europeans, did investigate a large number of claims in 1873, the commission did not investigate all the complaints, and had recommendatory powers only. C W Richmond, the chairman of the commission, found that it was only special

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circumstances that prevented transactions that normally would have been fraudulent, from actually being so. The Maori commissioners, W Hikairo and W Te Wheoro, were much stronger in their criticism of the Hawke's Bay transactions, identifying numerous instances of fraud and gross unfairness. New legislation did arise from the investigation, but no sales of land were repudiated, nor was any compensation made. No government officials were censured for their involvement in the sales. The Crown simply took its 10 percent cut of each sale, which was collected in the form of a land transaction tax. Despite requesting and expecting Hawke's Bay Maori to help fight in the war against Te Kooti, the Crown refused to help Maori retain land that they did not want to alienate.

The Heretaunga and other cases highlight the misunderstanding of the position of those chiefs who received Crown grants. It was widely understood that they were to act as trustees for their hapu. Instead, however, they became sole legal owners of an undivided share, and their grants became a currency to cover their personal liabilities. This report has concluded that although some Maori did on occasion spend money in a frivolous fashion, on the whole, chiefs' debts were probably tribal ones, rather than individual. Maori indebtedness, then, and the manipulation of such by merchants, settlers, and Crown officials, came to the fore during this period. This report has argued that the Maori grantees could not have been expected to fully understand the intricate financial maze that swamped them once they had legal title to land, and that they were denied an equal opportunity to participate in the economic development of the Heretaunga–Ahuriri Plains.

By 1873, Maori had lost an estimated 400,000 acres (this includes the Tamaki purchase) of mostly prime Hawke's Bay land to private settlers and to the Crown. Although the Crown had been made aware of the unfair situation in Hawke's Bay, the legislative initiatives it took to counter the failings of the court had little effect [see app II]. Maori continued to challenge the legitimacy of the alienations of land via the Native Land Court in other courts, and before parliament.

## **7.7 THE LAY-BY APPROACH TO PURCHASING AND THE RAUPATU**

Chapter 5 covers a similar time period to chapter 4, but focuses on further Crown purchasing, and the Crown's confiscation of 270,000 acres of Mohaka–Waikare land. This chapter explains the Crown's method of purchase it employed in this period, which has been termed the 'lay-by' approach, and which used the failings of the Native Land Court to its advantage. The lay-by method was a refinement of one tactic used in the 1850s. It involved the Crown making an initial payment to selected chiefs, on the condition that they obtained the title for the desired block from the Native Land Court. A final payment was then made to complete the alienation of the block. When purchasing in the Tamaki area, the initial payment was known as laying 'groundbait'. The Crown were not concerned whether the selected chiefs had the consent of all the customary owners, or were distributing the purchase money equitably. This policy appeared to prejudice the jurisdiction of the Native Land Court, as Crown officials took an active role in pre-determining who were the customary owners of blocks.

The lay-by method of purchase appeared to lead the Crown into trouble in 1866, and goes some way towards explaining the supposed rebellion of a predominantly Ngati Hineuru group of Pai Marire affiliates in October 1866. The Crown used the defeat of this group as justification for confiscating 270,000 acres of land in the Mohaka–Waikare district in January 1867. This report has summarised the current opinion of researchers of the Mohaka–Waikare confiscation. Although the authors differ slightly in emphasis and explanation, all agree that a rebellion as such did not take place, and that the Crown's confiscation of land was unjustified. This report concurs with this general conclusion.

The Crown agreed to return most of the confiscated land to Maori in 1870, retaining approximately 50,000 acres of prime land for itself. This amount, however, could be raised to 60,000 acres if the two blocks that were 'purchased' at the same time, Maungaharuru and Otumatahi, are included. A number of problems were associated with the return of the confiscated blocks, which included delays over surveys and the issuing of grants, and an initial inadequate and confusing identification of owners. These complications cost Maori dearly in the following decades. This report has argued that there is clear documentation of the Crown's desire to purchase the Mohaka–Waikare area, and that this desire represents one reason why land was confiscated there. It has already been argued by the Tribunal that the implementation of the confiscation legislation was unlawful;<sup>5</sup> for Mohaka–Waikare, it was also completely unwarranted, as the justification for the confiscation can not be substantiated from the historical record.

## **7.8 SOCIAL AND ECONOMIC EVALUATION**

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5. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, pp 10–11

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Chapter 5 also contains a section which introduces some of the ways in which the social and economic position of Hawke's Bay Maori could be evaluated. From the evidence studied, it appears that Maori, in 1875, were struggling to keep abreast of the development of Hawke's Bay. Most of their land had been alienated; of that left in their ownership, most again was either mortgaged or leased to Europeans. Although they were still producing arable crops on a larger scale than Europeans, it is unclear how profitable this was proving. Maori were not receiving the level of schooling they believed that they required, or that the Crown had promised to them. When evaluating the social and economic status of Maori, the question of how much responsibility the Crown ought to have assumed must also be considered. An associated issue is that of how well the Crown addressed concerns raised by Maori at the time. Politically, Hawke's Bay Maori in the early 1870s had opted to pursue grievances in more traditional European fora, by presenting petitions to Parliament, and pursuing cases in the courts. The Crown responded by appointing a commission to inquire into Maori complaints concerning the Native Land Court, but which also investigated some Crown purchase issues as well. The 1873 Hawke's Bay Native Lands Alienation Commission had recommendatory powers only, however, and the aim of the petitioners, to have various sales repudiated, did not eventuate. While changes to legislation followed the release of the commission's general reports, Maori did not receive any specific compensation from the Crown. They continued to protest through petitions, and, using a European sponsor's money, in the courts.

The tradition of protest gathered momentum throughout the rest of the nineteenth century. Chapter 6 provides an overview of the petitions, litigation, and direct action Maori took to air their grievances. Complaints were again aired about the lack of education in Hawke's Bay. Probably due to the interest shown by particular European politicians, a number of petitions were investigated in some detail by the Native Affairs Committee to which they were referred. Three case studies of this kind are provided, and show that regardless of the attention they received, on the whole, Maori failed to have their grievances redressed to their satisfaction. In a number of petitions, and in evidence given to visiting Crown officials, Maori expressed their concerns about the inadequacies of the Native Land Court and its associated legislation. The court was seen as complicated, unfair, ill-suited to adjudication on Maori customary issues, and above all, costly. They were not alone in their condemnation. Reviewing the court's awards relating to the Owhaoko and Kaimanawa lands, Premier Robert Stout stated in 1886: 'if this case is a sample of what has been done under our Native land Court Administration, I am not surprised that many Natives decline to bring their land before the Courts. A more gross travesty of justice it has never been my fortune to consider'.<sup>6</sup> In 1891, the solution suggested by Maori was to ask that the administration of their land be placed under their control. This did not occur.

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6. The Honourable Robert Stout, 'Memorandum on Owhaoko and Kaimanawa Native Lands', AJHR, 1886, G-9, p 23

In chapter 6 it is argued that the costs associated with general land court issues, of contesting points of law, and of taking cases to higher courts all had a detrimental effect on the overall wealth of Hawke's Bay Maori. A survey of civil cases in the 1880s has shown that large numbers of Maori were being sued for small amounts of money by Europeans, suggesting that Maori did not have a sufficient income to cover basic expenses, let alone to develop their own land – not that they had much land left to develop by 1930.

## **7.9 FURTHER CROWN PURCHASING**

While the period from 1875 to 1891 saw the Crown concentrate its purchasing in Tamaki, by 1930 the Crown had made large in-roads into all the districts where Maori still owned land. Land at Tamaki, Mohaka, Waimarama, and Mohaka-Waikare bore the brunt of a very effective Crown purchasing effort. The Crown purchasers again employed improper and unfair tactics to ensure that the Crown obtained the land it desired. One tactic the Crown used was to place prohibitions on Maori owners leasing land (even to each other), depriving them of rents they required for their survival, and eventually forcing Maori to sell. Purchases by private Europeans continued to occur during this period as well. Compounding the pressure on Maori to sell was their increasing social and economic marginalisation. By 1930 what land Maori did still own was either of marginal quality, or was too little to support the whole community which relied on it.

It appears that the Maori reserves were also being purchased in the early decades of the twentieth century. However, I hope to cover this in a chapter to be written later this year. This future chapter will also cover the issues relating to alienations of Maori land after 1930.

Hawke's Bay Maori were owners of a vast and valuable estate of land in 1850. They wanted to share their land with European settlers, in order to benefit from the growth and development the Europeans could provide. While Hawke's Bay did develop, Maori were left behind. Relieved of more land than they wished to sell, hindered by complex and costly land legislation, and hounded by Crown land purchasers when they were economically and socially marginalised, Hawke's Bay Maori were unable to maintain a viable tribal base from which to develop and prosper. Despite airing their grievances in the specific fora designed by the Europeans, they failed to obtain adequate redress. They continued to protest, however, and the claims to the Waitangi Tribunal are the latest effort in what has become a long tradition.

