

CHAPTER 8

THE BEGINNING OF THE GREAT PUBLIC WORKS BOOM – THE 1870s

The 1870s saw the beginning of the great ‘public works boom’, when massive public works programmes were established at a national level to provide an improved infrastructure and to attract immigration in an attempt to encourage sustained economic development. The major public works legislation during this time was the Immigration and Public Works Act 1870 and the Public Works Act 1876. The tradition of numerous amendments to public works legislation as new needs or problems arose also became established.

The legislation was clearly aimed at furthering settler interests and the needs of colonisation and in the process Maori interests were marginalised. However, in terms of takings of Maori land, most provisions enacted during this period appeared, on the surface at least, to apply equally to all land, whatever the ownership. As the provisions assumed more extensive application to European-owned land, they also included many of the protections so noticeably absent from the 1864 Act. The major exception was for land required for railways. As railway ‘mania’ swept the country, and a railway through a district was widely believed to almost guarantee economic prosperity, the protections for taking land for railways were significantly reduced. Once again this applied regardless of who the land was taken from.

Crown policy towards the taking of Maori land at a national level was also noticeably less aggressive, although the Crown right to take certain land without compensation was also operating in less sensitive areas throughout this time. This policy concerning land for national works was largely due to circumstances immediately following the wars, but resulted during the immediate post-war years and at a national level at least, in a return to the pre-war policy of consultation and negotiation with Maori leaders to purchase land required for public works. The situation at a local level, and in the South Island, is more confused and requires further research. However, in general it appears that where the need to avoid provoking further warfare was not so great, compulsory powers such as those discussed in the previous chapter, were used more often. In addition it seems that central government assisted local authorities to circumvent restrictions on their power to take Maori customary land until their power to do so was confirmed in the 1876 Act.

As historians have noted, by 1870 the colony was ‘war weary’ and peace was still by no means assured. It had been much more difficult to defeat hostile Maori than

settlers had at first believed, and at British insistence the extra support of Imperial troops was being withdrawn. Crown policy for the next few years therefore recognised the necessity of avoiding provoking more trouble. At the same time the economy was stagnating and it was recognised that continuing warfare was a major reason for this. There was also concern that little real progress was being made in developing the necessary national infrastructure required as a basis for economic prosperity.

According to Noonan, in 1870 most European settlements were still struggling to provide basic facilities, and were incapable of developing the hinterland. Coastal shipping was still the major form of communication and while work had been carried out improving harbours and lighthouses for example, little real progress had been made on internal communications. The creation of the provinces recognised that communications between regions was minimal but provinces in turn were exclusively concerned with the internal development of their own areas. Little progress had been made on improving colony-wide communications. The southern provinces had made most progress reflecting their greater wealth. By 1869, for example, Otago had many metalled and paved roads and both Otago and Canterbury had railway lines operating before 1870. Most districts were much further behind. On the West Coast by 1871, for example, there was not a single dray road leading out of Greymouth. Apart from the fine roads largely built by troops for strategic military purposes, the North Island had also made little progress. With the slump, even Otago and Canterbury faced depression. The New Zealand economy was still basically unstable, with little cooperation between the provinces. It also still lacked a reliable export trade and an adequate system of internal transport on which to build a united economy.¹

It was felt that public works on a much larger, national scale, were necessary to stimulate the country and to encourage immigration. At the same time, money spent on warfare could be better spent on employing Maori on public works construction which would at the same time assist in their pacification and civilisation. The Government accepted therefore that forceful acquisition, in ‘sensitive’ areas anyway, and the continuance of the wars was holding back the continued development of the country. In addition, the withdrawal of Imperial troops meant the colony had to avoid provoking further serious confrontation.

The public works legislation of the 1870s provided authority for the massive new national programme of public works. In addition it reflected the Crown policy of purchasing Maori land required for public works in the North Island at least, and the hopes of politicians that public works would be more effective than warfare in solving the ‘native problem’. The 1870s public works legislation acknowledged and continued discriminatory land-taking provisions in other Acts such as the right to take certain Maori land for roading and railways without compensation in the Native Lands Acts. However, the legislation itself was remarkably neutral, on the surface at least, when compared to the 1864 Act.

1. R J Noonan, *By Design: A Brief History of the Public Works Department, Ministry of Works, 1870–1970*, Crown copyright, 1975, ch 1, pp 1–6

The Immigration and Public Works Act 1870 authorised the adoption of the massive public works programme devised by Julius Vogel. It was described as an ‘Act to provide for immigration and the construction of railways and other public works and also to promote settlement’, and it was intended to solve both the economic woes of the colony and the ‘native problem’ at the same time. Large-scale borrowing would enable a massive programme of immigration and public works which it was hoped would provide the stimulation the economy needed. At the same time, by ‘opening up’ the country it was confidently predicted that Maori could be civilised and any further resistance broken down. The works of particular concern in the Act were those believed to be essential in developing the economy and in encouraging further settlement; in particular railways, the supply of water to goldfields, and the construction of roads, bridges, and ferries in the North Island.

The works were to be provided at a national level where it had become obvious they were beyond the capacity of individual provincial councils to finance and carry out. However, it was still envisaged that the cooperation of provincial governments would be necessary for the success of the scheme and they were still expected to continue with their own local works programmes.

The first five parts of the 1870 Act dealt mainly with the authority of the Governor and the means of financing the works as well as acquiring necessary land in the North Island by purchase and financing immigration. As part of the powers relating to railways, confiscated lands could be deemed wastelands of the Crown (s 22). The next three parts (Parts 6–8), dealt with provisions ‘specially applicable’ to the three major types of works; roads (Part 6), railways (Part 7), and water supplies (Part 8). These provisions included procedures for taking land and paying compensation. The final miscellaneous Part 9 included provisions to appoint a Minister of Public Works and to establish a public works department.

The provisions under Part 6, dealing with roads in the North Island, gave the Governor power to enter and take land for roads subject to many of the traditional public works protections for landowners. For example, a plan of the area to be taken was required and the proposed taking had to be publicly notified. There was provision for ‘well grounded’ objections to be heard, if made in writing within 40 days of the notice. The Governor was required to give ‘due consideration’ to such objections. If he still found it expedient to go ahead, and paid compensation to those entitled, he could then make an order directing the work to proceed. Provided that no compensation was payable in cases where under any other Act or ordinance still in force, ‘the Governor has power to make or take the road . . . without compensation’. Consent in writing of the owner was required before any road or highway could be made through any orchard, vineyard, garden, yard, or any park, planted walk, or avenue to a house or planted and set apart as a nursery for trees (ss 49–53).

Materials such as gravel or stone required in construction could be removed from the land but not in such a way as to cause damage to any building, bridge, or similar thing. Compensation was also payable for damages to land incurred in the removal of material (s 59). If any owner was dissatisfied with the compensation offered, there was also provision for an independent assessment (s 61).

Under Part 7, in relation to railways, private land could be entered for survey and taken for railways provided that owners could claim compensation for land taken or damages to land in terms of the Lands Clauses Consolidation Act 1863 (ss 70–71). Certain clauses of the Imperial Railways Clauses Consolidation Act 1845 were also incorporated (s 73).

Under Part 8 relating to works for the supply of water to goldfields, the Governor had power to enter, survey, and take lands required and divert or ‘impound’ water from streams as required (s 83). Compensation was payable to landowners for damages to land but no compensation was payable for diverting or taking water from rivers, streams, or natural watercourses (s 87). Appropriate sections of the Lands Clauses Consolidation Act 1863 were incorporated (s 85).

The 1870 Act continued many of the protections and provisions inherited from the English tradition and previously incorporated into the Lands Clauses Consolidation Act. It also allowed for the continuation of taking provisions in other legislation such as the right to take certain Maori land for roads without compensation. Confiscated lands were also deemed to be wastelands of the Crown. However, the taking and compensation provisions themselves appeared to deal equally with all land taken under the Act, regardless of the landownership. The discriminatory effect of the Act was most apparent in the lack of concern for special Maori interests. For example the protections were eurocentric. While European-style gardens and orchards were protected there was no corresponding protection for urupa or other wahi tapu, although these were known to be important to Maori. Later amendments containing specific provisions relating to native land also tended to be most concerned with assisting European settlement. In 1871, for example, the Governor was allowed to enter negotiations for land required for goldmining, railways, and special settlements, before it had been investigated by the Native Land Court.²

What was to become a familiar pattern of numerous amendments to public works legislation soon followed. The Immigration and Public Works Act 1872 amended and reorganised provisions with more emphasis on railways, reflecting the railway ‘mania’ sweeping the country. It was divided into parts concerned with surveys; acquisition of lands for railways; compensation; conveyance of land for railways and roads; construction and maintenance of railways; financing of roads in the Nelson South West goldfields; water supply on goldfields; and immigration. The survey and compensation provisions were made more general rather than referring just to land required for roads in the North Island as in the 1870 Act. Other provisions were made more detailed, for example, the owner’s consent was now also required before branches could be cut off a tree or shrub. The major change was in regard to railways, where previous protections were removed or restricted. The relevant provisions from the Lands Clauses Consolidation Act were no longer considered incorporated. Protections were considerably less than for other takings. Now, for example, land for railways could be entered and taken 21 days after the publication of a taking proclamation in the *Gazette* and in a newspaper of the district. This could happen even if there was no prior arrangement or agreement

2. Immigration and Public Works Amendment Act 1871, s 42

regarding compensation (ss 14, 16). The Governor's powers of proclaiming lines of railway were also extended. In addition, as described in the previous chapter, general provisions enabling the Crown to reserve the right to take roads in Crown grants was extended to railways. The right to take Maori land for roads without compensation was also extended to railways (s 36).

The parliamentary debates on the 1870 Act reflected the Government's policy that now 'bloodless conquest' by peaceful public works projects was preferred to force of arms. In fact it was intended that Maori land would be purchased by agreement where possible. It was expected that the public works themselves, and the increased settlement they generated, as well as the provision of employment for Maori on their construction, would now be the agents of pacification and civilisation.

In sponsoring the Act, Gisborne described it as the 'centrepiece of the financial policy of the Government'.³ The policy was designed to extricate the whole colony from a state of depression and to give it a 'fresh opportunity to enter into a course of prosperity and wealth'. In addition it would strengthen the Government's power in the North Island and now was a favourable time to begin implementing the policy, while native affairs in the North Island were in a state of comparative quiet.

A major part of the Act was concerned with the construction of roads in the North Island. This was 'an essential element' in the pacification of the island and an 'essential element' in the 'restoration and maintenance of peace' would be:

the employment of the Natives themselves for this purpose, as great power will thereby be given to restrain them from falling into evil habits or joining hostile tribes who may wish to attack the Europeans. It will at the same time open up the country, and also enable the settlers to form settlements in the interior, and if, unfortunately, we should again fall into war, it will greatly facilitate our defensive or aggressive operations, as the case may be.

Some £400,000 was set apart for making roads in the North Island over a four year period. The Minister was unable to state exactly what lines of roads would be made on account of the 'variable state of Native feeling'. For this reason also the Governor would have the power to spend the sum as 'favourable opportunities' arose without the General Assembly insisting on appropriation in advance. The Minister also stated that 'arrangements will be made for the purchase of land from the Natives and others, and this land can be handed over by the Governor to the provincial authorities . . .'. A similar sum would be made available for railways in the middle island. Before any sums would be spent on railways, however, special Acts authorising individual works would have to be approved by the General Assembly. The responsibility would then be the General Assembly's, 'immediate, certain and absolute'.

A sum was also to be made available for the extension of the telegraph. In the interior of the North Island the usefulness of this was 'obvious'. It was 'a most potent civilizer and colonizer of the country'. In fact the three stages, 'roads first, railways next and telegraph third' together did more than any 'instruments which

3. NZPD, 1870, pp 179–185

the human mind can devise for the settlement of the country'. The Minister went on to state that the Act was inseparably connected with native affairs. The alternative of peace or war was still hanging in the balance and the Act offered a means of restoring 'not by force of arms, but by the progress of settlement' order and tranquillity throughout the North Island. It would achieve a 'bloodless conquest of peace' and make the 'recurrence of any serious Native insurrection impossible'.

Later, in response to criticism that the policy was intended to supersede the public works programmes of provincial governments, Fox denied this and claimed instead that it was intended that provinces should go on with their own works programmes. The policy was that the national schemes that provinces could not manage on their own would be carried on alongside them, not overshadowing them.⁴

Provincial governments were abolished in 1876 and as a result a Public Works Act was passed in 1876 with the intention of tidying up and consolidating relevant public works legislation for both central government and the local authority successors to provincial governments. However, the Act did more than this in that provisions relating to takings and compensation were more detailed and the power of local bodies to take Maori customary land was finally confirmed.

The Act was divided into eight parts and followed the pattern of the 1870 Act in many respects. There were general parts on taking land, compensation, and surveys, and also separate parts relating to roads, railways, drainage, and water supplies for goldfields. As a general principle, written consent was required before entering or taking land occupied by such things as any building, yard, garden, or orchard. In addition, written consent was required before material such as stone could be removed from a quarry or similar place commonly used for taking such material. The exception to this requirement were railways and other works made under the authority of a special Act of Parliament (s 15).

Land could be taken for either Government works or county or district works (s 21). The procedures for taking land for public works generally contained the normal public works protections. Surveys and plans had to be made public, and well-grounded written objections received within 40 days had to be heard (ss 21–24). If after 'due consideration' of objections, the Minister or County Council or Roads Board decided to go ahead with the work and was sure that no private injury would be done for which compensation was not provided by the Act, a procedure was set down for taking the land. The taking authority had to issue the Governor with an accurate description of the lands to be taken with an accompanying map, signed by the Surveyor General or a certificated surveyor. The Governor could then, if he thought fit, have the taking proclaimed, gazetted, and publicly notified. The land then became vested in the Crown in fee simple, free of any interests, claims, charges, and so on, 'for the public use named in the said proclamation' (s 25). The taking was to be recorded, and an owner could require severed or temporarily occupied land to be taken in certain cases (ss 27–28).

Any land taken but then not required could be sold by Order in Council. However, the land had to be independently valued first and then offered at that price to the person it was originally taken from and then adjacent owner(s). If these offers

4. NZPD, 1872, p 575

were not taken up, then the land was to be sold at public auction (s 29). Lands taken but not required immediately could also be leased by the taking authority (s 30).

In terms of compensation, the general principle was that full compensation would be paid to any person owning or having an interest in land taken, or suffering injurious affection from the public works, or any damage from the exercise of powers conferred by the Act (s 33). All claims for compensation were to be heard by a newly established Compensation Court (s 35). In order to claim compensation, the claimant had to make a claim in writing, in the form specified, describing lands about which claim was made, the nature of the interest in such lands, the nature of the loss or injury claimed and the amount claimed as compensation. The claims had to be lodged at an office of the Minister or county council or road board (s 37). A procedure was also outlined for having the claim responded to, heard, and determined (ss 38–71). There was also a five-year time limit on compensation claims (s 72). The right already reserved to the Crown, to take land without compensation for a road or railway, was retained unless the right had already lapsed or become barred (s 73).

A surveyor could enter any land during daytime, for making authorised surveys and associated work such as setting up survey pegs. Where possible, reasonable notice had to be given to the occupier of the land (s 75). In the case of native land, a surveyor could not enter without a special authority signed by the Minister (s 78).

All roads were declared to be vested in the Crown (s 80). Roads other than Government roads were to be under the control of the district road boards or county councils. The powers of district road boards were set out, including the power to make surveys for new roads, to alter the width or level of a road, to take land to make a new road or alter the width of a road, to enter lands to construct drains to protect roads, to stop roads, to take material from land for roads under certain conditions and to use any uncultivated and unfenced land adjacent to a road as a temporary road while a road was being constructed or repaired (s 87). County councils had the same powers for roads under their management (s 90). Procedures were set down for stopping roads (ss 92–93). Where a road was stopped, the land could be disposed of in the same way as for surplus land taken for public works (that is to say, offered back to the original owner then adjacent owner(s), then sold at auction (s 94)). In addition, a landowner could exchange the land under the old stopped road for land required for a new road, and where the stoppage was for private benefit the owner had to pay all costs incurred (ss 95–96).

Railways could only be made under special Acts of Parliament (s 122). The Governor then had to issue a proclamation defining the middle line of the railway or any part of it and could amend the proclamation as found necessary during the construction of the railway. Plans and maps of the railway and the land to be taken formed part of the proclamation and had to be made available for public inspection (ss 124–125). After the publication of such a proclamation, the Minister could at any time give 21 days notice to the occupier of the land and then enter on the land and carry out any necessary work. The exact limits of the land required for the railway had to be determined within three years of the publication of the proclamation or powers contained in the proclamation ceased (s 127). None of the rights of notice to owners, rights of objection and hearing available in sections 22

to 25 with regard to taking other land, were to apply to railways made under special Acts and subject to such proclamations (s 128). Certain powers regarding railways were listed and no compensation was payable for railways made on public reserves.

In summary, the 1876 Act retained many of the same principles as the 1870 and 1872 Acts and amendments. Traditional protections were available, and in many cases strengthened, for most land required for public works. The major exception to this continued to be land required for railways purposes where some protections such as the right of objection did not apply and others such as rights of notice were considerably reduced. The general provisions relating to land taking, survey, and compensation also continued, and made no special distinction between Maori and European-owned land. Maori customary land, however, could not be entered by a surveyor without the written authority of the Minister. This provision seemed to confirm McLean's view that some tact was required and that this might help avoid situations where Maori resisted roads by removing survey pegs.

The Act also continued to acknowledge the Crown right in other legislation to take certain Maori land for roads without compensation. The 1876 Act also confirmed that now local bodies had general legislative authority to take Maori land including customary Maori land. This finally did away with the previous restrictions on local authorities with regard to general powers to take customary Maori land. In addition, all roads being used by the public were now considered to be vested in the Crown.

Although most other provisions seemed neutral, some were likely to have a significant impact on Maori. The declaration that all roads were vested in the Crown meant that many routes that Maori had allowed Europeans to use on a regular basis, including those from pre-European times, were now declared to be public roads vested in the Crown. 'Road' was defined as a public highway, whether a carriage way, bridle path, or footpath. In many cases no payment had ever been made for these and it seems clear that in many cases Maori had thought they were only allowing rights of passage not rights of landownership. There is evidence that this section was used to simply take roads without compensation if it was clear the public had been allowed to use them at all prior to this Act.

For example, in the Wairoa area, an ancient track was used for many years as a public road when the district was first being settled. It was still customary land when it was taken in 1916 for railway purposes. There had been an agreement that the old road would be incorporated into Maori land blocks, and while this had happened in other blocks it had never been carried out for the block in question. When later action was taken to investigate the situation regarding compensation, the Ministry of Works refused compensation on the grounds that the taking merely tidied up the situation and the road was already Crown land. When the proclamation had been made, the then Public Works department relied on sections 79 and 80 of the 1876 Act as substituted by sections 101 and 102 of the 1908 Act, in an effort to have any application for compensation declared *ultra vires* and struck out. As the 1876 Act declared that all existing roads used by the public were vested in the Crown, the department held that this road was therefore already legally public land in 1916.⁵

Other protections were still eurocentric. Objections had to be made in writing, within a set time period, following a very formal set format. Lands requiring written consent for entry continued to be lands occupied by orchards, gardens, or vineyards, for example. No mention was made of urupa, traditional hunting areas, or other wahi tapu.

In debate on the 1876 Act, it was explained that at first it was simply intended to consolidate the various public works and railways Acts legislation but then it was found necessary to go further and provide powers for various bodies, particularly the county councils and roads boards. Most criticism of the Act from European members was that the general protections were not strong enough and in many cases the public good had suffered. For example, there was now a right to encroach on public reserves without having to pay compensation. Other members also criticised the ‘pernicious’ practice that had grown up of ‘stealthy’ amendments or repeals every year, many of which ‘very seriously prejudiced’ public rights. There were also concerns that members of county councils and roads boards, ‘all men of influence’, would be able to bring undue political pressure on the House.

In parliamentary debates in 1872, member for Southern Maori, Tairaroa, highlighted problems Maori were experiencing even though the provisions of the 1870 and 1876 Acts in theory did not discriminate. He seemed to confirm that the national policy of consultation was limited to the more sensitive districts of the North Island. He was concerned about takings for railways in Greymouth. In particular the evasion of compensation and the impact of lack of consultation for railways takings on Maori, who had great difficulty finding out what was going on and what their rights were anyway. Tairaroa thought the Act was intended only for the benefit of Europeans – ‘that was to say, of the strong side’. Maori in Greymouth were unable to obtain compensation and were told that the department of Public Works had decided that the railway brought more value than the compensation was worth. The Minister had told them that large amounts of money had been spent developing the quay, which would be a benefit and that the railway would also benefit the town.

However Tairaroa pointed out that this value was largely to the Government and to Europeans not to the Maoris, who had lost houses and land. He thought the protections and compensation provisions of the Act only seemed to be meant for Europeans, and the Government did not obey them in dealing with Maoris. ‘The law ought to be carried out exactly the same with both races, and, if Europeans were compensated, the Natives should be compensated also’. If the Government wanted land from Maori it should also confer with Maori first and settle a price for the land before work began on the railway.⁶

As had become normal practice, there were numerous amendments to the 1876 Act. For example, the Public Works Act 1876 Amendment Act 1878 excluded all protections regarding notice, objections, and public notice of taking (ss 21–25 of the 1876 Act) from land taken for railways (s 5). Land for railways could be taken by proclamation alone (s 6). Notice was only required before or after the

5. Correspondence in MA 1, 5/5/70

6. NZPD, 1876, vol 23, pp 514–519

proclamation to advise owners of land taken so they could claim compensation (s 8). Mines and minerals were also to be excluded from land taken (s 25), and land could be taken for a work after that work was completed (s 4). Land required for works, including railways, could also be purchased by agreement (s 21). The Governor could also sell surplus land taken for a work to any education board without complying with normal procedures (such as offering back to the original owner first) (s 24). The Boards of Conservators of rivers were also given the same taking powers as roads boards for the purposes of protective or other works concerning rivers (s 35).

The Public Works Act 1879 authorised the alteration or diversion of rivers streams and watercourses when desirable for the safety or maintenance of a public work (s 16). The Act also validated previous orders in council and proclamations made under public works legislation that may have been defective (s 14). The Public Works Act 1880 provided that in any claim for compensation for lands taken for public works out of native reserves, the Governor was to act as claimant and the Minister as respondent (s 12). The power of the Crown to take roads through native lands without compensation was also extended in many of these Acts, as already described in chapter 5.

The 1870s also saw a series of separate railway Acts. The Railways Construction Act 1878, for example, allowed the Governor to purchase lands from native owners required for certain railways (s 4). These included a line proposed to run through the King Country through land still in Maori ownership, and depended on successful purchase negotiations.

Although most Acts of this time reflected the Crown policy of negotiation with Maori, local authorities were still acquiring increasing powers, often in ways that Maori felt encroached on traditional land and resource rights. For example, the Highway Boards Act 1871 gave roads boards increased rating and taking powers, the Municipal Corporations Waterworks Act 1872 simply vested water rights in corporations without regard to prior Maori rights, and the Harbours Act 1878 extended the powers of harbour boards including the granting of land-taking powers (ss 166–170).

Perhaps one of the last attempts to provide for colonisation in a way that allowed Maori some theoretical control and opportunity for cooperation with the Crown was the Thermal Springs Districts Act 1881. This provided for certain districts where the Governor could provide for European settlement and use of mineral and hot springs areas by cession, purchase or lease of native land. The preamble to the Act stated that it would be:

advantageous to the Colony, and beneficial to the Maori owners of land in which natural mineral springs and thermal waters exists, that such localities should be opened to colonization and made available for settlement . . .

Among the powers of the Governor under the Act, were those of treating and agreeing with the native owners for the use and enjoyment by the public of all mineral or other springs, lakes, rivers, and waters; lay out and survey towns allotments and farms; make, stop up, divert, widen, or alter any bridges, ways, or

watercourses; and to exercise the powers of compulsorily taking land under the Public Works Act 1876 for the purposes of water supply and sewerage (s 5). With the consent of native owners, the Governor could also undertake other public works such as the setting apart of land for such things as parks, schools, churches, and gardens, and manage and control mineral and hot springs, and build pump rooms, baths, and similar things, for the convenient use of springs, baths, and lakes (s 6).

The attempt at providing for European colonisation by leasing lands and retaining Maori ownership eventually failed in the face of settler pressure and lack of political will on the part of the Government. A later Thermal Springs Act 1910 reflected the situation that had resulted from Government mismanagement of leases and the pressure to allow lessees to purchase the lands. The whole issue of various land settlement schemes requires a separate research paper. However, it needs to be noted that public works provisions were an important part of this scheme and apart from necessary sewerage and water supplies which were provided for under the 1876 Act, the provision for public needs was to be by negotiation and agreement with the native owners.

The administration of public works land takings during most of the 1870s reflected the Crown policy of negotiation with Maori at least at a national level. From 1869 to 1870 the Native department was revitalised under Donald McLean.⁷ McLean had responsibility for public works as well as for Maori affairs, defence, and land purchase. The various means of extending colonisation were therefore coordinated. McLean followed a policy very reminiscent of the one he had followed under Grey before the wars. Instead of using compulsory powers to take roads, for example, he extended roads into Maori territory only with the owners' consent. This was in essence a continuation of Grey's policy of 'managing' Maori and taking colonisation including public works as far as possible but just short of provoking confrontation.

The extension of roads and telegraphs by negotiation and purchase depended considerably on respect for Maori values usually more readily found in Native department officers than in the new Public Works department. McLean arranged with the Minister of Public Works that surveyors and engineers would wait for the permission of the district officer of the Native department before they proceeded with their work, unless they were especially accredited by McLean to act alone. McLean circularised an agreement to this effect to his officers in 1872. In it he warned that it would not be wise to leave negotiations, sometimes of a delicate character for opening and constructing new lines of roads, entirely in the hands of engineers or other persons who from inexperience or ignorance of local matters might cause misunderstandings and perhaps future trouble. District engineers were to consult with and obtain the advice of native officers in a district before beginning new road works or resuming works stopped because of native difficulty. This would be found to be satisfactory and would avoid the chances of collision.⁸

7. A Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, Auckland, Oxford University Press, 1973, pp 229–231

8. Memo circularised by D McLean, 8 November 1872, in MA 4/66, p 664

Frequently it was Native department officers themselves who both negotiated permission to make a road in Maori territory and supervised the making of it. Although the Government was in a position to exert powerful pressure there was a sense of real negotiation and some give and take on both sides. Importantly, the process involved consultation with Maori before work took place. For example in 1871 H T Clarke reported on the complex negotiations for the construction of the main road line on the western side of Lake Rotorua between Tauranga and Taupo, known as the Mangorewa Forest road. The area was considered highly tapu because of numerous ancient battles that had resulted in enormous loss of life. More recently, losses by Government forces had been blamed on the troops' violation of this tapu. The main hapu of the area were also divided in their support for the Government.

Clarke reported that negotiations involved a great deal of argument over who was really going to benefit from the road. The chiefs pointed out the great advantages to Europeans, while Clarke insisted that Maori would greatly benefit from having their villages made accessible to the sea port as well as having lands opened to 'beneficial occupation by Europeans'. At last he got them to give a hesitant agreement to a survey being made. On reopening negotiations, he found the chiefs had more objections, many of them 'frivolous and absurd'. Finally, the road was agreed to under a number of conditions, including contract work on the road for each hapu at an agreed rate, the Government to provide the necessary equipment, and the Government agreed to assist in preventing trespass by Europeans in the pigeon-trapping season. The contract rate to be paid for the work was also the subject of much haggling and the opportunity to earn cash was obviously a major incentive in agreeing to the road.⁹ The first annual report of the Public Works department also acknowledged that 'great tact' was required in negotiating the passage of roads through native land.¹⁰

Maori generally welcomed the opportunity for consultation and took every opportunity to emphasise the importance they placed on this process. They also generally welcomed opportunities to come to grips with the post-war society and to participate in new opportunities for economic development. It is clear that even after the bitterness of warfare, Maori were prepared to cooperate when they were consulted, and when works such as roads were clearly likely to be beneficial to both races, they often responded generously by continuing to gift land to enable roads and other works to be built. At a national level at least, once again they had reason to believe that the Crown would respect their wishes for consultation and negotiation. Reports of numerous negotiations over roads show, for example, that where there seemed to be obvious economic benefit, Maori were keen for roads and often competed among themselves over where the roads should go. The first Public Works annual report noted that some delays in obtaining consent for roads arose from arguments among Maori as to whose land the roads would go through.¹¹

9. AJHR, 1871, D-1, pp 19–20

10. AJHR, 1871, B-2a, p 3

11. Ibid

As well as providing much-needed employment after crops and harvests had been disrupted by war, Maori were encouraged to accept roads by promises that they would provide better access to markets and the cash to revive economic enterprises. McLean also supplemented his policy of diplomacy with gifts and loans to various iwi and hapu to help rebuild after the wars. For example, in 1872 the Resident Magistrate at Napier was informed that the Native department would supply an advance to the natives to assist in repairing their flour mill.¹²

It is clear that Maori also provided a valuable contribution to roading. As noted by Ward, as the roading system was greatly expanded in the North Island, it was Maori workmen who were almost always the pioneers. Contract prices were cheaper than that paid for European labour and efforts were made to hold rates down by the use of military labour. Reports of the time are full of complaints about the ‘absurdly high prices’ Maori wanted to charge for work, and delays and stoppages if Maori cooperation could not be obtained. There are also numerous descriptions of the Armed Constabulary and the Native Contingent being used to build roads and bridges in the North Island where native demands were considered too high. For example, on the Whakatane–Te Teko road it was felt that native demands were ‘in excess of the value of the work’ and it ‘was therefore commenced by the Native Contingent’. However ‘the Natives objected, and the work has since been stopped’.¹³

McLean continued slowly opening up areas by his policy of purchase negotiations, supported where necessary by advances and gifts to obtain cooperation. He avoided pressing areas such as the King Country where he met determined resistance and simply attempted to wear objections down and slowly encroach on ‘hostile’ areas. In his policy of diplomacy McLean often appeared to be more sensitive to Maori concerns than the average settler. According to Ward his policies were also largely responsible for keeping the peace in the post-war years and opening up the way for further colonisation. However, as Ward has also noted, McLean was at heart convinced that further colonisation was inevitable and in the country’s best interests, and his land purchase methods were often dubious.

In terms of public works purposes, such as making agreements over roads, some of the problems with McLean’s methods are readily apparent. McLean and his staff for example often entered agreements where it seems Maori had quite different understandings of the terms, but the confusion was allowed to remain if it helped the deal go ahead. For example, an essential part of McLean’s pacification policy was to award construction contracts to all hapu with an interest in the land, even though Pakeha engineers might frequently complain of the difficulty and delay in having to organise new gangs as the road passed through the territory of each successive hapu. In 1870 McLean instructed Parris in Taranaki that in constructing road works in the districts between Waingongoro and Stoney River, ‘In every case contracts should be made with each hapu through whose land the road goes, to complete the work within their respective boundaries’.¹⁴

12. Letter to R M Napier, 22 November 1872, MA 4/66, p 668

13. AJHR, 1873, E-2b, p 5

14. Memo from McLean to Parris, 18 October 1870, AJHR, 1871, D-1, p 51

McLean's purchase negotiations linked rights for roads to pass over land so closely to the contracts for construction of the work, however, that at times it seems clear that Maori may well have understood they were being offered work and sometimes gifts in return for agreeing to rights of use and passage of roads over their land rather than to a change in actual landownership, much as they had understood earlier pre-war agreements. For example, in a report by Public Works staff in 1871, mention was made of the problems incurred as different owners claimed the right of having their people employed as the road line was 'crossing their property'.¹⁵ Legally roads that were constructed became vested in the Crown, but it is not clear if this was properly explained to Maori.

McLean also apparently allowed his land purchase officers to make deals concerning land takings that contained terms and conditions not provided for in the legislation. For example, there is evidence that land purchase officers agreed to conditions that took Maori concerns into account knowing this would win Maori cooperation and prevent serious disruption to construction and survey activity. However these terms had no legal standing and were rarely included with the legal documentation of the acquisition. It is also likely that many of the agreements may have been verbal and unrecorded. However, evidence does exist that the practice of making such agreements continued for some time and at least some agreements were recorded. On rare occasions departments did keep them and uphold them, although there was no strict legal obligation to do so.

An example is land taken for a ballast reserve on the Foxton Manawatu railway in 1888. The land purchase officer and the Maori owners agreed to the taking on a number of terms. These were that payment was made for the land at a set rate, the owners retained the right to use land not actually being worked for ballast, a grave in the centre of the site was to be protected, and the land was to be returned when Railways no longer required it for ballast. This agreement, although made in good faith, had no legal standing and was not entered on any official record. It was only through luck that it survived in Railways papers on the taking but it was overlooked when Railways no longer needed the land. Instead, in 1911, Railways leased the land to a European. It was only when the owners reminded Railways of the terms that a search was made and the agreement found. Technically, the legal title vested in the Crown with the taking proclamation and this contained no terms. However in this case Railways eventually decided it was morally bound to uphold the agreement and the land was re-vested in the owners by the Native Land Amendment and Native Land Claims Adjustment Act 1915 (s 11).¹⁶

The land purchases in the Taranaki district during the 1870s also provide a good example of McLean's policy and some of the problems associated with it. Because of the confusion that had occurred over implementing confiscation on the ground, McLean followed a policy of yielding a 'tacit consent' to Maori reoccupation of certain areas. As part of this, McLean's officers then negotiated purchases and agreements for roading with hapu on land that was already supposed to have been confiscated. McLean did this while biding his time until confiscations could be

15. Letter from Turner to Blakett, 3 March 1871, AJHR, 1871, D-1, p 15

16. Correspondence, MA 1, 21/2/4

properly enforced, according to the second report of the West Coast Commission.¹⁷ As a result, however, Maori thought some confiscations had been officially abandoned and this was confirmed when McLean's officers began purchasing. When this kind of purchase was frowned on, officers instituted the 'secret bribery' system of takoha or gratuities for land. This simply led to increased confusion about the implementation of the confiscations, but in the meantime road building was carried on.

Maori were well aware that roading was being used to pacify and open up the Taranaki district. In 1872, Parata, the member for Western Maori, told the House that the road the Government was attempting to build near Parihaka would 'never be completed while the Government hold lands belonging to the Natives'.¹⁸ In practical terms, however, McLean just continued his policy of negotiating with iwi and hapu where possible and encroaching gradually as far he was able. Roads were pushed through where possible and temporarily abandoned where opposition was too strong. While McLean was in charge he managed to avoid provoking outright resistance as happened later with more aggressive tactics.

While McLean's policies were welcomed by Maori in so far as they appeared to confirm a Crown policy of consultation and negotiation, it is clear that the overriding objective was to facilitate European settlement and to provide works that catered for European needs. Maori were involved because their land was often required and because construction work not only helped seal purchase agreements but would help assimilate Maori into European values and customs. For example, in a report on roads north of Auckland, J J Wilson noted a general improvement in the native people. They were acquiring habits of industry, appeared to better appreciate 'the value of time' and generally clothed themselves better since they were 'able to earn money by roadwork'. As always however, Europeans were much more ambivalent when Maori appeared to pick up values and attitudes too well. Wilson also noted that their increased contact with Europeans had 'increased their love of gain' and they were 'always on the alert to obtain some advantage in their work, or to sell at high rates the timber needed for the bridges and culverts'.¹⁹ Observers of the time also noted the bleaker side of the influence of 'civilisation'. The absence of able-bodied men on work gangs for long periods tended to undermine traditional social structures in villages left behind. The works camps were at the mercy of shopkeepers selling often poor quality food at high prices, so that cash earned was quickly spent on food. In addition, liquor was always easily available in camps to further the process of demoralisation and dissipation.²⁰

In spite of the advantages claimed for Maori in purchase negotiations; roads were consistently described in official reports in terms of their suitability for European settlement. For example, a road described as running completely through native land was of a standard that would 'suffice until European settlers are introduced'. It

17. Second Report of West Coast Commission, BPP, vol 16, p 403

18. NZPD, 1872, p 595

19. AJHR, 1874, E-3, app B, p 40

20. Quoted from the diary of Thomas Grace, 'A Pioneer Missionary Among the Maoris', in Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brookers Ltd, 1993, p 219

was also hoped that other roading improvements would ‘lead to the early settlement of the surrounding country.’²¹

At the same time engineers and settlers in general were often resentful of the need to gain Maori cooperation and the need to approach the Native department to achieve this. This became more apparent further into the 1870s as the possibility of renewed war seemed to become more remote. Ward has quoted H T Clarke of the Native department declaring in a letter to McLean in 1874 that if Native department staff did not become involved in negotiations to construct a telegraph line then difficulties would be sure to arise. Clarke complained that Public Works staff knew ‘whom to come to, to help them out of their difficulties – and then abuse them soundly afterwards’.²²

The Crown also appears to have used the possibility of compulsory land takings to force purchase prices down. In 1874 one of the Maori members asked whether any steps had been taken to ascertain and settle claims of Maori owners of lands taken for railways and other purposes under the Immigration and Public Works Acts. Maori had at first thought land for railways would be paid for and they were willing to give it for railways if it was. Now, however, they had been told it would not be paid for. The Minister replied that exactly the same process was followed for Maori and European-owned land. Lands were surveyed and valued and a price offered to the natives. If that price was not accepted by them, the matter was dealt with under the Railways Act.²³

At a local level and in the South Island, the pattern of public works takings of Maori land is much less clear. While major works and works in sensitive areas were undertaken at a national level, provincial governments were still expected to carry on with their own works programmes. After the provinces were abolished in 1876, this responsibility moved to successor organisations such as county councils and road boards. More research is required in this area, but it appears as though compulsory powers were more likely to be used in these circumstances. Until 1876, there were presumably still legal restrictions on the powers of local authorities with regard to the taking of customary Maori land, although this may not have been too much of a concern as it was mostly outside European settlements. Central government also actively assisted local authorities to get around any restrictions by passing various Acts that gave piecemeal taking powers, such as to roads boards, and by taking land on behalf of local authorities. While central government dealt with land acquisition in sensitive areas therefore, local authorities often operated in areas where Maori were in a minority or the threat of resistance was much less. In these circumstances the use of compulsory powers such as having the Government take certain land required for roads without having to pay compensation, appears to have been more widely used.

The major factor at a local level seems to have been whether taking authorities thought they could ‘get away’ with not consulting Maori. The strong views of local personalities both for and against consultation could also influence policy in this

21. AJHR, 1874, E-3, app B, p 41

22. H T Clarke to McLean, 27 November 1874, (ATL) McLean Papers MS 32, f 218, no 74,

23. NZPD, 1874, vol 16, p 749

kind of situation. There was also confusion about the extent of taking powers and whether compensation ever had to be paid. This was partly the result of taking powers being incorporated in various types of legislation. For example, roads could be taken under the right to take 5 percent in the Native Lands Acts or under general public works provisions. There were also clearly attempts to evade compensation and to bend provisions to suit local authority requirements. In addition, local authorities were characteristically reluctant to provide public works required by Maori. Policy at this level is therefore very much more confused and documentation available appears to show that both consultation and compulsory powers were used at various times and in various circumstances.

For example, an 1873 letter reveals that the Wharehine District Road Board in Auckland entered into negotiations and gained agreement from Maori owners to buy land required for a road. However the provincial treasurer questioned why this was necessary when the right had existed for the last seven years to have roads taken without paying compensation.²⁴

Maori, not surprisingly, found the whole process extremely confusing when land required for works at a national level could involve consultation and purchase while at a local level land could simply be taken. Adding to the confusion was Maori willingness to gift land if they were consulted and the work was obviously required. This process of gifting was much less likely from Europeans, who tended to expect fair compensation. It obviously involved cultural differences as well, which require further research. For example, Maori clearly had different expectations arising from gifting. While Europeans expected compensation they also accepted that they no longer had an interest in the land, whereas for Maori gifting seemed to imply a continued interest in the land should the need for the public work cease. The expectation of eventual return may also have been a reason why Maori chose to gift land so often and forgo short-term compensation. However these differences in expectation were rarely acknowledged by Europeans. Sometimes the gifts themselves were acknowledged but at other times Maori appear to have been left thinking they had gifted land while local authorities acted as though the right to take land had been exercised.

Maori also appeared to use gifting to emphasise the importance they attached to the process of consultation, often gifting land if genuine efforts at consultation were made. These initiatives were also often ignored by settlers once the objective of obtaining land as cheaply as possible had been achieved. For example, it was reported to the Superintendent of Auckland province in 1874 that problems had arisen when native owners were not asked for their consent for a main line of road. The owners did not object to giving the land but they saw the survey ‘very much in the light of *taking land* and . . . unless this little difficulty is promptly explained to them officially it will lead to their refusing to give the land’ (emphasis added). The assistance of the Reverend Gitto was requested and authorised to use his good offices to explain.²⁵

24. AP 2/2, 1873/1716

25. Letter from John Shepherd to Superintendent Auckland Province, 14 January 1874, AP 2/13, 74/230

Maori also found that road building, especially at a local level, rarely took their interests into account, even when they were prepared to gift the land. While provincial governments would have land taken and built roads to encourage settlement, they rarely responded positively to Maori requests for roading assistance. Some of these problems were highlighted by the Member for Southern Maori in 1872, when a grant was being considered to assist in the building of the Portobello–Otago Heads road, as cited in chapter 5. Both provincial and central government had failed to help and both attempted to lay responsibility for assistance on the other. The continuing refusal of local governments to respond to Maori roading needs brought continuing criticism. In 1879, for example, Maori members complained that little Public Works money was spent on roads required by Maori in the North Auckland area. The only roads the people there had were simply those left to them by their ancestors.²⁶

The issue of rating was a major local issue that is in theory separate from public works takings and requires its own research. However, in practical terms, rating and public works issues were often closely linked, as it was rating at a local level that was supposed to pay for and maintain public works. Ward has noted that in the 1870s Maori were heavily involved in local administration, but it was almost entirely within the ambit of the Native department, for example as native assessors or police, or on native school committees. Maori had almost nothing to do with the machinery of local settler administration such as highways and harbour boards, or provincial councils or their successor local bodies. This alienation reflected an increasing separation of the races. Ward has shown that in the aftermath of the wars settler hostility to Maori also became increasingly evident, particularly in urban areas where by now Maori were often refused access to public amenities. Settler hostility was also a major reason behind Maori moving out of urban areas that had grown up around traditional pa sites, for example in Wellington, New Plymouth, and Greymouth. The separation of the races at a local level also had long-standing legislative encouragement when in early years local franchise was limited to those with freehold property, effectively excluding Maori.

Antagonisms were reflected in relations between Maori and local settler government. Maori infuriated local authorities by their inability and unwillingness to pay rates. Provincial governments and their successor local bodies antagonised Maori by aggressively continuing the alienation of Maori land through the use of local public works takings. They also used the non-payment of rates as a reason to neglect public works concerns of Maori. The move towards less and less consultation as soon as circumstances allowed only aggravated the problems. Increasing lack of communication meant local authorities were increasingly unaware of Maori concerns, even if they were willing to take them into account. As antagonisms became more deeply entrenched the Crown did little to try and ensure accommodations were made that would take Maori concerns into account.

In rating terms, many Maori for example could not see why land they had held for centuries that had been passed to them by their ancestors should suddenly become subject to taxes, often when they saw no benefit from them. They also saw

26. NZPD, 1879, vol 33, p 476

rates as an imposition forced on Maori without consultation or a chance to be modified to address Maori concerns. For example, many Maori still lived largely outside the cash economy and while they may have been willing to give free labour and materials to maintain a road for example, they often simply did not have the money to pay rates. Other circumstances often created by Government institutions also caused difficulties in paying rates. The fragmentation of ownership created by the Native Land Court, for example, not only made it difficult to use land economically but it was also almost impossible to get every owner to pay their share of rates when many might not even live in the district. Local body insistence that rates had to be paid in cash and rejection of suggested alternatives meant the only option of paying rates was to sell yet more land. This only increased Maori suspicion that the imposition of rating was simply another device to part them from their land.

Local bodies, however, were generally unsympathetic to these problems and regarded non-payment as a failure of one of the duties of property ownership. They were generally not willing to negotiate possible alternatives to rates such as the offer of regular free Maori labour in maintaining roads. Instead they preferred to use the non-payment of rates as an excuse to neglect Maori needs and as yet another reason for preferring Maori land in takings for public works purposes.

The Crown had to take some responsibility for allowing this situation to develop, as it was Crown involvement, or lack of it, that contributed to the situation. For example, the Maori Land Court that caused fragmentation of title was a Crown creation and local bodies were not required to take Maori concerns into account or reach accommodations over alternatives to rates. A number of other circumstances also encouraged local bodies to regard Maori land as a prime target for public works takings and these too often resulted from Crown action. The legislative provisions regarding taking land for roading for example were much less protective of Maori land and therefore made it an easier target. Other legislation not directly related to public works takings also had an inevitable impact when it discriminated against Maori in being able to economically use their land. For example, the Native Land Amendment Act 1878 (no 2) made it illegal to advance a loan as a mortgage over any land held by a Maori by Crown grant or memorial of ownership. The result was that Maori were not able to use their land as security to raise finance to develop it or use it more economically. Until the 1920s, in fact, there was little encouragement for Maori to use their own land. The resulting underdeveloped and underutilised Maori land only confirmed European prejudices that it would be better out of Maori hands. Local authorities responded to this by regarding Maori land as a prime target for public works takings.

Because local bodies were able to act almost exclusively in the interests of settlers, projects were also undertaken to further settler requirements while little or no attention was paid to the impact this might have on Maori rights and concerns. As local authorities increased their powers in the 1870s, especially in areas such as drainage and river control, works of benefit to farmers were carried out without any concern that they were also destroying ancient Maori food traps and fisheries, and in these cases there was also no requirement for consultation or compensation.

The attitude of most settlers was reflected in debate on the Highway Boards Act 1871. The very long preamble to this Act sought to remove the restrictions imposed on provincial councils by the Constitution Act, including over lands where aboriginal title had not been extinguished. It was also deemed expedient that highway boards should have powers to take land compulsorily for certain purposes without first obtaining a special Act or ordinance. The Act allowed customary Maori land and Maori land where a Native Land Court certificate of title had been issued to be rated 'if in the occupation of any other than an aboriginal Native' (s 5). The boards also had powers to take land for works concerned with making or altering roads and building and bridges and drains in connection with roads. The taking had certain traditional protections for landowners, such as a requirement for notice, the opportunity for objections and the right to compensation (ss 28–34). Written consent was also required before lands occupied by buildings, gardens, and so on, could be taken or used (s 35) and the Lands Clauses Consolidation Act 1863 was incorporated (s 36).

The proposed Bill was described as giving highway boards the necessary powers to fulfil their functions and to remove any doubt as to the legality of their acts by granting them powers that could only be conferred by the General Assembly. The doubts included the power to rate property owned by the Crown or native land and the Bill would give that power. There was also no general power for highway boards to take land for certain purposes. Provincial councils could pass special Acts to take roads or land for certain purposes but there was no general power to do so. The Bill gave that power with certain restrictions to protect private property.

While European members of the House were divided on almost every other issue, they were unanimous when it came to native land. The highway boards with their responsibility for local roading were described as doing the 'great work of colonizing the country, and preparing it for the reception of a large population, by making roads.'

Reference was made to Taranaki and the large number of Crown grants issued to Maori there. It was claimed that it was only 'just and equitable' therefore that they should be rated like other people. The member neglected to mention that the Crown grants in Taranaki were almost all the result of confiscated land 'returns' where land had to be returned by Crown grant.

European members were also adamant that Maori would have to accept the duties and responsibilities of property ownership as Europeans saw them. The Maori members were severely lectured by a number of European members on this point. They were told that Maori had been asking for equality with Europeans for a long time, including having a share in the legislation and governing power of the colony. As a 'necessary consequence, they must share in the burdens and responsibilities of the Europeans'. Another member added that the sooner Maori members:

learnt the lesson that they were sent there to assist in the general government of the country, to act for the benefit of all, and the sooner they became aware of the responsibility of the position they occupied, the better would it be for themselves and for the country.

They had the great privilege of living in a free country and of participating in the making of laws and they should not forget that natives owned large amounts of land, ‘the ownership of which entailed large responsibilities’.

In a later debate the Maori members were told that they should remember that:

property had its duties as well as its rights, and that they had come to that Assembly for the good of the Colony at large. They should not suppose that they were there to represent exclusively their own race.

The treaty stated that Maori were to have the same rights and privileges as English subjects and on that principle, wherever English subjects were affected the Maoris should be treated similarly. European members also complained that the measures were too lenient on Maori:

the Maoris had always been exclaiming against not having equal rights with the Europeans, but now they wished a great deal more, and not only desired the same rights and privileges, but laid claim to be exempt from the burden others had to sustain.

For their part the Maori members protested against the extension of rating powers but also sought to make constructive suggestions about cooperating in a way that would take Maori views into account while still enabling the purposes for which rating was required to be served. This could either be by allowing Maori the opportunity to discuss and agree to rating or to provide an alternative equivalent to rating for example in the form of materials and labour.

Taiaroa criticised the passing of a law when Maori still did not know about many laws. He had already proposed to the House that a Maori council be established to consider and advise on laws affecting Maori. Maori would support them if they had been considered and agreed to by such a council. He wanted the whole issue of rating to be put to a council. He also reminded members of the Treaty of Waitangi and the guarantees in it of Maori rights to lands, forests, and fisheries. Parata was concerned that Maori would be unable to pay rates. He preferred that the Government ask the chiefs for the land through which the roads were to run, and they would give it. He also asked for time and cooperation over the making of laws.

Katene was also concerned that Maori would be unable to pay rates and then they would lose the land they left. With no land left they would have no means of livelihood. He also told members that Maori were often unaware of matters dealt with by the Assembly, and warned against pressing the measure too hastily. He felt it would be better for members to turn their attention to the troubles still existing in the North Island and attempt to end them before passing laws of this nature that would equally affect both races. He gave an example of a possible alternative to rating. The Ngapuhi people had worked out a system of regularly working for a set time on the roads without payment and that was their contribution to road rates. He explained that Maori did not object to the principle of sharing the expenses of maintenance of roads but they wanted the opportunity to have a say on the matter and have such measures agreed to together.

The suggestions of the Maori members were generally ignored in favour of lecturing them on their duties and responsibilities. The only marginal support came from the member for the Bay of Islands, McLeod, who assumed completely unrealistically, that highway boards would have to take notice of Maori concerns because in a community where the natives were so numerous:

they would naturally form a portion of those Boards, and possibly, have a majority of voices; but in any case, with their numberless claims to land, they would have numberless votes, and therefore be in a position to regulate the taxation accordingly.

He was also the only European member to point out that Maori already paid large taxes through duties on goods and received very little in return. In the Bay of Islands for example, he calculated that they paid between £40,000 and £50,000 per year in this way but received almost nothing back. He asked why some of this revenue could not be made available for making roads ‘instead of bringing in a new tax to squeeze still more out of them?’ He also pointed out that out of the tax revenue given to the Auckland provincial government, most was spent in the city area and very little in the outlying area (where most Maori lived). For example, that year the Bay of Islands and Mongonui had received only £27 out of £12,400. Other members also admitted that Maori had shown a desire to contribute to the construction of roads, and had always contributed to them, much to their credit. However, this was still not considered sufficient, as rates were required for ongoing maintenance.²⁷

While McLean was in charge of the Native department he attempted to mediate in conflicts between Maori and local government. He sponsored the Native District Road Boards Act 1871, whose object was to assist in the ‘settlement and pacification of the Colony’ by authorising and encouraging Maori to build roads and other public works through the establishment of road boards controlled by Maori. The proposed boards could only be established after a written request to the Governor and where the majority of the population in a district was Maori. Papers published on the working of the Act show that the Government then interpreted the Act to mean that the boards would only have authority over customary land. Crown-granted land, including European land, was excluded and was still to come under the ordinary Highways Acts with separate roads boards. In effect the Act was simply being used to extend rating to customary land. Not unnaturally, Maori thought that boards that excluded Crown-granted land would be unworkable in a community. They made it clear that they wanted an organisation that included both natives and Europeans to cooperate together, ‘. . . a Native and European Runanga, which should be empowered by the Government to settle disputes, and to assist the Magistrates in enforcing the law . . .’, and they rejected the boards ‘unless the property belonging to both races is amenable under the same Act . . .’²⁸ The Act lapsed through lack of support and Maori requests for more equal consultation also fell on deaf ears.

McLean fell back on urging cooperation between local bodies and Maori communities, and he appears to have accepted that the Maori contribution to

27. NZPD, 1871, pp 358–385

28. AJHR, 1872, vol 2, F-4, pp 4–6

roading for the time being at least could be regarded as offsetting rates. He was also willing to assist provincial councils at times by contributing the equivalent rate liability from the general fund. However, this was clearly not regarded as a matter of general policy. There appears to have been no real Government acknowledgement that central funds could be generally used in this way in recognition of the often-made point that Maori paid very high customs dues but received very little back in return.

In a letter to the Superintendent of Taranaki province for example, H T Clarke, the Under-Secretary of the Native department, wrote that in response to problems about collecting rates from Maori, it had been worked out that their annual liability in the district was about £73. It had been decided that this sum would be defrayed this year on the distinct understanding that it was not to be regarded as a precedent. It was a matter of regret that the Taranaki natives had not fallen sufficiently into European ways to make them understand the principle of local taxation. Mr Parris had been instructed to instil in them the necessity of contributing to the formation and repair of roads from which they gained so much benefit.

The letter also urged that the provincial government revert to the former practice in Taranaki of electing native chiefs of influence as members of various road boards. They would assist at discussions and participate in the levying of rates. They would then be able to point out to their friends and relatives the advantages they reap from roads and would most probably advise them to view the matter in its proper light. ‘The principle of associating chiefs with Europeans on Roads Boards would be found to have a beneficial influence’.²⁹

The urging to cooperate with and coopt chiefs if necessary seems to have largely fallen on deaf ears, and another opportunity for including Maori in the process of local government rejected. Local authorities much preferred the option of compulsion and instead generally supported coercive measures such as the right to take land if rates accumulated and were persistently unpaid.

Even McLean’s efforts were directed as an interim measure until Maori had ‘fallen sufficiently’ into European ways. He also seems to have been motivated by the fact that local antagonisms were beginning to have an impact on his national purchasing programme. Reports he was receiving at the time reveal that Maori concerns about rating were becoming a major impediment in negotiating over land for roading. For example in 1875 McLean received a report from James Mackay on negotiations regarding a road line between Hamilton and the Thames River or Waihou. Most of the line was completed, but the natives were opposing a survey over a small part that ran over their land on the grounds that they would become liable to highway rates. Mackay reported that there were many objections of this kind and they were not confined to one district. The reason given for refusing right of way was constantly ‘that conceding a right of road gives the Government power to rate the owner of the land over which the road passes’. In the present case, the owners had agreed to give permission to construct a road at once if they were guaranteed highway rates would not be levied on them:

29. H T Clarke to Superintendent Taranaki, 14 October 1874, MA 4/20

Maoris, as a rule, do not damage the roads by heavy traffic. The small amount they contribute to the rates is of trifling importance compared with the difficulties they cause through stopping the construction of roads and other public works by their refusal to allow entry on their lands.

Mackay went on to describe this refusal because of rates as a ‘growing evil’ that should not be lightly disregarded. He recommended that legislative measures should be taken to exempt all lands held by natives, whether derived from Crown grant or not, from rating under any Highway Act; except for those lands within townships. In addition he pointed out that in some places the natives were unable to pay highway rates ‘from absolute want of means’.

The Under-Secretary H T Clarke supported this in an accompanying memo:

The Natives allege, and no argument will disabuse their minds, that once they allow roads to be made through their property, so surely do they become liable to pay rates.

This was the reason why they stopped the survey of the Cambridge and Tauranga road. It was also one of the reasons they did not like the operations of the Native Land Court. They did not realise that when title was investigated and then derived from Crown grant, they were subjecting themselves to burdens never understood. Instead of being the great advantage that was promised, holding land by Crown grant led to a great burden never explained or contemplated. He suggested that natives should be relieved of these taxes, and if they were holding land and not disposing of it, they should not be subject to rates.³⁰ A further letter from Mackay also warned of the great dissatisfaction being caused by highway boards rating native reserves. He believed that it was the root of a great deal of opposition in carrying out the great scheme of public works in native districts or upon lands held by natives.³¹

However, in the end the Native department could offer Maori very little help in the face of settler demands for public works that suited their needs regardless of Maori concerns. This was particularly true of local works such as drainage operations. In the same 1874 letter cited previously, H T Clarke told McLean of problems faced in helping a hapu save their eel fishery from drainage works. The hapu had chosen the site of the reserve so they could continue to have access to eeling. However drainage works threatened to destroy the eel fishery and therefore make the reserve useless. It was a real pity the hapu did not have access to legal advice but :

It would never do for a government officer and especially for one of this wretched Native department to tender such advice. It would directly be stated that we were opposing the opening up of the country.³²

30. J Mackay to Native Minister, 18 June 1876, and accompanying memo from H T Clarke, AJHR, 1875, G-10, p 1

31. J Mackay to Native Minister 6 August 1875 in AJHR, 1875, G-10, p 1

32. H T Clarke to McLean, 27 November 1874, (ATL) McLean papers, MS 32, f 218, no 74