

APPENDIX II

PUBLIC WORKS TAKINGS OF MAORI LAND IN THE *NEW ZEALAND GAZETTE*

The database of Public Works takings prepared by Nita Zodgekar can be accessed at the Tribunal library, located in the Tribunal offices, 110 Featherston Street, Wellington.

ABOUT THE AUTHOR

My name is Nita Zodgekar. I completed a BA in Social Policy at Victoria University in 1993. In 1994, I was employed as a researcher at the Ministry of Education, where I worked on two projects: *He Mahi Tahi Tatou: Positive Practices Promoting Good Race Relations in New Zealand Schools*, and *Beginning School Mathematics*. In 1995, I returned to university and graduated with an honours degree in Social Policy. Over the last three years I have also tutored two university social policy courses. I was employed as a researcher at the Tribunal from December 1995 to April 1997. During this time I was principally involved with the public works project. For this assignment I searched through all the *New Zealand Gazettes* and some of the *Provincial Council Gazettes* for public works takings of Maori land, created a database from this information, and briefly investigated other sources. I have also been involved in claims facilitation tasks for the central Auckland district.

INTRODUCTION

In 1994, Cathy Marr produced a report on public works takings of Maori land investigating the period from 1840 to 1981, which pointed out the lack of statistical information on these takings.¹ In response to this, and as part of the Waitangi Tribunal's Rangahaua Whanui project, the Tribunal undertook to compile a database of public works takings of Maori land using the *New Zealand Gazettes*. Because many of the claims registered with the Waitangi Tribunal are concerned with public works takings, it is anticipated that this database will be widely used by historians and by claimant groups alike. By employing a keyword search, one can find examples of Maori land taken from particular blocks or survey districts.

The project is divided into two parts: a survey of the *New Zealand Gazettes*, and a second phase involving a survey of takings using other sources, for example, Maori Land Court title records. The *New Zealand Gazette* is a newspaper of the New Zealand Government. An official *Gazette* has been published in various forms since 1840. The *Gazette* is the

1. Marr's report will be published as part of the Rangahaua Whanui series (National Theme G).

means of publishing all kinds of official notices and proclamations. These include many types of notices that range from statutory regulations to the individual appointments of members of professional bodies by the Government and its agents. While this report is concerned with information derived from the published *Gazette* notices (contained in the proclamations), some comments or supplementary research for the second phase of the study are included. It is important to remember that this report focuses on published information in the *Gazettes* pertaining to those Maori land takings that can be distinguished from takings of general land. The emphasis was on finding notices that could definitely be classified as Maori land as opposed to general land.

This report is limited to looking at the *New Zealand Gazettes* as a source of information for public works takings of Maori land. It is organised into five parts. It begins by looking at the method used in extracting the information required from the *New Zealand Gazettes*. The next four parts discuss some findings drawn from the *Gazette* notices in terms of the various public works Maori land was taken for, the legislation used to take land for these purposes, some observations regarding the discriminatory way Maori were treated in terms of notification procedures in the *Gazettes*, and finally some issues in relation to obtaining data for this database.

METHODOLOGY

The main task in the first stage of this study was to find information in the *New Zealand Gazette* on Maori land taken for public works purposes, to input this information into the database, and to provide some analysis of the results. The database is organised in chronological order. A hard copy of the database has been compiled. It contains a photocopy of every notice used and is collated in chronological order. Each entry includes the following details:

- the year and volume of the *Gazette*, and the date of the notice;
- the section, number, and name of blocks where land was taken or proposed to be taken;
- the survey district and the provincial district where land was taken or proposed to be taken;
- the legislation enabling the taking; and
- details of whether the land was ordered, proposed, or declared to be taken, and the purpose it was taken for.

Searching through the *Gazettes*

The major problem in exploring the *Gazettes* for Maori land taken for public works purposes, was finding notices that distinguish between the taking of Maori and general land. It was not until 1883 that the proclamation notices in the *Gazettes* detailing land to be taken for public works made this distinction.² The *Gazette* notices from 1883 to 1912 made this distinction by explicitly stating in the heading of the proclamation, that it was Maori land being taken for public works purposes.³ After 1912, this clear differentiation between Maori and general land was not made in the *Gazettes*. From 1912 to 1974, land taken for

2. The Public Works Act 1882 set out the requirement to publicly notify works proposed to be executed.

3. In fact, these were only examples of customary land taken (elaborated on in the methodology section).

roads under Native Land Acts can be clearly distinguished as Maori land and so was included in this database.

The method used for finding this information was largely to search through the indexes of the *Gazettes*. Although the indexes are very detailed, especially for the earlier *Gazettes*, they are not always consistent. Maori land taken for public works purposes could be found under a number of headings such as 'Native land', 'Native Land Court', 'Land', and 'Orders in Council'. These headings would list Maori land proposed to be taken and the purpose for which it was required. In the *Gazettes* after 1912, land taken for public roads under Native/Maori Land Acts, was usually found in the indexes under the headings 'Road-line proclaimed as a public road' or under 'Roads and Streets' saying 'Laying out and taking a road'.

The same notice is usually repeated a few times in later *Gazettes*.⁴ In the earlier *Gazettes*, the notices pertaining to Maori land are headed with: 'Native land taken'; 'Native land proposed to be taken'; 'Consenting Native land to be taken' (the Governor's consent was needed when taking wahi tapu land); and 'Laying off roads over Native Land'. In the *Gazettes* after 1912, the notices were usually headed with the following: 'Laying-out and taking a Road'; 'Proclaiming road-lines laid out'; 'Road traversing Maori land'; and 'Declaring land in a roadway laid out'. After the mid-1950s most of the notices on the database are under this latter heading.

Customary Maori land

Customary Maori land is land held by Maori people in accordance with their traditional customs and usages before title has been determined by the Native Land Court. After 1840, the Crown not only pursued a policy of alienating land from Maori ownership, but also of converting land remaining in Maori hands from customary title into title derived from the Crown. This became known as Crown-granted or freehold Maori land. Little Maori customary or freehold land remains; by 1980 the latter had dropped to 5 percent of the total area of New Zealand. In addition, a significant amount of Maori freehold land was set aside as reserves. Crown agencies had control of this land and some of it was sold or used for public works.⁵

In legislation before 1852, the words 'Native land' were used to mean all Maori land (which was generally still in customary title). After 1852, a distinction had been made between 'Native' (customary land) and 'Maori' land (land derived from a Crown grant or some other legal title as Maori freehold land). It is important to note this, because between 1882 and 1912, the *Gazettes* distinguished between the taking of Maori customary and Maori freehold land. Nearly all takings between 1882 and 1912 recorded on this database are takings of Maori customary land. This conclusion was reached for two main reasons. First, most of the notices stated that land was not derived from the Crown, and secondly the use of the term 'Native Land' in the headings of the earlier notices is consistent with the terminology used to describe Maori customary land during that period.

In the later *Gazette* notices a variety of Maori freehold and Maori customary land was taken under Native Land Acts. The use of the 'Native land' in the title of these Acts is a

4. Perhaps as a result of the 1882 Act requirement that the proposal be twice publicly notified.

5. G Asher, and D Naulls, *Maori Land*, Wellington, New Zealand Planning Council, Planning Paper no 29, 1987

reflection of the terminology used before the Maori Purposes Act 1947, instead of an indication that it is only customary land to which the Acts refer. This supports Marr's assertion that: 'Public Works definitions varied at different times as to whether "Native Land" meant customary land only or included Crown granted Maori land as well'.⁶ In the post-1912 notices of land taken for roads under Native Land Acts, the land taken is definitely under freehold title if the proclamation contains a reference to a legislative provision allowing a 'well grounded objection'.⁷

Appellations

In a booklet on survey records, provided at a research training workshop held at the Department of Land and Survey Information (DOSLI), it states that from the appellation (or labelling) of a parcel of land, one can discern the unique identification of land.⁸ Thus, it is claimed that different appellation systems apply to each of the main tenure types of land; Crown, General (European freehold), and Maori. Crown land appellations usually begin with: *Section # of a Block of a Survey District*. General land usually has a lot number and deposited plan number: *Lot # DP#*. This document states that all Maori land parcel appellations start with the block name, for example, Mangawhara.

This system was not always used, however, by the writers of the *Gazette* notices. There are examples of Maori land taken, where the description of the land according to this identification system would be Crown land. In *Gazette*, 1889, volume 1, page 500, for example, the notice is headed with: *Native Land proposed to be taken for the Construction of a Police-station . . .* and the appellation detailed it as being from a *Section* number. There are also examples of Native land with appellations that would traditionally label it as General land. For example, in *Gazette*, 1906, volume 1, page 4, the Maori owners gifted land to the Crown for a Native school, and the appellation described the land in terms of General land numbers. Furthermore, one cannot be certain that all appellations starting with a block name are actually references to Maori land. This system of 'tagging' or labelling a parcel of land is only *indicative* of the tenure status of a piece of land described.⁹ Thus this system could not be used with sufficient precision to distinguish between Maori and General land taken.

THE CROWN'S EXPANDING EMINENT DOMAIN

[Road and Rail] had great symbolic significance: paths of civilisation, bring order and doom to natives and nature.¹⁰

6. C Marr, 'Public Works Takings of Maori Land, 1840–1981', unpublished draft, Wellington, Treaty of Waitangi Policy Unit, 1994, p 5

7. For example, section 50 of the Native Land Amendment Act 1913

8. Department of Survey and Land Information, *Survey Records: A Research Training Workshop*, Wellington, 1996

9. This was decided after a discussion I had with coordinator of the DOSLI course, Ronald Hermon.

10. Belich; 1996:353

Public works purposes

The definition of what constitutes a public work has widened over the years. In the 1928 Act, the definition was similar to previous public works legislation. It had to be based on some statutory authority or on Parliament's appropriation of money for the work. The definition of public work included any survey, railway, tramway, road, street, gravel pit, quarry, bridge, drain, harbour, dock, canal, river, water-work, and mining and associated work. It also included electric telegraph, rifle and artillery ranges, lighthouses, and buildings for public purposes. This definition was even more widely extended in subsequent years:

by 1945, land could be taken for subdivision, development, improvement, provision or preservation of amenities, public safety in respect of any public work and for regrouping or better utilisation.¹¹

The *Gazettes* in the 1880s indicate that there were a number of major road lines and railways in construction that involved the taking of Maori land. In terms of these major works the taking notices proclaimed Maori land as taken for: the Great North Road, West Coast Road, Cambridge–Rotorua Road, Wellington–Napier Railway, Kawakawa Railway, Waikato–Thames Railway, Foxton–New Plymouth Railway, Nelson–Greymouth Railway, Hurunui to Waitaki Railway, Maungakawa to Waiorongomai Road, and the North Island Main Trunk Railway line.

Roads and railways, however, only constitute some of what was taken under the label of public works. The sheer variety of purposes that land was taken for shows the very broad definition that 'public work' has had in New Zealand legislative history. The following list of the public purposes that Maori land was taken for and proclaimed in the *Gazettes*, illustrates the wide domain of the Crown's powers to take land for public purposes: lighthouses, gravel-pits, police stations, hospitals, scenery preservation, school sites, native schools, electric lighting, wharf sites, cemeteries, landing reserves, stock paddocks, post offices, drainage systems, courthouse sites, public buildings, internal communication between lakes Rotomahana and Tarawera, a station for collecting rainbow trout ova, the construction of beacons and leading lights, model kaainga, waterworks, magazine reserves, abattoirs, bridges, recreation grounds, historic purposes, pilot and signal stations, travellers' accommodation, public health purposes, and defence works. This demonstrates the immense variety of purposes for which land could be taken as a public work.

Land taken for 'lesser' purposes

Details about the purpose for which land was taken are often ambiguous in the gazette notices. Land was taken for public buildings, or public health purposes, for example, without specifying what sort of public building, or what kind of public work needed land for public health purposes (a hospital perhaps). Land taken for 'historical purposes' or 'internal communication between lakes' are also examples of vague reasons in terms of public notification and justification. These unclear descriptions of why the land was taken are good examples of how widely public works legislation could be applied. It would also

11. Marr, p 117

be interesting to find out how often the land taken was used for the ‘specific’ purpose, even when a particularised purpose was actually identified in the *Gazette* notice.

Many of the takings in the *Gazettes* seem to be for what would be deemed more ‘essential’ public works, for example roads and railways. However, there are also examples of Maori land taken for what appear to be less important purposes, such as a station for collecting rainbow trout ova, recreation purposes, travellers’ accommodation, and model kaainga. It is debateable whether these works were important for the wider public good, however this was defined at the time. They were unlikely to have been of any benefit to Maori.

Judging from the number of acres taken for each specific purpose in the *Gazettes*, it seems that land may often have been taken that was surplus to the requirements of the work. In 1908, for example, 54 acres 3 roods of land was taken for building a lighthouse in Maunganui, Bay of Islands.¹² In 1899, 7 acres 2 roods of land was taken for the construction of a police station in Te Whaiti, Whakatane.¹³ These are just some examples of amounts of land that were likely to be in excess of the purposes that it was taken. The Tribunal’s *Te Maunga Railways Land Report* deals with issues to do with land no longer needed for public works and rights under the Treaty in terms of the return of such land.¹⁴

LEGISLATION AUTHORISING TAKINGS IN THE *GAZETTE*

Legislation used to take Maori land for public purposes in the *Gazette*

The procedure for taking lands set out in the Public Works Act 1882 required a notice to be gazetted, and to be twice publicly notified, stating the place where the plan was open for inspection, with a general description of the works proposed to be executed, and the lands required to be taken. This notice would also call upon all persons affected by the proposed development to send any well-founded objections in writing within 40 days from the first publication. After all objections, if any, had been given due consideration, the proposed works were to go ahead with the consent of a minister or local authority. The *Gazette* notices began to distinguish between Maori customary and other types of land taken after this Act.

The legislation that the takings on this database have been authorised by are as follows:

- Public Works Act 1882
- Native Land Court Act 1886
- Drainage Act 1893
- Public Works Act 1894
- Native Land Court Act 1894
- Reserves, Endowments, and Crown and Native Lands Exchange, Disposal, and Enabling Act 1898
- Public Works Amendment Act 1900
- Scenery Preservation Act 1903
- Public Works Act 1905
- Native Land Act 1909
- Public Works Act 1908

12. *New Zealand Gazette*, 1908, vol 2, p 2577

13. *New Zealand Gazette*, 1899, vol 1, p 500

14. Waitangi Tribunal, *Te Maunga Railways Land Report 1994*, Wellington, Brookers, 1994

- Native Land Amendment Act 1913
- Native Land Amendment Act 1914
- Native Land Claims Adjustment Act 1918
- Native Land Amendment and Native Land Claims Adjustment Act 1921–22
- Urewera Lands Act 1921–22
- Native Land Amendment and Native Land Claims Adjustment Act 1923
- Public Works Act 1928
- Native Land Amendment and Native Land Claims Adjustment Act 1928
- Maori Land Act 1931
- Maori Affairs Act 1953

Thus this project is not concerned with takings under public works legislation only, because many takings occurred under other legislation. This also shows the sheer volume of legislation used for taking Maori land.

The legislation used to take and to notify these takings of Maori land for public purposes was poorly drafted. This is reflected in what seem to be ad hoc provisions in the myriad of Native Land Acts passed during the early 1900s. Section 51 of Native Land Amendment Act 1913, for example, sets out that it was in the public interest that any road line laid out should be proclaimed in the *Gazette* as a public road. The Native Land Amendment and Native Land Claims Adjustment Act 1918, stated that if a road line had been laid out under section 117 of the Native Land Act 1909, and had not been proclaimed as a public road, then it could be proclaimed as a public road under section 48 of the Native Land Act 1913, and section 15 of the Native Land Amendment Act 1914. This is a case where legislative provisions seem inconsistent and unclear as to exactly how to go about notifying information in the *Gazette*. Marr emphasises the confused state of this legislation: ‘Very careful reading of all the legislation together can still result in uncertainty about precise provisions applying at any one time’.¹⁵ Furthermore, the provisions in Native Land Acts, and Public Works Acts did not always coincide. This led to more inconsistency and uncertainty in terms of which provisions applied at any particular time.

A significant trend throughout this period was the widening of the powers of the Maori Land Court in order to facilitate the taking of Maori land. The Native Land Court Act 1886 allowed the court to make partition orders on application by any Maori or European purchasers. This Act allowed up to 5 percent of any block of newly partitioned Maori land to be taken for roading, without any compensation payable. The Tribunal’s *Ngati Rangiteaorere Report* considered this issue of taking land without compensation in the context of lands that were compulsorily taken for a road from Maketu to Tikitere under this Act, between 1889 and 1890.¹⁶ The Public Works Amendment Act 1887 extended the jurisdiction of the Maori Land Court further, by allowing it to determine compensation for all Maori-owned land, not just unextinguished customary land as under the 1882 Act.

Different taking provisions for Maori customary and freehold land

As far as taking procedures were concerned, in the legislation used to take Maori land that was documented in the *Gazette*, it is clear that Maori customary land was treated in a discriminatory way, as compared to Maori freehold land. The Native Land Amendment Act 1894 prescribed that when a road ran along a boundary between European and Maori

15. Marr, p 54

16. Waitangi Tribunal, *The Rangiteaorere Claim Report*, Wellington, Brooker and Friend, 1990

freehold land, that road was to be taken equally from both sides. This protection did not apply to customary land, leaving it more vulnerable to being taken. The Public Works Act 1894 explicitly detailed the different procedures for taking freehold as opposed to customary land. Section 2 of this Act outlined the gazetting procedures for taking Maori freehold land. The *Gazette* notice had to include a call for any objections to the proposed work. In section 88 dealing with customary land, there was no such clause for allowing objections. However, this clause gave the Maori freehold owner little power anyway, because the Act explicitly stated that an objection regarding the amount of compensation under offer did not constitute a well-grounded objection. Furthermore, customary land could be taken for public works without public notification if it was not registered under the Land Transfer Act 1915 (which it would not normally have been).¹⁷

The safeguard of notification for owners of customary land was important because apart from gazetting there was no other provision for notifying owners of customary Maori land when their land was required for public works.¹⁸ In terms of compensation, customary and freehold land were treated differently; for example, section 26 of the Public Works Act 1882 says that compensation for customary land was to be determined by the Native Land Court. Part III of the same Act emphasises that full compensation should be provided for any Maori freehold land taken. Eventually the Maori Land Court determined compensation for both customary and Maori freehold land. The section 387 of the Native Land Act 1909, states that the Governor may, without the consent of any person and without liability to pay compensation, lay out and proclaim roads over customary land. This is another example of less protection being given to Maori customary land.

The Urewera Lands Act 1921–22 is an example of special legislation and public works provisions negotiated by the Native Affairs and Lands Departments. It provided that the Crown got the bush around Lake Waikaremoana and Maori were to contribute about 20,000 acres worth of land to the Crown as a contribution towards roading costs. These were to result in the Crown acquiring large chunks of land suitable for settlement. In the *Gazettes* there is an example of this Act being used to acquire large areas of land under the name of public works. In the 1930 *Gazette*, volume two, page 2194, 1660 acres of Maori land was documented as being taken under the Urewera Lands Act for roads.

Marr emphasises the involvement and wide discretionary powers of local bodies in takings of land for public purposes.¹⁹ In the *Gazettes*, this survey found some examples of local body takings of Maori land for public purposes. These notices are under the ‘Private Advertisements’ section, and did not always appear to have conformed with prescribed taking procedures for notices in the *Gazettes*. For example, the Otago Heads Road Board gave notice that it was intending to take land from a native reserve for a road, but it did not give the precise amount of land being taken, the provisions of the Public Works Act 1908 it was taken under, and did not have the Governor’s seal of approval.²⁰

17. All surveyed land (both customary and freehold) was to be registered under this Act.

18. Marr

19. Marr, p 119

20. *The New Zealand Gazette*, 1911, vol 2

POOR NOTIFICATION PROCEDURES FOR MAORI LANDOWNERS

Deficient gazetting processes

In order for a taking to be legal it had to be gazetted in full according to the provisions of the Public Works Act 1882. Many of the *Gazette* notices do not describe the precise piece of land that is being taken. Instead they often say 'Part' of a particular block of land. The *Te Maunga Railways Land Report* pointed out that the incomplete description of the land in the *Gazette* resulted in the owners not knowing what was being taken.²¹ It was often seen as too cumbersome to notify all the owners of Maori freehold land in multiple ownership. It is dubious how often these gazetting procedures were complied with. The Tribunal's *Turangi Township Report* gives an example of the Crown entering Ngati Turangitukua lands with bulldozers without consulting or notifying them, before any proclamation taking the land was gazetted.²² In this case the Crown was exempt from the notice requirements in sections 22 and 23 of the Public Works Act 1928.

Not all public works takings had to be gazetted. Where Maori owned land that was needed for public works, but it was not registered under the Land Transfer Act 1915, notification procedures did not take place. Only surveyed land was registered and even 30 years later, a lot of Maori land was not on the register.²³ However, there were some instances of notices in the *Gazettes*, proposing to take land that was unsurveyed.²⁴ Until the Maori Affairs Amendment Act 1974, legislation for public works takings had separate and less secure provisions for taking Maori land and were thus discriminatory.

Discriminatory notification procedures

Using *Gazette* proclamations as a way of notifying owners when their land was to be taken, shows the total lack of communication and consultation made with Maori. Throughout the period this *Gazette* survey covers, Maori were subject to discriminatory notification provisions:

for a large proportion of even Crown granted Maori land, notification procedures were much less effective than for non-Maori land and this of course had a large bearing on the ability to make objections.²⁵

Ngata pointed out the unfair method in which public works takings were administered, particularly since the Maori owner was often the last to know about the proposed works:

The Native owner should be the very first man to be consulted. If it were European owned land the very first thing the Government would do was to approach the European owner.²⁶

Gazetting as a way of notifying owners was a totally ineffective way of advising Maori landowners of proposed takings, as the *Te Maunga Railways* case illustrates: 'What is more significant is that because there had been no meeting of owners, it is quite likely that many

21. Waitangi Tribunal, *Te Maunga Railways Land Report 1994*, Wellington, Brookers, 1994, p 74

22. Waitangi Tribunal, *Turangi Township Report*, Wellington, Brookers, 1995, p 360

23. Marr

24. For example, *New Zealand Gazette*, 1896, vol 1, p 8

25. Marr, p 119

26. Ngata, April 1916, NZPD, 1916, p 743

of the 19 owners did not know that land was being taken at the time'.²⁷ It is clear that Maori notice rights were being breached. The first warning that their land was being taken came in the proclamation in the *Gazette* taking the land, if they were lucky enough to have proposed works over their land actually published in the *Gazette*. Many Maori landowners were subject to stress caused by rumours of proposed works over their lands due to ineffective gazetting procedures.²⁸ The Crown does not appear to have protected Maori owners' rights of rangatiratanga in the approach they took in proclaiming land for public works purposes. The Tribunal's *Mohaka River Report* also found no record of any consultation between the Public Works Department and the Maori owners when land was taken in 1921 and 1926 from the river frontage.²⁹

These Acts gave the Crown extremely wide powers to take Maori land for roads, by just using Maori land informally as a road, and then later declaring it to be public ownership. Section 484 of the Native Land Act 1931, for example, stated that if a road traversing Native land had been used as if it were a public road, or if it had been improved or formed using public funds, then it could be declared a public road. The *Gazette* notices show that a significant number of pieces of land were acquired for roads this way under the Native Land Amendment and the Native Land Claims Adjustment Act 1928 and the Native Land Act 1931. This method of deciding that land should be taken for a road lacks any of the formal procedures of consultation that European owners were given.

These examples all reflect the gradual extension and opening up of the Crown's ability to take Maori land, partly as a reaction to the decrease in Maori land sales. The unequal and inequitable way Maori were treated in the taking procedures for land that was appropriated for these works may have been a breach of article 3 of the Treaty, which guarantees Maori the same rights and privileges as Pakeha. It was stated at the time that more communication occurred when European-owned land was needed for public works.³⁰

DATA ON PUBLIC WORKS TAKINGS OF MAORI LAND

This project is one step towards the collation of statistical data related to takings of Maori land for public works purposes. This kind of data would be very useful for addressing the Treaty implications of policy and practice in public works land takings. Marr stated that a major problem in producing her report was that statistical data related to takings of land for public works purposes was not readily available in any usable form. This data is even more elusive for Maori land.

It is of some concern that we do not have this information available in any usable form. There are qualitative accounts of Maori land taken for public works purposes, but there is not the quantitative information on a national scale. This database will be a valuable source of evidence for the Crown, historians, and claimants. However, the usefulness of this database in its present form is very restricted in terms of statistical information on total amounts of public works takings of Maori land. The limitations of the *Gazettes* for getting a complete picture of these takings means that there was likely to be much more land taken

27. Ibid

28. Waitangi Tribunal, *Turangi Township Report*, Wellington, Brookers, 1995

29. Waitangi Tribunal, *Mohaka River Report*, Wellington, Brooker and Friend, 1992

30. Ngata, April 1916, NZPD, 1916, p 743

than this *Gazette* survey shows. Therefore, breaking down this information, for example into Rangahaua Whanui districts, would be problematic if one is searching for an accurate figure of how much land was taken for public works.

The total amount of customary land taken for public works purposes, that has been recorded on this database from 1883 to 1912, is only 12,502 acres 1 rood 2 perches. A graph has been constructed to show trends over the period from 1883 to 1910.³¹ The bar showing takings from 1907 to 1910 illustrates an increase of over three times the taking on the other bars. It could be the case that authorities were more diligent about gazetting information during this period, or perhaps the extended powers to take Maori land under the Native Land Act 1909 resulted in more land being taken. More research would be needed to determine this point.

Other sources of information for public works takings of Maori land appear to be equivocal. If this project is to continue, the second phase of this study will involve a survey of takings using other sources. These sources have not been fully investigated as yet. I have identified the following possible avenues for investigation:

- (a) Local land titles offices should have all records of public works land takings, but it may be difficult to access all Maori land takings. This information is organised on a parcel by parcel basis. In each parcel there may be several titles. All the information they have has been gazetted. This may be a good source of information after the 1920s, if there is some way of distinguishing between Maori and General land taken. However, to go through these records would be an extremely time-consuming process, and thus perhaps not a feasible exercise.
- (b) Maori Land Court title records may be a useful source for after the 1950s.³² The district offices will have this information since it is organised on a district by district basis. The district offices have organized this information block by block. If the amount of compensation could not be agreed on between the owners and the Crown, then the minute books of the Maori Land Court also may have some information. If there was firm resistance on the part of the owner or owners, or some dispute, there may be a file as well. The *Gazettes* have file references that can be followed up for details regarding compensation.³³
- (c) LINZ (formerly part of the Department of Lands and Survey Information) have individual files per property which give detail on land taken, but apparently these do not explicitly say whether it is Maori land. However, by following up the legal description one might be able to tell in some cases, since land was taken under separate provisions. LINZ also have a Public Works Register of Proclamations which covers the years from 1874 to 1950. This register mainly has purchase information and the appellation notices may give an indication of the land tenure in terms of the kind of ownership (that is, Maori, General, or Crown land). They also have land compensation claims registers, but the information on public works is repeated in the Public Works Register. Series 224 held by LINZ at Heaphy House, Wellington, has records called 'Maori land compensation claims', which cover 1911 to 1913. This gives information on Maori land taken for public works. Unfortunately this information only spans two years.
- (d) Transit New Zealand have records that were created by several successive agencies, namely the Main Highway Board, the Ministry of Works and

31. See appendix 1

32. The older records may be archived.

33. These files can be tracked down at Archives (see point five).

Development, Roading Division, and finally the National Roads Board. Part of the Ministry of Works and Development, the National Roads Board, was established in 1953. This board had sole power of construction, maintenance, and control of all state highways and subsidised the cost of local roads, until 1989 when Transit New Zealand took over its responsibilities. Transit New Zealand currently have papers relating to the acquisition or purchase of land for roading and motorways.

- (e) National Archives have Land and Survey files, Works and Provincial Records, Policy files, and a card index of takings. From 1926, volume 2, the *Gazette* notices have file references that can be followed up at Archives using the Land and Survey files. The reference is usually at the bottom of the page (such as L and S 16/1993; or PW 33/1176).³⁴ In the notices before 1926, sometimes the plan reference can be followed up for a file on the taking. However, research in this area will also be limited due to time constraints.
- (f) The Maori Trustee has some very scattered information. They only have files on individual cases, which they suspect are held at National Archives; even then these do not detail anything about where land was taken and for what public purpose. Their records only outline compensation.
- (g) For this survey, a search of the *Provincial Council Gazettes* for Maori land taken for public purposes was conducted. These gazettes were published by the Provincial Councils from 1853 to 1976, and did not have much useful information for the purpose of this project. In terms of Maori land and public works, the type of material they contained included such things as the duties of the Superintendent and other authorities in terms of land regulations and the setting apart of reserves for any purpose of public advantage; proclamations regarding the regulations associated with extinguishment of Native title over blocks of land; notice under Native Land Acts of times and places for investigating claims; the details of the completed plans of some towns and suburban sections, including how many acres of land will be devoted to roads and public reserves; dispatches for individual commissioners relative to land in particular areas; tenders for making roads and other public works; regulations for the licensed occupation of pastor lands; regulations for applications to buy land that the Crown had acquired from Maori. There were no notices of takings in the provincial gazettes.

Tracking down these sources, identifying the appropriate data, and collating this information is a large research task. It appears likely that problems will arise in distinguishing between Maori and general takings in these sources. Perhaps the result of this type of research will be a series of general trends and overall quantities in terms of land taken for public works, instead of an estimate of exactly how much Maori land was taken in specific areas. Nevertheless this information will be invaluable.

The way for this project to proceed is on a district by district basis. There is no easy way of quantifying the amount of Maori land that was taken for public works purposes in a particular district for two main reasons. First, most of the information in the second phase of this study is organised according to the geographical location of the taking, for example, Maori Land Court records. Secondly, and more importantly, the kind of trends we want to discern from this material will require this breakdown of material. There is the intention that the data will be organised into Rangahaua Whanui districts for analysis at some later stage in the process of this study. It would be interesting to get statistics comparing North and South Island takings, and the impact of takings in tribal areas where a lot of land has

34. L and S was Lands and Survey Offices and P W was the Public Works Department.

been lost by other means. Also data on the relative amounts of Maori and non-Maori land taken, and the impact of various Government policies on the amounts taken for public works purposes will provide worthwhile information. The Crown and claimants should indicate to the Tribunal whether they feel that such a quantitative study would be useful on a district by district basis.

CONCLUSION

The dominant problem with the *Gazettes* is that they do not distinguish between Maori and General land taken after 1912, and that not all Maori land takings were gazetted in any case. Apparently using the appellations detailed in the individual notices would not be a reliable way of differentiating the status of land tenure for each piece of land taken for public works. Furthermore, I am not confident as to the consistency in gazetting. Hence this database is limited to takings of Maori customary land from 1882 to 1912 and Maori land taken for roads under Native and Maori Land Acts from 1912 to 1974.

With reference to the quantities, even of customary land, we can conclude that not all takings were gazetted. The statistical information gained through this exercise is too incomplete to support a thorough statistical analysis of the amounts of land taken for these purposes in New Zealand. However, judging from my preliminary search, data should exist at various repositories, but it will undoubtedly be in a very scattered and unprocessed form.

The *Turangi Township Report* refers to the Crown's 'draconian statutory powers' in terms of public works takings. This exercise has shown that the Crown's actions when gazetting public works takings of Maori land reflects this harshness in their wide definition of what constitutes a public work, the nature of legislation authorising the takings, and the use of the *New Zealand Gazettes* as the method for notifying owners. In this respect, it would be helpful to have information about the print run, circulation, and main repositories of nineteenth-century and twentieth-century *Gazettes*.

It seems that much of the land taken was not used to benefit Maori, but instead was a form of obtaining their land compulsorily. This is reflected in the *Gazette* notices detailing land taken for purposes not essential for the public good, ambiguous descriptions of works land was taken for, and taking land clearly surplus to the requirements of a public work without any obligation to return the land. The poor quality and confused state of legislation allowing these takings contributed to the restrictions on Maori ability to object to these takings. The discriminatory way customary Maori land was treated as opposed to Maori freehold land, but more significantly, the way Maori land was taken in comparison to European-owned land, illustrate these points. Lack of notification in terms of communication with owners is reflected in the incomplete gazetting procedures and the general inadequacy of the gazette as a method of notifying Maori owners of proposed takings. This confusion and ambiguity allowed the Crown to take Maori land with minimal consultation.