



## CHAPTER 2

# THE MAORI LANDS ADMINISTRATION ACT 1900

The preamble to the Maori Lands Administration Act 1900 identified four problems which Parliament hoped to alleviate with this legislation.<sup>1</sup> The first concerned the decline in the amount of land left in Maori hands after a decade of intensive purchasing by the Crown. The petitions of ‘chiefs and other leading Maoris’, it was noted, had repeatedly requested:

that the residue (about five million acres) of the Maori land now remaining in possession of the Maori owners<sup>2</sup> should be reserved for their use and benefit in such wise as to protect them from the risk of being left landless . . .

The second problem was the state of those same millions of acres. It was deemed to be in the best interests of all of the people of New Zealand, Maori and Pakeha alike, to make provision ‘for the better settlement and utilisation of large areas of Maori land at present lying unoccupied and unproductive’, although Maori were to be encouraged and protected ‘in efforts of industry and self-help’. Finally, it was considered necessary to prevent ‘useless and expensive dissension’s and litigation’ when Maori lands were dealt with: ‘better administration’ was identified as the remedy here.

The stated concerns which the 1900 Act was designed to address, in other words, were that Maori might not have sufficient lands left for their future needs if any more was permanently alienated; that the lands which they retained were not being profitably used by either Europeans or Maori; and that the procedures in place for managing them were inadequate. These problems were to be tackled by means of a new system of regulation for Maori freehold lands in the North Island.<sup>3</sup>

To begin with, section 5 of the Act specified that at least six ‘Maori land districts’ were to be formed. Each of these was to have a ‘Maori Land Council’<sup>4</sup> consisting of between five and seven members. Included were a president and two or three members appointed by the Government, plus two or three members elected ‘by the

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1. Stout and Ngata (AJHR, 1907, G-1c) described the preamble as a policy statement, but it is carefully worded so as to avoid actually stating approval of the first item.
  2. As noted earlier, Maori appear to have held approximately 7.5 million acres at this time. Certain categories of land, however, may not have been counted in reaching this figure.
  3. Although the 1900 Act applied to the whole country, the Native Land Court retained jurisdiction over Maori freehold lands outside of the North Island, and continued to do so until a South Island Maori Land Board was created in 1914. See Part II.

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Maoris of the district out of their number'.<sup>5</sup> The Government-appointed members were to include at least one Maori (s 6). At least half, and probably a majority, of the members of any given council would thus be Maori.<sup>6</sup> A simple majority of the membership of a land council would constitute a quorum, but only if their number included at least one Maori member.<sup>7</sup>

These Maori Land Councils were given three related roles to play. The first involved the supervision of a revised system of land alienation, and the second, the exercise of judicial powers relating to the ownership of Maori lands. Both of these represented intrusions into areas which had previously been the sole domain of the Native Land Court. The third role was to act for Maori landowners in the administration of lands vested in or placed under the authority of the land councils.

The centrepiece of the new system for regulating alienations was 'papakainga' land. The Maori Land Councils were to proceed 'with all convenient speed'(s 21):

to ascertain and determine what land each Maori man, woman and child has suitable for his, her or its occupation and support, and to determine how much thereof and what portion is necessary to be a papakainga<sup>8</sup> for each such Maori for his or her maintenance and support and to grow food upon . . .

Each individual would receive a certificate which clearly identified themselves and their papakainga, which land became 'absolutely inalienable'.<sup>9</sup> Nor could any alienation of Maori freehold land, whether by lease, sale or mortgage, take place unless each of the owners was able to prove that he or she had 'sufficient land left for his occupation and support'. This involved producing either a papakainga certificate or other evidence that a papakainga had been allocated to them.<sup>10</sup>

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4. Described as 'Native District Land Councils' in earlier Bills (see B Gilmore, 'Maori Land Policy and Administration during the Liberal Period, 1900–1912, MA thesis, Auckland, 1969, p 17), and sometimes referred to subsequently as 'Maori District Land Councils'. I have preferred the shorter title. It would appear that the title 'land board' was discarded at some point because it was considered in some quarters to imply a lack of consultation. See, for example, Carroll's comments in 1898: 'Notes of Meetings', pp 11–18 (Huntly, 4 April 1898).
  5. Maori could be members of only one land council at a time. Section 7(10) specified that 'Every election shall be held in the same manner, as nearly as may be, as in the case of an election of a member of the House of Representatives for a Maori electoral district.' The Maori Land Council regulations issued in January of 1901 stated that any Maori 21 years of age or over was entitled to vote in land council elections for the district in which they resided, and any male Maori aged 21 or over could be a member of a land council: *New Zealand Gazette*, 7 January 1900, p 1.
  6. That is, in a five-person land council, at least three would necessarily be Maori (one appointed plus two elected), and in a seven-person land council at least four would be Maori (one appointed plus three elected). A six-person body could include either three or four Maori.
  7. Also, all orders issued by councils required the signature of at least one Maori member before they could be sent to the land court for confirmation (see below). In 1903 the Act was amended to define a quorum as one European and two Maori members, for all but 'purely formal' matters (s 4).
  8. Defined in s 3 as 'an inalienable reserve set aside for the occupation and support of any person of the Maori race'.
  9. The only exception was under s 21(7), where all of the land owned by an individual Maori was unsuitable for their occupation and support. In such cases the land could be exchanged, or sold to buy more, under to supervision of the land council.
  10. Sections 23 and 25. There were also several requirements relating to the nature of the alienation instrument and the method of payment of the money, similar to those in force under the 1894 Act.

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Although provision was made for existing restrictions on the alienation of any given piece of Maori freehold land to be removed by the Governor, on the recommendation of a land council, it was explicitly stated that this was not to be construed as authorising the alienation of papakainga lands (s 24).

Subject to this limitation, all Maori freehold land was potentially open to alienation. Where leasing was concerned, the land councils were given final authority over all lands in this category, except that they could not waive or alter existing restrictions on alienation. They could, however, under section 24, recommend to the Governor the removal of any such restrictions.<sup>11</sup> The land council of the district in question had to consent to all leases. This consent could not be granted until and unless certain criteria had been met. These included production of the owners' papakainga certificates (or proof that papakainga land had been allocated), and of an instrument of lease which embodied a certified Maori translation. The lease agreement also had to carry the signature of a witness of a specified status<sup>12</sup> who attested 'that each alienating Maori understood the meaning and purport' of the document (s 25(2)).

Where sales – permanent alienations – were concerned, however, the Maori Land Councils had a limited role. If the land concerned was owned by only one or two individuals, then the new Act was deemed 'to in no way affect' the transaction. These sales would be dealt with under section 117 of the Native Land Court Act 1894, requiring approval by the court rather than the land councils.<sup>13</sup> If the land concerned was owned by three or more individuals, then the prior consent of the Governor in council was necessary, but the conditions required for a valid alienation were the same as those for leases under section 25 of the 1900 Act.<sup>14</sup> In addition, in the case of sales or mortgages witnesses had to certify on the instrument of transfer that they had seen the money paid to the vendor (s 25(3)).<sup>15</sup>

The land councils were thus charged with the duty of ensuring that all Maori landowners retained sufficient land for their future maintenance, and with the protection of their interests when lands were leased to private individuals or the Crown. The land councils had little to do with sales. The Crown, however, had promised in 1899 that it would not purchase any more Maori land for the time being, and the many restrictions on private purchase set in place during the mid-1890s remained in effect. For all practical purposes, new sales of Maori freehold land were suspended.<sup>16</sup>

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11. These provisions were modified but not substantially altered in 1903 (s 24).

12. A member of a land council, a stipendiary magistrate, a justice of the peace, a postmaster, or a licensed interpreter.

13. See also Sir John Salmond, 'Notes on the History of Native-Land Legislation', *The Public Acts of New Zealand 1908–1931*, vol 6, reprint, p 91. The following year, an amendment to the Maori Land Administration Act put leases of land owned by one or two individuals on the same footing (s 4).

14. This is not explicitly stated, but follows from the fact that specific conditions are laid down for sales in s 25(3), as noted below.

15. Between 20 October 1900 and 28 October 1907, restrictions were removed to enable the lease of 167,500 acres of land and the sale of 53,116 acres: National Archives MA 16/1 'Return' of 27 October 1907 (quoting the corrected figures added by hand to the typed original).

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The land councils were also given judicial powers for determining the ownership of customary lands, and for dealing with other ownership-related matters. These bodies were to ‘have and exercise’, with respect to all Maori lands within their individual districts (s 9):

all the powers now possessed by the Native Land Court as to the ascertainment of ownership, partition, succession, the definition of relative interests, and the appointment of trustees for Native owners under disability.

These powers represented a substantial portion of those vested in the Native Land Court under the Native Land Court Act 1894 and its amendments. Section 14 of this Act had given the land court jurisdiction over (among other things), the investigation of title and the determination of ownership, the definition of relative interests in and the partition of land, and the determination of successions.<sup>17</sup> The Native Land Court had controlled the appointment of trustees for Native owners under disability by virtue of section 3 of the Maori Real Estate Management Act 1888.

Where ascertainment of ownership was involved, the land councils were to be assisted in their judicial role by ‘Papatupu Block Committees’ representing the claimants to each piece of customary land whose ownership required determination. These committees were to carry out their investigations ‘having due regard to Maori customs and usages’, and to provide the land council with a written report on the block and a sketch-map showing boundaries. The report was to identify the families and individuals with an interest in the land, and the relative shares to which they were entitled. After the land council had held a hearing at which all parties could be heard, it was empowered to issue an order confirming the report ‘with such modification or alterations as it finds to be necessary’ (s 19). The land councils was also able to call upon block committees for assistance when dealing with any other matters within their jurisdiction (s 11).<sup>18</sup>

None of the powers so conferred upon the land councils, however, were to be exercised ‘unless and until directed so to do by the Chief Judge of the Native Land Court’ (s 9). Further, any and all orders issued by land councils were to be forwarded to the chief judge. If no appeal was lodged within two months of his notification of the order in *Kahiti*, the chief judge was to ‘countersign and issue the same, whereupon the order shall have effect as though it were an order of the Native Land Court’ (s 14). The circumstances under which the chief judge might order the land councils to exercise these judicial powers – or decline to allow them to do so – were not specified in the 1900 Act.

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16. Crown and private purchases which were already under negotiation, however, could be completed (s 34 and 35 of the 1900 Act).

17. For the relevant amendments, see Statutes, 1895, no 52; Statutes, 1896, no 27 and 53; Statutes, 1897, no 25; and Statutes, 1899, no 30. ‘Special Provisions’ relating to these powers are detailed in Part V.

18. The Act thus assumed that the block committees formed to deal with uninvestigated customary lands (dealt with at s 16–20) would remain in existence after ownership had been determined.

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This created a grey area which lasted until 1909. As John W Salmond (later Chief Justice Sir John Salmond) noted in his commentary on that year's Native Land Bill, the land councils:

were in certain matters given the same jurisdiction that up to that time the [Native Land] Courts alone had exercised, but it was not made clear what relation existed between the provisions of that Act and the different provisions in *pari materia* of the Native Land Court Act, 1894. Consequently the law contained two sets of different and inconsistent provisions dealing with the same matters, and also recognized two different bodies . . . having concurrent and discordant powers and duties in respect of the same matters.<sup>19</sup>

It should be noted, though, that chief judge of the Native Land Court had the power to both initiate and approve land council judicial operations, and also acted as the first stop in the process of appeal. When and if objections were made to a land council order, the chief judge could either investigate the matter himself or refer the appeal to the Native Appellate Court (s 10).

The land councils thus took over most of the land courts' responsibilities for confirming alienations of Maori land, and a portion (not clearly identified) of their responsibilities for ascertaining ownership. The new institutions' third role was administrative, and much of this was a new departure. The Native Land Court Act 1894 had had little to say about the administration of Maori lands. The relevant section dealt only with incorporation of the owners of specific blocks of land, with the approval of the land court.

The 1900 Act gave the Maori Land Councils sole authority over the approval of incorporations, superseding the Native Land Court (s 30).<sup>20</sup> But it also went a good deal further: the legislation offered Maori landowners the option of using land councils to manage their holdings. Two ways of doing so were set out. Firstly, section 28 provided that:

Any Maori or Maoris, whether incorporated or other wise, owning Maori land may transfer the same, or any definite part thereof, by way of trust to the [Land] Council, upon such terms as to leasing, cutting up, managing, improving, and raising money upon the same as may be set forth in writing between the owners and the Council . . .

Where the owners were not incorporated, all of them had to approve the transfer of title to the land council (s 28), but a simple majority would suffice where they were incorporated (s 30(2)).

As noted, the land council's powers over a piece of land so vested in it would be restricted by the nature of the written agreement made with the owners. Further

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19. Sir John Salmond, 'Preliminary Note: Extract from Introduction to the Native Land Act, 1909, by Sir John Salmond', *The Public Acts of New Zealand (Reprint) 1908-1931*, vol 6, pp 91-92. This is an edited version of the memorandum which Salmond prepared in 1909 while counsel for the Law Drafting Office. The original is held with the Bills in the Legislative Library, and a copy in the New Zealand Room of the Auckland University Library.

20. Statutes, 1903, no 92 also empowered the land councils to incorporate owners for the sole purpose of operating a farm.

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provisions were also made by the Act itself. Firstly, allowance was made for portions of the land involved to be turned into inalienable reserves at the request of the owners. This might include:

such portion of such land as may be required for [the owners'] . . . occupation and support, and also to reserve any land as burial-grounds, eel-pas or eel-weirs, fishing-grounds, or as reserves for the protection of native birds, or the conservation of timber and fuel for the future use of the Maori owners.<sup>21</sup>

The initiative for making such reserves had to come from the owners themselves.<sup>22</sup> The land councils were not explicitly required to meet such requests, but given the nature of its relationship with the owners it seems likely that they would have been difficult to refuse.

Secondly, the land council could not sell the lands vested in it under section 28. The description of the scope of the written agreements with owners, quoted earlier, referred only to leasing as a method of alienation. The following sub-sections empowered the land councils to enter into agreements for the lease or mortgage of vested lands, but did not authorise permanent alienations of any kind.<sup>23</sup>

Once a given block had been vested in it, then, a Maori Land Council's freedom of action would be constrained by the original vesting agreement and by the aforementioned statutory restrictions. It must be emphasised, though, that the owner(s) would no longer be able to exercise any direct influence over the administration of their own land after vesting it in a land council. Their only means of exercising any control at all was through their elected representatives. Given the absence from the 1900 Act of any provision for returning lands held by the land councils to the control of their owners, either on request or after a fixed period of time, it is apparent that a decision to use the land councils' services in this manner was not one to be entered into lightly.<sup>24</sup>

The other method by which Maori landowners could use land councils to manage their holdings did not involve vesting in trust. Rather, the land in question could be placed under the administrative control of a land council, subject to a modified set of statutory regulations rather than a set of terms agreed upon with the owners. This method could only be used where a block was held by 11 or more owners, who were not incorporated, but in this case the interests of dissenting owners could be partitioned out. (Under section 28, as noted above, where the owners of a block were not incorporated unanimous consent was required before the land could be vested in a land council.) Subject to proper provision having been made for papakainga, the land council would then 'For the purpose of the administration of such land . . . have all the powers of a [Crown] Land Board in respect of Crown

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21. Section 29(1). A provision was added in 1901 for setting apart Native Townships; s 8(11).

22. Until 1903; s 17.

23. Note that Professor Ward is mistaken in noting that land councils were able to sell vested land: see 'Sir James Carroll', DNZB, vol 2, p 80.

24. The Act was amended in 1901 to allow owners to request the return of land to their control when a lease had expired. The land council, though, could 'decline to entertain any such request' if the land was subject 'to any right of renewal, charge, lien, or encumbrance'. See Statutes, 1901, no 42, s 8(11).

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Lands'.<sup>25</sup> These powers, however, were subject to one major restriction: the land council would have 'full power and authority to alienate by way of lease or mortgage, but not by sale'.<sup>26</sup> It would 'for all purposes of administration be deemed to be the owner of the land' (s 31(7)), but the ban on permanent alienation made the effect of the arrangement very similar to that of a vesting in trust under section 28.

The section 31 alternative was a rather clumsy method of circumventing the possibility that a few uncooperative individuals could prevent lands with multiple owners from being brought under the control of the land councils. It was soon abandoned for a more direct approach. In 1901 an amendment was introduced allowing lands with more than 11 owners to be vested when a majority of them (in both number and interest) agreed to the measure.<sup>27</sup> It seems unlikely, given that the amendment came into force before many of the land councils were in full operation, that much if any use was ever made of the original section 31.

Although the income collected from lands vested in or administered by the land councils was to be passed along to their owners, certain deductions would be made on the way. The land councils themselves had first call, being empowered to extract a sum sufficient to defray the cost of administration for each block. Next came deductions for all monies due 'in respect of any valid mortgage, lien, charge, or liability affecting the land'. What was left was to be paid – at 'prescribed intervals' – to the owners in shares proportionate to their individual interests.

This, then, was the new system put in place to protect Maori from the risk of becoming landless, to promote the settlement and utilisation of their unoccupied and unproductive lands while encouraging Maori industry and self-help, and to simplify procedures for land administration. A strong emphasis was placed on leases, rather than sales of Maori freehold land. This would serve to keep lands in Maori ownership while ensuring that those which the owners themselves could not utilise were available to others who would. Income from leasing lands which were surplus to requirements would provide owners with capital for the development of their remaining holdings, with papakainga ensuring that a sufficient amount of land remained available 'for [their] . . . maintenance and support and to grow food upon'. The Maori Land Councils, which incorporated substantial Maori representation, would oversee most alienations, protecting the owners from fraud. They would also be available to administer any lands which the owners might care to vest in or sign over to the councils. These institutions might also provide, with the owners' participation, many of the judicial services which had hitherto been a monopoly of the Native Land Court.

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25. This was similar to the system enacted in 1886, and proposed by Rees and Carroll in 1891, in which the Native Land Board was to function much the same way as the (Crown) land boards where alienations were concerned.

26. Section 31(3). The only exception was provision for the sale of unsuitable papakainga land, as specified in s 21(7). See above.

27. See Statutes, 1901, no 42, s 6. The instrument of transfer had to be executed by at least 10 owners who had secured the written authorisation of a majority in number and interest to do so. In 1903 this was altered to require the 10 to secure such approval at a properly-convened public meeting; see Statutes, 1903, no 92, s 20. Where 10 or fewer owners were involved, the original 1901 provision requiring unanimity remained in force.

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On paper, this revised system for the administration of Maori lands looked reasonably promising. There were a number of areas which might require improvement or refinement – the question of the division of judicial powers between the land councils and the land court is an obvious example – but the system laid out in 1900 appeared to be a feasible compromise. The Crown had agreed to cease its purchase of Maori freehold land, on the understanding that a substantial proportion of that remaining in Maori hands would voluntarily be made available by their owners for utilisation under lease. An institution to expedite such leasing had been provided, in which elected representatives of the owners held a prominent position. As far as the Pakeha public and politicians were concerned, though, the proof of the pudding would lie in the eating: specifically, their sole criterion for appraising the success or failure of the scheme would be the amount of ‘idle’ Maori lands brought into production under the new regime. If this did not happen at a satisfactory rate – or was perceived not to be happening at a rate deemed to be satisfactory (quite a different matter) – then it was by no means certain that Parliament would continue to accept the voluntary principle. And it should be remembered that the Liberal Government of the day was the same one which was prepared to ‘burst up the great estates’ of Pakeha landowners in the name of closer settlement and greater agricultural production. Under the circumstances they were unlikely to be reluctant to use compulsion against Maori landowners if the voluntary principle failed to produce acceptable results.