

Te Roroa Claim

04 Te Wawahitanga o te Whenua (Fragmentation of the Land):

Waipoua No 2

4.1 The Cost of Succession and Partition

Take 4

TE WAWAHITANGA O TE WHENUA (FRAGMENTATION OF THE LAND):
WAIPOUA NO 2

4.1. The Cost of Succession and Partition

Before we examine the succession and partition orders which fragmented Waipoua No 2 and greatly facilitated Crown purchasing from 1917 to 1973, we need to appreciate the high esteem in which the Native Land Court was held by the Maori people. The Native Land Court dealt solely with Maori land, and the Maori identified with it as "their" court. Its mana was the mana of their friend Her Majesty the Queen with whom they had entered into the Treaty. At the Acheson inquiry, Lou Parore, representing the petitioners, said:

the native people have always regarded the duty of the Native Land Court... as the father of the Maori people - a father in the protection of the interests against others, and also against themselves.... not only as the father, but as the agent for their general welfare affecting the land. (B7:221){FNREF:0-86472-088-2:4.1:1}

We also need to appreciate that survey and other costs involved in Native Land Court proceedings frequently forced people to sell interests in land that the court had determined.

The first application to the Native Land Court to partition Waipoua No 2 was made by Hapakuku Moetara and three others in 1886. The minutes of the hearing of the partition application are extremely brief (B4:7-8). Indeed, on the face of it, one is left wondering whether the court made an order at all! There was no record that a survey lien for £62 13s 4d was brought to his attention. It had been registered against the title to Waipoua No 2 in 1883, that is, seven years after the work was completed, and apparently without Hapakuku's knowledge. Indeed it was not until 1892 that Hapakuku complained that Waipoua No 2 should have been surveyed free of charge (E5:3; E4:3). This would suggest that he became aware of the charge some 16 years after the work had been done, and in the meantime he was being charged five per cent per annum interest on the fee secured by a lien over the title to the block.

The question of survey costs is important as they became a charge on the land by the registration of a lien against the title. The Native Land Act 1873 provided by s33, and subsequent legislation, that the land had to be surveyed before its ownership could be

investigated. Moreover, the Crown appointed the surveyor but the Maori paid the fee. Hence, in the partition of Waipoua No 2, Hapakuku wished to employ a surveyor named Baker but the Crown refused and employed another surveyor, Ingham Stephens (E5:12; E4:5). And if the Maori were unable to pay in money, land to that value could be taken in payment (s73 Native Land Act 1873). The Act acknowledged in s109 that, especially in the Bay of Islands and Hokianga districts, there were difficulties in obtaining proper surveys "owing to the claimants [Maori] themselves not having the means to defray the cost of such surveys".

The problem is well illustrated by a complaint from Cheal, the surveyor of the neighbouring Opanake block, to the Native Minister on 5 October 1891, that he had been waiting for two years for payment of his fees:

I wrote some months since to ask what action the Government were going to take re Opanake subdivision and if they were illegal whether the Crown was not responsible to pay me £169 for said subdivision being ordered by Native Judge and authorised by the Surveyor General, but to this question I had no reply. I would respectfully ask now the opinion of the Crown Law Officer what my position with regard to accepting more money for liens on the Opanake No 2 subdivision [is]. A Native has been offering to pay me for 2 subdivisions but what is my position? If the subdivision is illegal I am not justified in taking money for illegally performed work? My humble opinion is that the responsibility for payment rests with the Government.

On 29 October 1891, Cheal wrote again noting he had not had an answer, "that an illegal act had been committed is evident", and that the cost should "be borne by the Government of the Country". It should not be thought, however, that it was merely the surveyors who had cause for complaint. Without payment of the surveyor's fees the plans were not certified and the Maori owners, who had paid substantial court costs, were unable to obtain title.

To further illustrate the prevalence of delays in the registration of survey liens, in 1909 five liens were registered over partitioned areas of Waipoua No 2 in respect of orders made five years previously. By s73 of the 1873 Act, land could be taken in payment of survey costs. Such was the case in Waipoua 2B2 where the Crown applied to "cut off" a portion of the block (2B2A) in satisfaction of survey charges amounting to £28 10s. When the application was first called on 18 October 1906, Iehu Moetara asked that the hearing be adjourned "to see if money can be raised" (B4:43). Later in the day an order was made cutting off 95 acres in satisfaction of the survey charges which had been incurred 23 years previously (F1:5-6). The area taken was at the rate of 3s an acre, whereas, by government valuation the land was valued at 10s an acre five years later (F1:7). The Department of Lands and Survey had at that time also made application to the court to have land cut off in payment of survey charges for 2A1, 2A2, 2A3, 2B1 and 2B3. The owners paid these charges under the threat of losing their land. In some cases, such as 2A1 and 2B3, survey charges were apportioned against blocks in a partition when they were not in fact surveyed (E4:10, 55, 62, 83, 124). These survey costs were a statutory charge against the land which the Maori owners were unable to challenge in court.

Turning now to other costs, in giving evidence to the 1891 Royal Commission on Native Land Laws, Wi Katene complained:

the law of the Court is that for each day that I stand up and give evidence I have to pay £1. That is at the rate of £5 a week.... That is the regular weekly cost, even though the case may have been going on for two months. It might be a case in which I appear merely as an objector, and not as an applicant, before the Court. {FNREF:0-86472-088-2:4.1:2}

Native Land Court fees were set periodically by notice in the Gazette (s112 Native Land Act 1873). In addition to the fees for appearing in court, there was a 2s fee for being sworn in by the court before giving evidence. For example, when Hohi Paniora appeared in court on 2 February 1900 as an objector to the succession application to Wiremu Tuwhare (deceased) he was required to pay 22s, that is £1 for his appearance and 2s for being sworn on the Bible to give his evidence in opposing the application before the court (B4:11).

In addition to these charges 5s was charged for each order. In the case of succession applications, if the deceased had interests in more than one block (which was usually the case), the applicant paid 5s for an order in respect of each block. By 1904 the cost for the court making a partition order (quite apart from all the other court costs) was 20s per order (B4:41).

If the assistance of an interpreter was required there were set fees. The court's interpreter was attached to the court or judge during the hearing and any other interpretation was at the party's own cost.

Other costs involved in attending court were for travel, accommodation and employing solicitors. For example, the court frequently sat in Auckland or Russell, as in the case of the hearing scheduled for 15 January 1919 in respect of Waipoua 2B3A, which was adjourned on account of the Crown not being ready to proceed (B6:253). The journey from Waipoua to Russell return took two days and was to no avail for the Maori involved. If one remembers that the daily wage for an agricultural labourer in the Auckland area was 5s-6s in 1901, {FNREF:0-86472-088-2:4.1:3} these costs of appearing in the Native Land Court were substantial.

Undoubtedly the prohibitive costs must have deterred those with interests in Waipoua No 2 who were not among the ten named on the memorial of ownership from subsequently applying to the court to have their names added. If they attempted to do so, they were forced to sell land in order to meet the costs. This was clearly contrary to the wish they expressed to the Stout-Ngata Commission at Pakanae in 1908, namely to lease their land rather than sell it and thereby obtain an income without losing title (B1:7).

We shall now consider the alienation of Waipoua No 2 block, first in the period 1913-1923, secondly 1939-1945 and finally, 1960-1973.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

04 Te Wawahitanga o te Whenua (Fragmentation of the Land):

Waipoua No 2

4.2 Sales in Waipoua No 2 1913-1923

4.2. Sales in Waipoua No 2 1913-1923

The table below sets out the sales of Waipoua 2 blocks in the period 1913-1923.

Sales in Waipoua 2: 1913-1923

| Block | Area | Date of Sale (S)/ Order partition (P) | Date of Sale (S)/ Reference | Owner/ | Reference |
|-------|------|--|--------------------------------|--------|-----------|
|-------|------|--|--------------------------------|--------|-----------|

| | | | | | |
|------|------|------------|--------------------------------|----------|----------------|
| 2A1A | 608a | 28/04/1914 | 04/09/1917 & 09/09/1919 (S) | Marriner | B5:1; E4:13-16 |
|------|------|------------|--------------------------------|----------|----------------|

| | | | | | |
|------|-----------|------------|----------------|----------|---|
| 2A1C | 202a2r27p | 28/04/1914 | 02/02/1917 (S) | Trounson | 109a B5:1; E4:34-40 (210a)@ 31/05/1978 (P) B5:1; E4:34 |
|------|-----------|------------|----------------|----------|---|

| | | | | | |
|------|-----------|------------|----------------|------|---|
| 2A1D | 202a2r26p | 28/04/1914 | 18/12/1919 (S) | Kerr | 82a3r19p B5:1; E4:43-54 (205a2r20p)@ Maori land 48.7165h B5:1; E4:43 |
|------|-----------|------------|----------------|------|---|

| | | | | | |
|-----|-------|------------|----------------|---------|---|
| 2A2 | 1216a | 09/02/1900 | 17/10/1913 (S) | Eddowes | 400a B5:1; E4:55-61 04/09/1917 (S) Marriner 816a B5:1; E4:55 |
|-----|-------|------------|----------------|---------|---|

| | | | | | |
|------|-----------|------------|----------------|----------|---------------------------|
| 2A3A | 405a1r12p | 25/05/1910 | 04/09/1917 (S) | Marriner | B5:1; E4:68-72 (402a)@ |
|------|-----------|------------|----------------|----------|---------------------------|

| | | | | | |
|------|-----------|------------|----------------|----------|---------------------------|
| 2A3B | 980a2r28p | 25/05/1910 | 08/10/1917 (S) | Marriner | B5:1; E4:73-80 (985a)@ |
|------|-----------|------------|----------------|----------|---------------------------|

| | | | | | |
|-------|-----------|------------|----------------|----------|-------------------------------|
| 2B2B4 | 224a3r20p | 28/08/1914 | 08/10/1917 (S) | Marriner | B5:1; E4:113-116 (224a3r)@ |
|-------|-----------|------------|----------------|----------|-------------------------------|

| | | | | | |
|-------|-----------|------------|----------------|----------|-------------------------------|
| 2B2B5 | 224a3r20p | 28/08/1914 | 08/10/1917 (S) | Marriner | B5:1; E4:117-119 (224a3r)@ |
|-------|-----------|------------|----------------|----------|-------------------------------|

| | | | | | |
|-------|-----------|------------|----------------|----------|-----------------------------|
| 2B2B6 | 337a1r10p | 28/08/1914 | 08/10/1917 (S) | Marriner | B5:1; E4:120-123 (337a)@ |
|-------|-----------|------------|----------------|----------|-----------------------------|

2B3B2 900a 27/08/1914 09/11/1921 (S) Crown B5:2; E4:191-193

2B3D1 202a2r20p 15/05/1916 05/08/1918 (S) Crown B5:2; E4:213-214

2B3E 816a 06/07/1904 09/05/1923 (S) Crown B5:2; E4:244-248

Total area acquired 1913-1923: 6113a 3r 39p

@ = area when surveyed, a = acres, r = roods, p = perches, h = hectares

In every case, a survey lien was registered against the title. Moreover in July 1917 the Crown issued a proclamation prohibiting the sale of any of these blocks to anyone except the Crown (B3:7). In fact as agreements to sell had been entered into before the proclamation came into effect the majority were sold privately.

Before we discuss each block sale, it is important to understand that timber and gum were regarded either as "improvements" or as commodities to be dealt with separately. By 1914, timber, flax and gum were frequently sold to one person (eg Trounson) and the land to someone else (eg Marriner). Once sold to Europeans (eg Eddowes), they often leased the land to others (usually "Austrians") enabling them to extract the timber and gum. The Maori owners themselves in several cases attempted to lease the land, but were unable to do so because of a prohibition imposed by the Native Land Court when title was issued.

WAIPOUA 2A1A

4.2.1 Prior to the partition in 1915, the parent block, 2A1, was the subject of an application by the Department of Lands and Survey in 1906 to have land awarded in lieu of unpaid survey charges. The owners paid £6 4s 9d but interest charges of £1 11s 2d remained unpaid. **IN FACT 2A1 HAD NOT BEEN SURVEYED**, being the unsurveyed residue area at the southern end of Waipoua No 2 (E4:10).

The survey of 2A1 was carried out in 1915 and a further lien was registered against 2A1A on 17 May 1916 securing £39 8s 0d which was discharged upon sale to L B Marriner. From the sale price of £307 7s 6d was deducted the amount owing for survey charges (£43 2s 5d, inclusive of interest) and outstanding rates (£21 2s 2d) (E4:13-14; E5:54).

The sale to Marriner was complicated by the absence and subsequent death overseas at the First World War of one of the owners, Iehu Raniera Taoho (Te Rore). Iehu left a three year old son, Hune, for whom the court appointed a trustee in order that the interest could be sold to Marriner. The Crown lifted the proclamation as it applied to Iehu's interest enabling the sale to be completed. The solicitor for the purchaser informed the Native Minister that Iehu had been killed in action "and a succession order has been granted to his son" (B6:320-321). Unfortunately, we have not had any evidence as to who applied to the court for the succession to Iehu's interests.

WAIPOUA 2A1C

4.2.2 A charging order securing £20 2s 6d was registered on 17 May 1916. Part of the block, 110 acres, was sold to Gladys Trounson in 1917, whereupon the survey charges were paid. The Crown has, since 1917 and up until 1972, persistently attempted to purchase the balance of this block (now known as 2A1C1 and 2A1C2), amounting to approximately 94 acres, which remains in Maori ownership (E4:34-40).

In 1915 and 1921, the Crown took a total of approximately seven and a half acres for road from the Maori-owned part of the block. No compensation was paid to the owners (E4:37).

WAIPOUA 2A1D

4.2.3 On 17 May 1916 a survey lien for £15 16s 4d was registered (E5:43-44). This coincided with the sale of part of the block to R C Kerr which was concluded in 1919. The sale was not without its difficulties. One of the key figures, Te Tane Hohaia, died before the transaction was completed. There followed a series of "short-cuts" by the court, which, in effect doctored the documentation. Tane Hohaia's family was by-passed to overcome what the Crown has described as "a particularly difficult set of overlapping circumstances" (E4:43-46, F1:37-38). Although the transaction was settled in 1919, the balance of the proceeds of sale was not paid out to Tane Hohaia's family for another ten years. Clearly the procedure adopted by the court was completely irregular. The survey lien, together with interest of £3 8s 6d was paid by the Maori owners from the proceeds of sale (E4:43-49; C12:47).

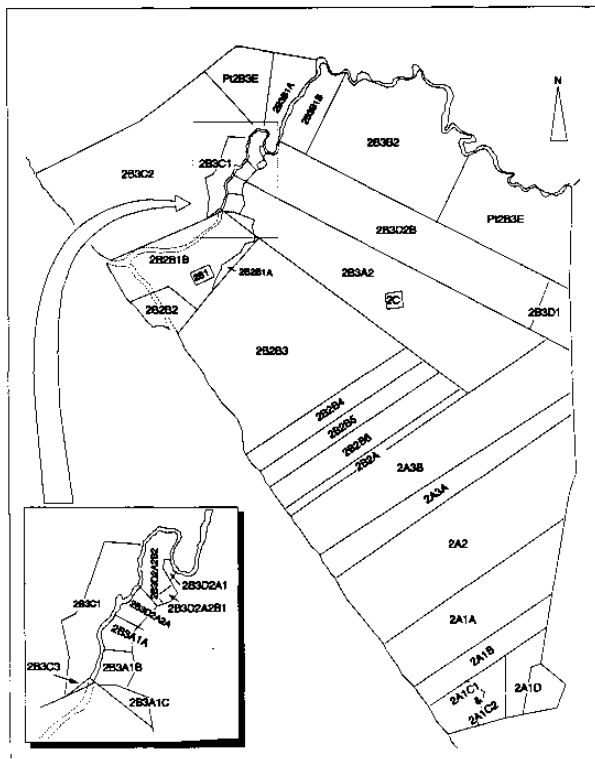


Figure 19: Subdivisions of Waipoua 2

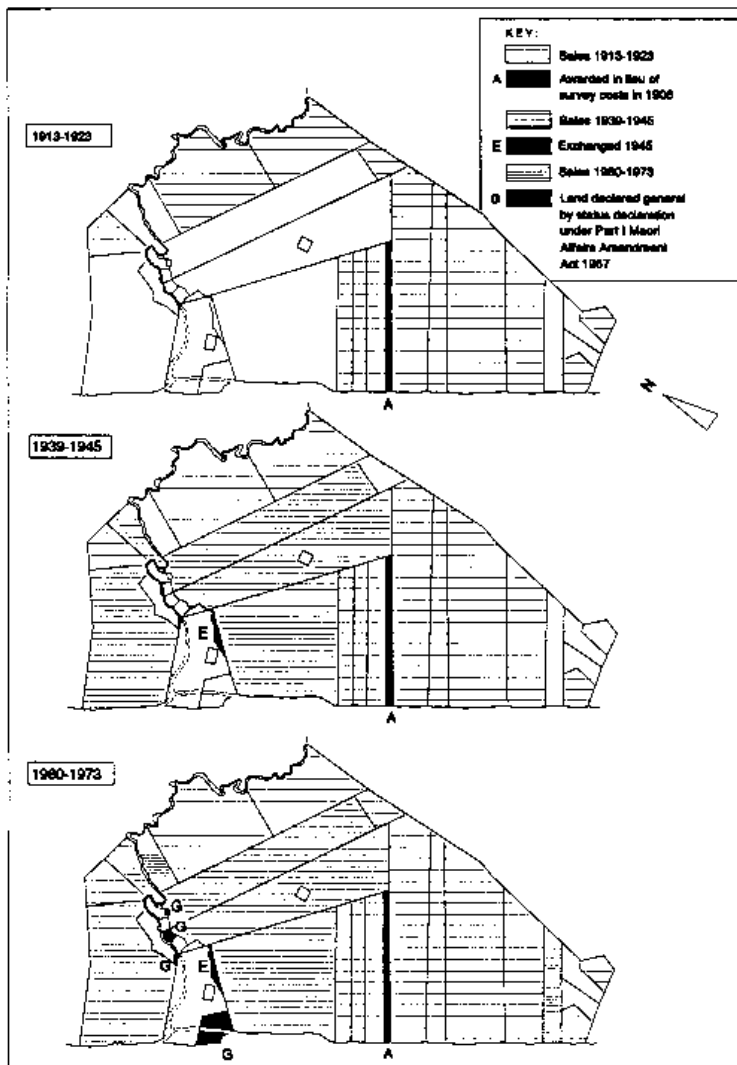


Figure 20: Land alterations in Waipoua 2 block

In 1915, approximately one and a half acres was taken for road without compensation. A further half acre was taken for road in 1966 with payment of £1 8s 4d in compensation. The balance of the area amounting to 121 acres, remains in Maori ownership. The Crown vigorously attempted to purchase the block making applications to the Maori Land Court and calling meetings of owners as late as 1972. This block, too, was subject to the Crown's proclamation of 1917. Subsequently, in 1923 the part sold to Kerr was excluded from the proclamation (E4:49-54).

WAIPOUA 2A2

4.2.4 A survey lien was registered on 24 June 1909 (B4:45). A previous lien for survey charges had been paid under threat of taking land in lieu of payment. An agreement was entered into in 1911, to sell 400 acres of the block to Margaret Eddowes. The sale was completed in 1913 and survey charges of £119 12s 8d were paid from the sale price of £400 (which included £100 for timber). The balance of the block, having an area of 816 acres, was sold in 1917 to L B Marriner (E4:55-60).

This block illustrates irregularities in the valuation evidence which were glossed over by the court. The price agreed for the sale of 400 acres to Eddowes was alleged to be 10s an acre. The current government valuation in 1911 was 15s an acre (E4:60). But the Maori owner wished to sell the timber separately which he valued at approximately £500 (F1:34-35). The Tokerau Maori Land Board confirmed the sale at 10s an acre. The purchaser paid £400 which was subsequently apportioned as £300 for the land and £100 for the timber (E5:314-316a).

The Crown has suggested there was confusion over the valuation, but conceded that the valuation at which the sale was confirmed was not current (E4:58; F1:35). We find that there was no reason for confusion. The vendor, Naera Te Ngaru, agreed to sell the 400 acres to Eddowes for £400 ie £1 per acre for the LAND. He sought a valuation of the timber which Eddowes had agreed to obtain. Naera estimated there to be at least a million superfeet of kauri ("a Konga Kauri i runga, kotahi Miriona nuku atu ranei" (E5:321; F1:35; cf C13:10)) which at 1s per 100 superfeet amounted to £500. The court confirmed the sale in October 1913 AFTER Naera had objected (E4:58).

WAIPOUA 2A3A

4.2.5 The same particulars as to survey liens and the threat by the Crown to take land in lieu of payment apply as in the previous block. In this case, however, in 1907 Reupena Tuoro disputed the correctness of the survey of 2A3, which was, in effect, acknowledged by the chief surveyor. Although Tuoro had even offered to pay to have the surveyor's mistake corrected, it was never attended to (E4:64). The court, in 1911, dismissed his application to have the matter rectified.

Negotiations for sale commenced in 1911 and foundered on account of arguments as to whether timber had been included in the sale price and discrepancies in the survey. The land was finally sold in 1917 to L B Marriner and the balance of survey liens paid (E4:68-71).

WAIPOUA 2A3B

4.2.6 A survey lien for £27 12s 1d was obtained by the Department of Lands and Survey in 1912. Negotiations for sale commenced that year, followed by attempts to lease the land in 1914 and its final sale to C D Marriner in 1917 (E4:73-76).

This block illustrates many of the problems faced by all the Waipoua No 2 blocks at this time. It was subject to a survey lien and the Crown was threatening to take land in lieu of payment. Timber and kauri gum was being removed by "Austrians" one of whom had leased adjoining land (2A2) from Eddowes. The owners had to apply to the court for an injunction in an attempt to stop the theft, first, against Kumevich in 1912

and secondly, against Anich in 1916. Despite this being a simple matter of theft, the Maori had to go to the expense of obtaining Native Land Court injunctions (E4:74-75).

In an attempt to obtain an income from the land in order to meet the outstanding survey charges, the owners sought to lease it but were unable to do so because of a prohibition imposed by the Native Land Court when title issued. Subsequently a lease was entered into for gum digging purposes at a rental of £30 per annum.

In the meantime, the owners were endeavouring to sell both the timber and the land. An agreement was initially entered into with Trousoun to purchase the timber and the land was sold to Marriner. Waipoua Ltd took over the agreement to purchase the timber for £325. By this time, however, the sale of timber was subject to wartime regulations. Before issuing the licence, the Crown itself considered purchasing the timber. Upon finding that its true value was £4800, it decided it could not afford it and permitted its sale for £325 to proceed (E4:77-80).

As in the other purchases by Marriner, settlement was made some months after the deadline imposed by the court had expired. The sale was nevertheless confirmed (E4:75-76).

WAIPOUA 2B2B4, 2B2B5 AND 2B2B6

4.2.7 Survey liens had been registered over each of these blocks in 1916 which were discharged upon sale to Marriner. As with the other blocks sold to Marriner, settlement of the purchase was some months late, yet the court confirmed them. In the case of 2B2B6, despite the court being informed that the Maori vendor did not have sufficient lands, the sale was confirmed. By permitting the sale in these circumstances, the court disregarded s220(1) Native Land Act 1909, amended in s91 Native Land Amendment Act 1913, which required that the owner, being "landless", had adequate means of support (F1:32).

WAIPOUA 2B3B2

4.2.8 Waipoua 2B3B was partitioned by Atareta Morunga in 1914 into 2B3B1 and 2B3B2 so that she could gift 2B3B1 to her daughters Te Riwhi Yakas and Te Hunga Kakawiki, retaining 2B3B2 in her own name (E7:4-6; E4:162-163).

A survey lien for £42 15s 6d was registered against 2B3B2 in 1916 (E5:43-44). Atareta died that year. Her family did not apply to the court for succession. This was done by the native land purchase officer, W E Goffe, in 1920 (E7:15).

The owners had no intention of selling this block; hence no previous attempts to sell to the Europeans who had been purchasing other blocks had been made. The 1917 proclamation, however, was in force. After Goffe had put through the succession order on 5 May 1921, following evidence apparently given by a relative (not one of the successors), he immediately arranged the purchase of the interests of the respective members of the deceased's family. The purchase was completed by the end of the year and in January 1922 the land was declared state forest (B3:20-21; E4:191-192).

When confirming the sale, the court relied upon a 1917 valuation, whereas a more recent valuation was available. Mr Goffe was apparently aware of this but, in contravention of s372 Native Land Act 1909, the purchase by the Crown was completed at a lower value (B6:173). No attempt was made by the Crown to redress its mistake.

WAIPOUA 2B3D1

4.2.9 This was the first block within Waipoua 2 purchased by the Crown. Interestingly, it was the only block over which a survey lien had not been registered; yet there were outstanding survey charges of £8 7s 4d. The value of the timber was not included in the valuation for the purpose of purchasing. The Crown estimated that there was 126,000 super feet valued, at 1.6d per 100 super feet (B6:288; E4:213). On those figures, the Maori vendor was short-changed by £94 10s 0d. The Crown called it quits by writing off the survey charges of £8 7s 4d, leaving a short-fall in value, on the Crown's figures, of £86 2s 8d. We emphasise "the Crown's figures" because the going rate was 1s 6d per 100 super feet in 1913 (B6:378) and 8s per 100 super feet by 1921 (E4:79). By 1918 one would have expected the price to have been substantially more than the amount admitted by the Crown.

WAIPOUA 2B3E

4.2.10 A survey lien for £53 18s 0d was ordered by the court in 1916 (E5:43-44). Authority for the survey was not given by the owners. Nevertheless the block was surveyed and they were ordered to pay the costs (E4:245).

The block, like all the others, was subject to the 1917 proclamation. As late as June 1921, the owners did not want to sell (E4:245-246). A short time later, however, the Crown commenced purchasing individual interests. The documentation reveals the prevailing practice of the native land purchase officer at the time, W E Goffe. He signed the certificate on the memorandum of transfer on 11 November 1921 that he, as a licensed interpreter, had explained the document to the vendors. He also witnessed some of the signatures in his capacity as a Justice of the Peace. Other signatures he witnessed in the capacity of a licensed interpreter, as late as 9 May 1923. But his certificate on the memorandum of transfer was given on 11 November 1921. Regardless, the transfer was confirmed by the court (E7:251-257).

That change in heart by the vendors may have been due to threats of the land being taken under the Public Works Act, as this was being discussed by Crown officials at that time (B6:149). At least the Crown's determination to procure the block must have been conveyed to the vendors, for by this time it was official policy, with respect to all the Waipoua blocks, that purchases "be vigorously proceeded with" (B6:202) and in the case of 2B3B1 "purchased at almost any cost" (B6:161). The pressure was such that the vendors agreed to sell at the land's unimproved value, whereas the value of the improvements was £100. Goffe cleverly completed the purchase at less than its 1918 value in 1923 and obtained confirmation by the court. After the purchase had been completed by the Crown and confirmed by the court, the undersecretary of native affairs discovered what Goffe had done and directed that the balance that should have been paid upon purchase, be distributed among the owners (B6:162). It took Goffe almost eight years finally to carry out the directive (E4:246-247).

In addition to not including improvements in the price, the Crown neglected to pay for the timber. This was estimated at 50,000 super feet, which, at the 1921 price of 8s per 100 super feet amounted to £200 (E4:248).

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

04 Te Wawahitanga o te Whenua (Fragmentation of the Land):

Waipoua No 2

4.3 Crown Attempts to Purchase Other Interests

4.3. Crown Attempts to Purchase Other Interests

The blocks we have discussed above are only those sold in their entirety in the period 1913-1923. But the Crown was attempting to purchase all the blocks and obtained part ownership of many more. One of the reasons it was unable to acquire these in their entirety was that some of the owners were overseas fighting for King and country. In the case of Iehu Raniera Taoho, the Crown obtained the appointment of a trustee when he had died in action, in order to purchase his interest. To take just one example of part purchases, by 1923 the Crown had acquired 66.68 per cent of the shares in Waipoua 2B3C, that is 811 acres of its total area of 1217 acres (E4:197). The native land purchase officer, Goffe, reported:

The remaining owners are dead. It is hard to get a succession order made. No one seems to know who the next of kin are. The matter has been before the Court on three occasions. (C12:29)

Those owners foolish enough to tell the native land purchase officer who the next of kin were, ran the risk of his lodging an application for succession to the deceased's interests in the block. Such was the case in Waipoua 2B3B1 where Goffe on 9 December 1920 signed and filed a succession application to the interests of Atareta Morunga. The court made the order on 9 May 1921. Judge Holland's minutes record that Iehu Moetara (a relative but not the next of kin or a successor to Atareta) gave evidence. In fact, Moetara may not have been present in the court. {FNREF:0-86472-088-2:4.3:4} Regardless, the succession order should not have been made as the block had been gifted to two of Atareta Morunga's daughters in 1914. Although this transfer was confirmed by the Tokerau Maori Land Board, it was not endorsed with a certificate of confirmation. Goffe's initiative sparked a controversy which continued for over 20 years involving a petition to Parliament and further hearings in the Native Land Court. This block further illustrates the Crown's determination and the methods it adopted to acquire interests in Waipoua No 2.

In other cases where the Crown had acquired part interests, it applied to the court for a partition of the block. In the case of Waipoua 2B3A, the Crown had purchased five sixths of the shares by 1918 and made application to the court to partition. The vendors stipulated an area of 200 acres to be retained by them but the Crown obtained a valuation which finally resulted in their receiving only 60 acres (E4:127-130). The valuation was prepared by a Crown employee and sowed the seeds of controversy resulting in a petition to Parliament (B7:318-320), further Native Land Court hearings

and reports. It is important to record that the undersecretary of native affairs noted in 1938 that the owner, Enoka Te Rore had not been present in the court when the partition was originally discussed (B7:289), and that the other owner, Iehu Raniera Te Rore had died in action in the First World War and his three year old son was represented by a court-appointed trustee. Native Land Court Commissioner Bell later commented that "the basing of the partition on the new particularised valuation does not appear to have been just" (B7:51). As in all the other sales of the Waipoua No 2 blocks, there were irregularities in the valuation of the timber.

The Crown's partition of 867 acres from 2B3D2 follows a very similar pattern (E4:215-225). New valuation methods were adopted which were not agreed to by the Maori vendors, and resulted in their buildings being included in the Crown's partitioned portion, contrary to the express understanding between the parties. The Crown demolished the buildings. Following a petition to Parliament the land was repartitioned in 1943. But the outcome still did not return the areas originally intended to be excluded from the partition or compensate the Maori for the loss of their dwellings.

At this point it is useful to remember that when the Maori owners appeared in court they incurred costs. In the cases we have just been discussing, it was not just one or two court hearings involved, but many, spanning 20 years.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

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4.4 Injustices in the Native Land Court System

4.4. Injustices in the Native Land Court System

In every case where the Crown purchased interests in Waipoua No 2, we have found injustices. To spell out all the injustices for each block, such as inadequate valuation of the land and little or no consideration of the value of timber, would be too repetitious. In our view the consistency of these injustices is explained by the role of the native land purchase officers and by the Native Land Court being principally the vehicle for identifying Maori land and facilitating its alienation, at the expense of Maori. The two principal native land purchase officers during this period, W H Bowler and W E Goffe, deserve a brief mention.

Bowler completed the first purchase of a block for the Crown, Waipoua 2B3D1 in 1918. By his own admission (E4:213), timber had not been taken into account in the purchase price, resulting in the Maori owners being short-paid by £86 2s 6d. In the memorandum of transfer of the block dated 5 August 1918, signing as a witness to the signature of the vendor, he described himself as "Commissioner, Native Land Court Auckland", not as native land purchase officer (E7:181-183). By s7 Native Land Act 1909, the governor could appoint commissioners to exercise the powers of a judge of the Native Land Court. In respect of this Crown purchase, Bowler sat effectively as the judge of the court. Owing to illness in his family, Judge Holland had asked him to do so. At the same time, Bowler hoped to be able to get in touch with some of the owners of the Waipoua blocks (B6:290).

Acting as the Crown native land purchase officer he purchased Waipoua 2B3D1 on the Crown's behalf. At the same time, acting in the capacity of the judge of the Native Land Court, he witnessed the Maori vendor's signature in that capacity, and knowingly cheated the vendor of at least £86 2s 6d. The Crown submitted that Bowler acquired this and other interests without "any undue pressure on the owners"! (F1:70)

Evidence abounds as to the Crown's relentless determination to purchase the remaining Maori-owned areas of Waipoua No 2. Bowler reported to head office in May 1918 that he was endeavouring "to push on with the Waipoua purchases" (B6:297). He was continually told that these blocks "should be acquired with as little delay as possible" (B6:248). This pressure on Bowler continued throughout 1919 and 1920 and his reports convey a tone of desperation. Ingratiatingly he commented on 20 August 1920 to the undersecretary of native affairs that "the Crown has acquired more than is shown in the returns" (B6:229). He was aware that the Crown had acquired in

fact a greater area of land than was represented in the records. Six days later he reported:

I am afraid that it will not be able to buy much more by direct transfer. Some of the owners are living on the block, and are not inclined to sell.

The land is very difficult of access, and the owners can only be hunted up on horseback. I would have done this earlier if I had thought it worth while. (B6:227)

Bowler's fears that he was not performing to head office's expectations were justified. Shortly afterwards, Goffe was sent into the district. Soon after his arrival, with a distinct note of triumph, Goffe sent a telegram to head office: "Have Secured about 700 acres Waipoua. more will follow" (B6:213).

About six months after Goffe took over Bowler conceded that the purchase of the Waipoua blocks was in his hands (B6:211). Goffe pursued the purchase of the remaining Maori interests in Waipoua No 2 with unscrupulous diligence playing every trick he could turn his hand to. They were aplenty, he being a justice of the peace and licensed Maori interpreter, first grade. We have seen how he put in succession applications (for example Waipoua 2B3B2) purchased at unimproved government valuation blocks with substantial improvements, purchased at out-dated valuations and purchased land with timber without paying the Maori for it. Whilst being the Crown's representative as purchaser, Goffe witnessed the signatures of vendors as a justice of the peace and completed the certificate that he had explained the transaction to the vendors in Maori and that they had understood what they had agreed to as a licensed interpreter. There was a prima facie conflict of interest unacceptable in a court of law. After examining the documentary evidence thoroughly, we find the Crown's statement that it had "stayed one stage removed from involvement in the affairs of the owners", incredible (F1:71).

When he was unable to acquire all the interests, he applied to the court to partition the Crown's interest, often leaving the residue area owned by Maori land-locked (for example 2B3D2A). The arguments over access to the small area remaining in Maori ownership at Waipoua settlement which persist to this day are a legacy of Goffe's purchase methods in the early 1920s.

In the evidence presented to us by the Crown, we were repeatedly told "the Crown showed an interest in purchasing" such and such a block. We find the expression quaint in the circumstances. Examples of the Crown's determination to purchase abound, ranging from expressions that "this section should be purchased at almost any cost" (B6:161) to "It is not desirable that a high value should be attached to the land in case at any time it is found necessary to acquire any portion of the land under the Public Works Act" (B6:149). Clearly the Crown's overriding concern was to extend its control over Maori land in the neighbourhood of the Waipoua kauri forest (C12:12). To achieve this it fenced off, by proclamation in 1917, the areas it wished to acquire. When it was found, however, that these included areas already acquired by Europeans, the proclamation was amended to exclude them. The policy giving rise to the proclamation was not directed to the LAND the Crown wished to acquire for kauri forest but rather to land in Maori ownership.

This discriminatory practice persisted until 1972 when the proclamation was finally lifted.

The Crown, from 1917 onwards, perceived the Maori to be a "menace" to the security of the forest (B6:377). Throughout the evidence there is repeated reference to the actions of "Austrians" who were trespassing on both Maori land and Crown land to steal timber and kauri gum (B6:161 passim). There is little evidence of Maori removing timber or kauri gum. The sad irony is that it was the land purchased by Europeans (Waipoua 2A2 owned by Eddowes), excluded from the proclamation, which was leased to the "Austrians", who were the acknowledged "menace" to the kauri forest in both Maori and Crown ownership. The discriminatory proclamation wrought a grave injustice upon the Maori who have lived in and conserved the forest for centuries.

Having fenced off the Maori-owned land in Waipoua No 2 with the proclamation, the Crown enforced survey liens and sent out its native land purchase officers so that doubtless the Maori owners in the end were "hunted up on horseback" (B6:227). They then appeared before the Native Land Court.

We have previously seen how the Native Land Court in 1876 failed to exercise a judicial function in determining the ownership of Waipoua No 2 and implementing "the arrangement" of its owners. The role of the native land purchase officer and the judge of the Native Land Court in the Crown's subsequent purchases of the Maori interests in Waipoua No 2, were indistinguishable. In hearing applications where Maori land was being sold to Europeans, the court was almost equally unquestioning, rarely ensuring that the land was being sold for value or that the value of timber had been taken into account in the price. For the Crown to hold out the Native Land Court as a court of law was a deceit.

The Crown, in its submissions, argued that the Native Land Court, being an arm of the judiciary, was independent of the State and not an agency of the Crown. We do not accept that argument. {FNREF:0-86472-088-2:4.4:5} By s7 Native Land Act 1909 the governor could appoint any person a judge or commissioner of the court without requiring the person to have any relevant qualifications. The evidence consistently shows a lack of judicial expertise that could reasonably be expected of a judge presiding in a court of law.

In reaching this conclusion, we have not assumed the role of a court with jurisdiction for judicial review. We have examined the evidence in relation to the performance by the Crown of its obligations under the Treaty. The Crown failed to extend to Maori the same rights and privileges as were enjoyed by British subjects generally. By s9 Magistrates' Courts Act 1908, only persons with the qualifications of a barrister or solicitor, or who had previously exercised the jurisdiction "in a competent manner" for a period of five years under the 1893 Act, could be appointed a stipendiary magistrate. By failing to require in the Native Land Court legislation that only appropriately qualified and competent judges and commissioners could be appointed, the Crown was in breach of its obligations under the Treaty.

In the course of reviewing the evidence in this claim, we have found references in official documents and correspondence which suggest that the Crown's policies and

practices were not confined to Waipoua, but applied to many other areas in Tai Tokerau. Indeed, they may have applied nationally. The Land Titles Protection Act 1908 was passed out of the Crown's concern at the number of cases being brought in the Supreme Court challenging the actions and decisions of Native Land Court judges and other public servants. The preamble to the Act records that "considerable alarm has been caused amongst the European landholders at such attacks upon their titles". The Crown barred any proceedings which could review the actions of its servants in Maori land matters.

The Crown's policy in purchasing the Maori-owned land at Waipoua continued unabated until 1928, when preparations commenced for the consolidation schemes which would enable the Crown "to obtain a sufficient area of Native lands to liquidate the payment for rates made by the Crown under Section 25/1927". Accordingly, Goffe was directed to "discontinue all purchases immediately" (B6:92).

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

04 Te Wawahitanga o te Whenua (Fragmentation of the Land):

Waipoua No 2

4.5 Maori Complaints and Official Inquiries

4.5. Maori Complaints and Official Inquiries

When the Native Department stopped purchasing for the Crown in 1928, it was left with part interests in numerous blocks. All were administered, however, by the state forest service, and it was not long before the Crown resumed its efforts to purchase the balance of the blocks. Hence, in respect of Waipoua 2B3B1, the native land purchase officer reported that he was having difficulty contacting the two owners as they were "living in the bush" and it would be "very difficult to get to them in the winter" (B6:56). Three months later he reported that, although he had contacted these owners (Atareta Morunga's daughters) and they refused to sell, he would call on them again within the next two months (B6:52). Obviously, these kuia were not as charitable as the young lady who owned the last Maori interest in Waipoua 2B2B3 valued at £4 13s 4d, and signed the transfer out of sympathy for the consolidation officer who had gone to a similar amount of trouble (B7:148). {FNREF:0-86472-088-2:4.5:6} Atareta's daughters still refused to sell.

The Native Department being unsuccessful in its efforts to purchase, sought the assistance of the Native Land Court's consolidation officers who were preparing schemes to facilitate the utilisation of Maori land. A report by consolidation officer William Cooper on 29 August 1931, suggested the repartitioning of the Crown-owned interests, awarding about 1000 acres to the Maori owners by way of kainga (B6:44). The repartition suggestion was eventually acted upon, but without benefit to the Maori owners.

Maori discontent lived on after the Native Department ceased purchasing in 1928. The state forest service was having trouble as Maori insisted upon continuing to occupy what they claimed was theirs. The principal resisters were Himiona (Pohe) and Te Aramaira Paniora on Waipoua 2B3D2A and 2B3D2B and Enoka Te Rore on Waipoua 2B3A1 and 2B3A2. The state forest service moreover was being embarrassed by reports claiming the Crown had treated the Paniora's and the Te Rore's unjustly (B6:63; B6:41).

After renewed attempts at purchasing the interests, the Crown received a report from consolidation officers, Cooper and Mills, on all the outstanding Maori interests in Waipoua No 2, advising that there was no prospect of further purchases (B7:410). A consolidation of these interests was suggested. The state forest service again rejected any aspect of the recommendations which would benefit the Maori owners (B7:395). Its reply, however, was referred to the registrar of the Native Land Court. His

memorandum of 17 December 1935 is a milestone in the evidence on the workings of the Native Land Court. The registrar's memorandum concludes:

A perusal of this report [by the Consolidation Officers] will show that the Natives are entitled to a full inquiry by the Native Land Court into the matter of the purchases by the Crown in these blocks before any action is taken to have their interests located either by consolidation or Partition.

As far as the Natives are concerned the matter is far deeper than merely a consolidation or partition of their present legal interests and it would now appear necessary for the Natives to Petition Parliament in order that the Court may be authorised to make full inquiry into the position. (B7:389-390)

Only at this point did the Native Land Court accept its responsibilities as a court of law.

In co-operation with the Department of Lands and Survey and the Native Department, the state forest service lodged a partition application in the court. The Crown was anxious to have the application set down for hearing but was informed by Judge Acheson that the Maori owners had expressed an intention to petition Parliament. The court considered the petition should be disposed of before it heard the partition application (B7:328; B7:330). The director of forestry, however, considered that this delay "would be embarrassing" and endeavoured to obtain an early hearing to get the partition underway (B7:326). The court adjourned the application as the petition had been filed (B7:317).

The Crown was clearly uneasy at what a full inquiry into the transactions by which it obtained its interests in Waipoua No 2, and elsewhere, might reveal. The chief surveyor of the Department of Lands and Survey, R G Macmorran, wrote:

To disturb the decisions of the Native Land Court at this period would invite complaints and representations from all sources in regard to other transactions in which the Crown is involved. (B7:310)

He was, of course, and is, absolutely right.

The petition to Parliament from Ata Paniora and Toa Mihi Paati concerned Waipoua 2B3B1, Waipoua 2B3D2 and Waipoua 2B3A (B7:317-320). Their complaints were, briefly:

(a) Waipoua 2B3B1-Atareta Morunga had gifted the block to two of her daughters in 1914. Whilst the transfer had been confirmed the certificate had not been endorsed on the document itself. Goffe applied for succession to her interests and the block was awarded to the deceased's ten children. The Crown purchased the interests of eight children, but the daughters to whom the deceased had previously gifted the whole block, refused to sell.

(b) Waipoua 2B3D2 and Waipoua 2B3A-the Maori owners had sold a part of each block to the Crown and the remaining owners had agreed to partition on an area basis. The Crown subsequently adopted a new method of valuation which resulted in the

partition being made on a value rather than area basis. Both intended to retain 200 acres of their respective blocks whereas the different valuation method resulted in one retaining 30 acres and the other, finally, 60 acres.

In its submissions to the Native Affairs Committee of the House of Representatives, the Crown argued that in the case of Waipoua 2B3B1, the court, at the time of making the succession order, was unaware of the earlier gift to the daughters and that the Crown's actions in purchasing the interests of the other eight children "appear to be quite bona fide" (B7:303). In respect of the other two blocks it alleged either that there was no understanding that there was a specific area reserved by the Maori owners or that they agreed to the valuation basis of the partition.

The House of Representatives ordered an inquiry and this was heard by Judge Acheson 6-7 July 1939 (B4:76-96; B7:194-227). The Crown solicitor argued the Crown's case along the lines of its submissions to the Native Affairs Committee. The court was not required to make a decision as the parties entered into an agreement in settlement out of court.

The assumption that the Crown had acted in good faith in respect of Atareta's daughters' Waipoua 2B3B1 block was not challenged in the court. There is evidence, however, that the Crown was aware of the gift by Atareta to her daughters prior to Goffe's purchase of the other interests in the block. In a memorandum to Goffe, 22 August 1929, the undersecretary of native affairs had written:

The particulars of title on our file obtained in 1917 seem to show that the interest of Atareta Mourunga [sic] was transferred by way of gift to Te Riwhi Jakas [sic] and Te Hunga Kakawiki who are presumed to be the same as Te Riwhi Morunga and Te, [sic] Hunga Morunga, but that the confirmation was not then signed.

Please look into the matter and advise whether the confirmation certificate was ever completed and if so whether any registration of the transfer took place. (B6:84)

The evidence establishes beyond any doubt that the Crown knew that the block was no longer in the estate of Atareta Morunga when it purchased the interests in 1921. {FNREF:0-86472-088-2:4.5:7} Nor do we accept that Goffe was unaware that this was Te Riwhi and Te Hunga's block before he purchased the other interests. Both sisters were living on the land, had cultivations there, and he would have met and spoken to them as he did with all the other Maori in the district whose interests he was attempting to purchase for the Crown.

Concerning the other two blocks partitioned by the Crown, the argument that the Maori owners understood or agreed to the terms of the partitions does not bear examination. Elderly Maori owners in isolated Waipoua, were not English speakers. They understood only as much as Goffe explained to them in Maori.

On account of the out-of-court settlement, these issues were not put to Judge Acheson. The agreement entered into by the parties was no more than a consolidation of both the Maori and Crown interests at Waipoua (B7:190-192).

Following Acheson's inquiry it was left to the parties and the Native Land Court to implement the terms of the agreement. The matter finally came before Commissioner Bell exercising the jurisdiction of a judge of the Native Land Court. In a confidential memorandum to the undersecretary of the Native Department he described the agreement entered into in respect of the partitioned blocks Waipoua 2B3D2 and 2B3A, and other blocks, as unjust. Setting out his reasons fully, he estimated that the owners of 2B3D2 lost 157 acres to the Crown for which they were not paid and for 2B3A, 133 acres (B7:50-52). He suggested:

it is possible that (the original vendors having died) the Natives interested being their representatives by succession probably had not the sound knowledge of the past that their deceased elders had and made the agreement in an endeavour to get something back of what in an uncertain manner they understood their parents had lost. (B7:51)

We should add that this was war time. The men, as was the case when the Crown commenced purchasing in 1917, had gone overseas to fight for their country.

The undersecretary of the Native Department referred Commissioner Bell's memorandum to the undersecretary of the Department for Lands and Survey for comment. The chief surveyor in Auckland responded:

The report is a potential source for further petition, and I am strongly of the opinion that it should be expunged from the records of the Department, and I would recommend that action be taken in that direction. (B7:47)

Macmorran, now undersecretary of the Department of Lands and Survey, cautiously supported the chief surveyor's view, and the undersecretary of the Native Department concurred. He wrote to the registrar ("himself") in Auckland, saying "If you see no objection, would you please act on the Chief Surveyor's suggestion" (B7:44).

The implementation of the agreement was finalised by proclamation on 15 February 1946 (B7:11).

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

04 Te Wawahitanga o te Whenua (Fragmentation of the Land):

Waipoua No 2

4.6 Crown Purchases 1939-1945

4.6. Crown Purchases 1939-1945

The land obtained by the Crown in the period 1939-1945, which was all the subject of the out-of-court settlement, is set out in the table below:

Crown Purchases within Waipoua 2 1939-1945

Block Area Date of Date of Sale (S)/ Reference
Order Exchange (E)

2B2B1A 31.3a 23/01/43 -/07/1945 (E) E4:97
(30a3r5p)@

2B3A2 1155a 09/07/45 09/07/1945 (S) B5:2; E4:161
(1148a2r30p)@

2B3B1A 166a2r 23/04/41 -/-/1941 (S) B5:2; E4:182
(173a0r20p)@

2B3C2 1140a 23/01/43 -/-/1943 (S) B5:2; E4:206-208
(1131a2r)@

2B3D2B 855a 09/07/45 11/07/1945 (S) B5:2; E4:243
(845a1r)@

2B2B3 1405a1r35p 28/08/14 -/08/1941 (S) B5:1; E4:106-112
(1405a)@

Total area acquired by the Crown 1939-1945: 4734a 1r 15p

@ = area when surveyed, a = acres, r = roods, p = perches

The acquisition of all these interests had been initiated by Native Land Purchase Officers Bowler and Goffe and in effect it was a tidying up exercise for the Crown.

There is one other transaction at this time which we should mention. The Maori at Waipoua made representations to the Department of Education in 1940 for the establishment of a school at the settlement. The department acknowledged the need and suggested an area of four acres would be required. A suitable site was identified on Crown land, but the forestry department declined, pleading that they would need the area for a sawmill and administration. The Maori community gave the land for the school from the small area it still owned. The forestry headquarters had already been established elsewhere and the sawmill was never built (E4:229-233).

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

04 Te Wawahitanga o te Whenua (Fragmentation of the Land):

Waipoua No 2

4.7 Crown Purchases 1960-1973

4.7. Crown Purchases 1960-1973

The table below sets out the final purchases by the Crown in Waipoua No 2:

Crown Purchases within Waipoua 2 1960-1973

| Block Order | Area | Date of Sale | Date of Reference | Reference |
|-------------|------|--------------|-------------------|-----------|
|-------------|------|--------------|-------------------|-----------|

| | | | | |
|--------|------------------------|------------|------------|------------------|
| 2B3B1B | 139a2r (138a0r10p)@ | 23/04/1941 | 15/02/1961 | B5:2; E4:183-190 |
|--------|------------------------|------------|------------|------------------|

| | | | | |
|--------|--------------------|------------|------------|------------------|
| 2B3A1B | 29a (30a1r10p)@ | 11/07/1945 | 11/02/1966 | B5:1; E4:150-159 |
|--------|--------------------|------------|------------|------------------|

| | | | | |
|-------|-----------------|------------|------------|------------------|
| 2B3C1 | 76a (76a1r)@ | 23/01/1943 | 16/04/1973 | B5:2; E4:201-205 |
|-------|-----------------|------------|------------|------------------|

| | | | | |
|------|---------------------------|------------|------------|----------------|
| 2A1B | 202a2r26p (204a1r30p)@ | 28/04/1914 | 13/06/1973 | B5:1; E4:17-33 |
|------|---------------------------|------------|------------|----------------|

Total area acquired by the Crown 1960-1973: 449a 0r 10p

@ = area when surveyed, a = acres, r = roods, p = perches

Waipoua 2B3B1B

4.7.1 A survey lien securing a total of £24 15s 11d was written off by the Crown in 1950 following implementation of the settlement agreed to at the Acheson inquiry in 1939. The Crown purchased the property at government valuation in 1961 (E4:183-190).

This block was the area Atareta Morunga's daughters had previously refused to sell to the Crown. The claimants in our hearings produced evidence identifying a number of wahi tapu on this block, but this evidence was not presented to the Maori Land Court at the time of the sale. The Minister of Forests apparently suspected there might have been a burial ground on the block, but on inquiry with the Department of Maori Affairs it was assumed that, because a meeting of owners had agreed first to lease and later to sell to family members, there were no wahi tapu (E4:189). Being a family transaction, we do not consider that concern for wahi tapu would have then been an issue. Accordingly, the question was not properly addressed before the land was sold to the Crown.

The restraints on the owners in the use of their land imposed by the Crown's proclamation, and the Crown's willingness to use it to purchase the land cheaply, are illustrated in this block. After one of the owners, Wiremu Yakas, returned from the war, he attempted to lease the property. Subsequently the owners wished to sell to their father. The Crown refused to lift the proclamation prohibiting its alienation. The owners then granted the Crown an option to purchase for £2500. The Crown refused to purchase at that price, offering only its government valuation of £1930 (E4:189). The conservator of forests recommended in 1959 that "the section and house be purchased if it can be obtained for a nominal sum" (E7:82). As to the suggestion that the proclamation be lifted, the director of forestry said:

As we are under a duty to pay the lowest reasonable price for the land it seems necessary that consent to the revocations of the Order in Council be withheld until a settlement has been reached. (E7:92)

The relevance of the proclamation to price is unmistakable.

WAIPOUA 2B3A1B

4.7.2 This was Enoka Te Rore's share of 2B3A1 which was sold by his son John Te Rore to enable him to purchase a house. When the Crown partitioned its interest, Enoka understood he would have 200 acres. In 1966, the Crown purchased at government valuation which took into account its being uneconomic for farming purposes (30 acres), its being isolated and having uncertain access. Attempts by adjoining Maori owners to purchase both prior to the sale to the Crown and subsequently, were unsuccessful. {FNREF:0-86472-088-2:4.7.2:8}

The claimants justifiably challenge the valuation. Enoka was entitled to 200 acres on the partition of the block. The Crown benefited both from its being an uneconomic unit in terms of its valuation and from its proclamation by which it excluded others from purchasing in a situation where the owner needed to sell on account of his financial circumstances.

WAIPOUA 2B3C1

4.7.3 The object of the exchange between the Crown and the owners leading to the partition of 2B3C in 1943 was, for the owners of 2B3C1, to "make the holding a usable and economic farm holding" (B7:64). The Crown retained shares in the block, however, and agreed that the Maori owners should have an option to purchase

(C12:51). In 1962 the chief surveyor proposed to partition out its interest (E7:133). The deputy registrar noted:

that the area of this block is 76¼ acres only and it is therefore less than economic in size without being cut up further.

...If any use is being made of the land a better solution would be for the Crown to offer its interest therein to the occupier, particularly if he is one of the owners. (E7:134)

The land was occupied by one of the owners, Barney Pumipi, who was also an employee of the forest service. {FNREF:0-86472-088-2:4.7.3:9} There is no evidence that the Crown offered its interest to Pumipi. Rather the forest service considered the block a valuable addition to the adjoining state forest No 13 and proceeded to purchase the outstanding Maori interests in it (E7:135).

A special government valuation was obtained putting the value in 1963 at £380 (\$760). Lack of access was taken into account in the valuation (E7:136). Negotiations for the purchase were inconclusive and resumed in earnest in 1971. Another valuation was obtained from the Valuation Department which took into account both its restricted access and its being an uneconomic farming unit, and recommended that the "block would best be incorporated within the Waipoua Forest" (E7:148). The value was \$560, that is \$200 less than the previous valuation.

The Crown proceeded with its intention to purchase. The commissioner of Crown lands stated "The four Maori owners have no intention of obtaining the Crown's interest or of using the land in any way" (E7:151).

Although 30 years previously the Crown had agreed to offer its interest to the Maori owners, there is no evidence that the Crown made an offer to them. Nonetheless the land was being used by one of the Maori owners, who was also an employee of the forestry department (E4:201, 203).

By September 1972 the Maori owners agreed to sell to the Crown, but one of the owners, Tukuhiua Toi, had died. To obtain his interest, the Crown filed an application in the Maori Land Court for a succession order. The minutes of the hearing are informative:

M. Phillips in support-Crown now permitted to negotiate.

Kotehunga Saunders sworn-Deceased my brother-died about 1966 or 1967 at New Plymouth-I was informed of his death. My foster mother attended the funeral. No will. Had one child.

Teresa Dal Huia Toi f.c. Gisborne or Opotiki

(her mother is Kathy Toi).

M. Phillips - The Crown has purchased all shares but these in Waipoua 2B3C1 and wishes to acquire them.

Witness proceeds. Full name is Tukuhiua Hohaia Toi.

Order 136/53.

Waipoua 2B3C1 \$87.93 to Teresa Dal Huia Toi f.c.

Order 93/53 appointing Maori Trustee and empowering him to sell to H.M. the Queen at proper figure. (E7:158-159)

The intention of the application is unambiguous: the purchase by the Crown of the outstanding interest. To achieve that end, the application for succession was secondary. The evidence presented to the court was at best second-hand. The witness was uncertain as to when her brother died and where his child lived. How could she be certain he did not leave a will? There was no evidence as to the age of the child. Was she in fact still a minor? But it would appear the deceased was survived by his wife. The Crown, as purchaser, had a direct conflict of interest in filing and prosecuting the succession application. The court effectively made the succession order in favour of the Crown in disregard of the interests of the Maori owner. The purchase was completed in April 1973 (E4:205).

WAIPOUA 2A1B

4.7.4 The sale to the Crown, by way of resolution of assembled owners pursuant to Part XXIII Maori Affairs Act 1953, was confirmed by the Maori Land Court on 13 June 1973.

The court minutes show that the Tane family on 2A1D were interested in acquiring the land and were also concerned as to water which derived from 2A1B. The court recorded that a resolution of owners having 0.917 of a total of 1.000 share agreed to sell, and that the purchaser was "TO TAKE THE TITLE AS IT IS" (E5:168-170).

The court itself underlined this last sentence. Minutes of the meeting of owners on 8 May 1973 were not produced to us in evidence. The resolution confirmed by the court has no particulars as to who attended the meeting or how they voted (E5:168). Harding Leaf gave strong evidence that he was an owner and was not aware of any intention to sell the land or of the meeting being held.

Following settlement of the purchase by the Crown, the Maori Trustee paid \$48.12 from the proceeds for outstanding survey and rates charges, that is the VENDOR was clearing the title of the charges whereas the court ordered the PURCHASER "to take the title 'as is'" (E5:172). Subsequently the chief surveyor said there was no record of the Crown consenting "to the condition" (E5:173-174) which had been imposed by the court, not the Maori vendors. The Crown refused to refund the amount paid by the Maori Trustee on the vendors behalf, to discharge the outstanding liens. By repudiating the court's authority to impose conditions in making its order, the Crown was, in effect, denying its own title to the block.

The Tane family, represented by their solicitor, L Cannon, had been attempting to purchase the block from their cousins in order to provide access to their adjoining 2A1D block and to secure their water supply taken from a spring on 2A1B (E5:177).

Immediately following the court hearing they commenced negotiations with the Crown to purchase an area of 9.22 ha for this purpose. The commissioner of Crown lands obtained a number of reports from within his department:

Waikara Road... has not been maintained by the Hobson County Council and is at present impractical for access purposes. Any other access would be expensive to form leaving the existing track (formed by the Tanes) on the area applied for, the only practical solution. (E5:202)

Most of the area sought by the Tanes was "steep" (E5:192); "this portion of land is not necessary to our needs" (E5:176).

Four years after the Crown's purchase, the sale of this 9.22 ha area to the Tane family was completed. None of the delay was attributable to the purchasers. The price paid by the Tane family was \$1260, being the "current market value" (E5:207; E4:30-31). {FNREF:0-86472-088-2:4.7.4:10} The price paid by the Crown for the whole block (82.7 ha) was the government valuation plus a loading of 15 per cent. The unimproved portion of the price for the whole block amounted to \$1955.

These figures are very important. The Crown's negotiations for its purchase commenced well before the lifting of its proclamation in 1972, and were concluded within that climate without reference to market values. When it sold a part of the block to the Tane family, however, it was at current market values. This was the first sale since 1917 to establish the market price. The comparison is:

1. Crown purchase (G V + 15%) 82.7ha \$1955
2. Crown sale (market value) 9.22ha \$1260

Market value for 82.7ha \$11,214

CROWN PROFIT ON PURCHASE OF 2A1B 573%

The part sold to the Tane family at the current market value was not the best part of 2A1B-it was principally steep, not considered of value for inclusion in the Waipoua Farm Settlement then being established under the government's civilian settlement scheme.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

04 Te Wawahitanga o te Whenua (Fragmentation of the Land):

Waipoua No 2

4.8 The Prices Paid by the Crown for Waipoua No 2 Land

4.8. The Prices Paid by the Crown for Waipoua No 2 Land

The price for all the sales of Waipoua No 2 were at government valuation (most being out of date), excepting the last two sales which added a "loading" of 15 per cent to the valuation. None of the sales, from the very first in 1918 {FNREF:0-86472-088-2:4.8:11}, related to a "market" price. The Crown was aware, at the time, that all these valuations were "somewhat lower" than a realistic value by reports it had received from the Crown ranger (B6:327). All the Crown purchases, from the first in 1918, until June 1922, were at out-dated government valuations, none of which the Crown rectified. Even on those values, the Crown calculated that the vendors were underpaid by 18 per cent (F1:89-90).

Claimant researcher Garry Hooker, has calculated the shortfall in value paid on all the sales, by adding 15 per cent to the government valuations current at the time of the sales {FNREF:0-86472-088-2:4.8:12}, and adding the value of the timber on the blocks for which the vendors did not receive payment. He then calculated the acreage which that shortfall in price would have purchased at the rate paid for the land in respect of each sale. The shortfall in value translated into acres amounted to 14,058 acres (C12:53). This result is surprising when one considers that the area sold amounted to 11,553 acres, that is, the amount they were not paid by way of current government valuations (+15 per cent loading) and the value of timber, would have purchased a greater area than was sold. The failure of the Crown to pay for timber would account for a substantial proportion of the shortfall.

The use of government valuations was unjust. Market place criteria were applied in circumstances where the Crown itself had eliminated the market by issuing its proclamation in 1917. Moreover, lack of access and services, and the uneconomic size and shape of the blocks, were all taken into account, whereas it was the Crown itself which, in its partition applications, had brought about these factors detracting from the land's value.

The initial pressure to sell arose from the survey liens which were in almost all cases registered against the titles without the knowledge of the owners. In 1908, the owners of Waipoua No 2 were unanimous in their evidence to the Stout-Ngata Commission that they did not wish to sell their land (B1:7). Initially, timber was sold to meet the survey costs until in 1910 they started to negotiate sales of their land to European purchasers. By 1917, £377 16s 0d was still secured by survey and rates liens despite many having been paid previously. The average wage at the time was approximately

£1 15s 0d per week. Liens were registered over 14 blocks during the first world war when many of Te Roroa ki Waipoua were overseas. In their absence, the Crown's native land purchase officers purchased interests in these blocks which were under threat of being taken in lieu of payment of outstanding survey charges, at out-dated values in a market smothered by the blanket 1917 proclamation. For the interests of the servicemen, the purchase officers awaited their "return from the Front" (B6:261). For those who died in action, they filed applications in the court enabling them to be acquired. The Crown's acquisition of the Maori interests, described as being "acquired under Native lien", was systematic and relentless (F1:att 19).

Until 1936, the role of the Native Land Court was clerical only, to record the dealings of the purchaser or the Crown's native land purchase officers, even assisting them in the case of one judge by recording evidence from people who had not attended court! When the rules did not suit, they were bent (eg the Hohaia succession in 2A1D), or broken (eg sales to Marriner) or ignored (eg valuations under s372 Native Land Act 1909). If the judge was unavailable to perform these functions, a Crown purchasing officer could sit as judge in his place. Apart from outward appearances, the Native Land Court bore no resemblance to a court of law.

The Waipoua No 2 blocks were firmly within the Crown's grasp by 1936. In every sale, both to Europeans in the early stages and to the Crown after the proclamation issued in 1917, there are undeniable injustices-out of date and incomplete valuations; incorrect surveys; land taken for roads without compensation; arbitrary partitions; Crown partitions leaving the residue without access and so on. The Acheson inquiry in 1939 which resulted from the Paniora and Paati petition to Parliament, was a tidying up exercise for the Crown in consolidating its part interests acquired principally during the period of the first world war.

Following the inquiry in 1939, Commissioner Bell of the Native Land Court was concerned that the out of court settlement reached between the Crown and Maori owners was unjust. The agreement, again, was negotiated in wartime, when Te Roroa ki Waipoua men were overseas. Everything had been completed by the time they returned.

The final purchases illustrate the use of the 1917 proclamation by the Crown to prevent the alienation of the remaining Waipoua No 2 blocks to family members and other Maori at Waipoua, and to deny the vendors market prices. When the death of an owner came between it and purchasing an interest in 1972, the Crown filed and prosecuted a succession application in the Maori Land Court, obtaining an order vesting the interest in the Maori Trustee, thereby enabling it to purchase, to the complete ignorance of the beneficiary and her immediate family.

Negotiations by the Crown for its last purchase at Waipoua commenced in 1970, were well-advanced by the time the proclamation was lifted in April 1972, and completed the following year. The Crown's acquisition policy at Waipoua had subsisted for 55 years. A short time later it sold a small unwanted portion of this last block to Maori neighbours at market value, at a profit of 573 per cent.

Of the 12,220 acres originally set aside as a native reserve, only 691a 0r 30p remains Maori freehold land.

The titles to the remaining Maori land at Waipoua are all in multiple ownership. The evidence in this claim explains how multiple ownership came about-by the Native Land Court's inclusion, against the wishes of the Maori, of the few as absolute owners (and the exclusion of the many whose interests they were supposed to represent) and the succession orders made in most cases to all the children equally of a deceased "owner", down through the generations. No evidence has been presented as to the consequences of multiple ownership, and accordingly we have not considered these in the report. We have, however, considered it appropriate to provide some discussion, especially its resource management implications, which is in appendix 5.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

04 Te Wawahitanga o te Whenua (Fragmentation of the Land):

Waipoua No 2

4.9 The Reasons for the Crown's Proclamation

4.9. The Reasons for the Crown's Proclamation

The Crown had issued its first proclamation, pursuant to s363 Native Land Act 1909, prohibiting the sale of all the Waipoua No 2 blocks to anyone except the Crown, on 2 July 1917. It was the mother of all the proclamations which remained in force until 1972 (B1:12). The origins of the Crown's policy of acquiring Waipoua No 2 for state forest apparently arose from Hutchin's "Report on the Demarcation and Management of the Waipoua Kauri Forest" in 1916, which identified Waipoua No 2 on a map as being an area "To be acquired for reforestation" (B2:14; F1:48). It has been assumed that the purpose of the proclamation was to implement that policy by acquiring the land from its Maori owners, for the reason that they represented a "menace" to the security of the adjoining kauri forest.

That assumption is incorrect. Rather, the opposite is true. Whilst the land remained in Maori ownership the forest was safe. Only if the land was alienated to others would there would be a threat.

The action to issue the proclamation was in response to a letter from the undersecretary of the Department of Lands and Survey to the undersecretary of the Native Department on 7 June 1917 requesting that steps be taken:

to proclaim these lands as prohibited from private alienation, as it is understood that Austrian gumdiggers are now negotiating for the purchase of some of the blocks and they should not be allowed to acquire the land, whilst if the Native land is alienated there would be great danger to the kauri forest adjoining, and it is very important that such danger should be reduced to minimum. (B6:375)

The letter was referred to the Native Minister who endorsed his approval for "alienation to be prohibited" (B6:375). The proclamation was duly issued a little over three weeks later.

The myth that "the presence of the Maoris in the immediate vicinity of the Forest constitutes a standing menace to the security" originated with the commissioner of Crown lands at Auckland {FNREF:0-86472-088-2:4.9:13} and conveyed by the undersecretary of the Department of Lands and Survey on 1 September 1917 to his counterpart in the Native Department (B6:333). A short time later the Native Land Purchase Board, on 15 September 1917, decided "to acquire all the unalienated subdivisions" of the Waipoua No 2 block (B6:332).

The original letter, however, which gave rise to the proclamation only anticipated a danger to the forest if the Maori owners were allowed to alienate it to others. In our view, it was only intended to prevent sales to outsiders and not among themselves. {FNREF:0-86472-088-2:4.9:14} It definitely did not perceive the Maori owners themselves to be a danger to the forest. {FNREF:0-86472-088-2:4.9:15}

The myth of the Maori "menace" has persisted to the present day in the Crown's administration of the Waipoua forest. But as we have seen, there is no evidence of Maori removing timber or bleeding kauri for gum in the forest. There have been cases of Maori being prosecuted for trespassing to gather mahinga kai, including native pigeons. The only evidence in relation to the forest itself, however, has exclusively involved "Austrians" and other European settlers such as Ross, a settler at Katui in September 1917, and Davenport in October 1917, who were both prosecuted for stealing gum (B8:9). Indeed, the Maori owners themselves had to take out injunctions to stop the theft of timber and gum from their own lands by "Austrians" to whom Europeans had leased land in the neighbourhood. {FNREF:0-86472-088-2:4.9:16}

The respect by Maori for native forest is best corroborated within the forest service's own records. On 3 February 1920, the inspector of forests at Auckland, H S Whitehorn furnished a full report to head office following an inspection of areas of Waipoua No 2 block owned both by Maori and those areas alienated to Europeans. It reveals that on European-owned land the kauri had been bled, whereas on the Maori land good stands of kauri remained (B8:72-76).

The purpose of the forestry inspector's inspection was to determine what areas adjoining the state forest would yield millable timber and be suited for reforestation. The Crown's policy was not motivated by the Maori "menace" but rather to acquire for the purposes of sale the native timber the Maori had conserved, and to incorporate the area in its planting programme. Although very little evidence has been produced as to the sale by the Crown of timber from the land it acquired in Waipoua No 2, there is evidence that it was the Crown's desire to acquire timber when it was aggressively pursuing the Maori land interests. In 1920 it sought to purchase Trounson's timber-cutting rights over some of the Maori land for £1000. After completing purchases, and declaring the land state forest, it carried out detailed surveys in the period 1920-1924 as to the number and variety of millable trees and the timber they would yield, and let out contracts to millers, such as V Trounson and the Morningside Timber Company, returning as well a supply to its own public works mill (F1:att 107-133; B8:104). The extent of the Crown's timber sales aroused concern in the European community that the kauri forest was under threat (B2:35). Substantial quantities of timber were being extracted until at least 1944 (B8:100).

Whilst the original intention of the proclamation was not to acquire the Maori interests in Waipoua No 2, it immediately became the tool by which the Crown dispossessed Te Roroa ki Waipoua of their land and heritage. The myth of the Maori "menace" to the kauri forest became the justification of its policy whereby the Crown obtained valuable timber for sale and acquired the land cheaply for reforestation. The areas already alienated to Europeans were subsequently withdrawn from the proclamation making it plain that it was not so much the security of the forest that was of concern, but rather a desire to acquire the Maori land for economic considerations.

The proclamation fenced off the Maori land, eliminated the market, and after an intensive campaign by Crown employees, enabled the Crown to purchase at outdated valuations. The Native Land Court, clothed in the respectability of a court, formalised these acquisitions at the Crown's bidding.

Not only has the Crown's policy dispossessed Te Roroa ki Waipoua of its land and heritage; it has also dealt them a grave cultural insult. The nation has Te Roroa to thank for conserving the kauri forest for centuries.

REFERENCES

{FNTXT:0-86472-088-2:4.1:1}1 In 1900, the Maori Lands Administration Act established Maori Land Councils which subsequently became the Maori Land Boards for each court district. In the Native Land Act 1909 the board comprised three people, one of whom was to be a European who was also the president of the board; in the Native Land Act 1931 (s77) the board comprised two people, the judge and registrar of the court of that district. It was the board which checked transactions to ensure they were "a fair deal for the landowners" (F1:27). By its composition and the considerations it was required to take into account, it was the alter ego of the Native Land Court, constituted within its legislation, and we have dealt with its functions, and those of the court, as being synonymous.

{FNTXT:0-86472-088-2:4.1:2}2 AJHR, 1891, G-1, p 21. See also A19:48

{FNTXT:0-86472-088-2:4.1:3}3 Official New Zealand Yearbook (Wellington, 1901) p 241

{FNTXT:0-86472-088-2:4.3:4}4 At the inquiry on 6 July 1939, Judge Acheson, after querying whether Moetara was present in court, commented that "Judge Holland had a habit of entering up the name of the person who gave evidence on some previous hearing. It does not follow that because he made the entry the person was there" (B7:210).

{FNTXT:0-86472-088-2:4.4:5}5 That judges of the Native Land Court were public servants, rather than members of an independent judiciary, is plain from the preamble to the Land Titles Protection Act 1908: the actions of Native Land Court judges "and other responsible officers of the public service" were barred from being challenged in the courts.

{FNTXT:0-86472-088-2:4.5:6}6 As with the other interests purchased at this time, the price paid in 1941 was at the 1918 valuation (E4:108; C12:30)

{FNTXT:0-86472-088-2:4.5:7}7 The "particulars of title" showing the transfer by Atareta to her two daughters were forwarded to the registrar of the Tokerau Native Land Court by the undersecretary of native affairs on 26 June 1917 (B6:362).

{FNTXT:0-86472-088-2:4.7.2:8}8 The Crown has acknowledged that the reasons given at the time to justify its refusal to sell to adjoining owners were not in fact justified (F1:130-131).

{FNTXT:0-86472-088-2:4.7.3:9}9 The claimants describe Mr Pumipi in their evidence as being the husband of Kahuru Hone Toi. He was her son to whom she transferred her interest in 1959.

{FNTXT:0-86472-088-2:4.7.4:10}10 Crown evidence that this figure comprised \$950 for the land and \$310 for improvements (fencing) (E4:30-31; E5:197) was incorrect. It was found that the boundary fence between 2A1D and 2A1B was in the wrong place and the purchasers paid an ADDITIONAL \$407.16 for fencing (E5:208).

{FNTXT:0-86472-088-2:4.8:11}11 Although the Crown's first purchase in Waipoua

No 2 was in 1918, it had acquired 95 acres (2B2A) in 1906 in satisfaction of a survey lien (E4:87).

{FNTXT:0-86472-088-2:4.8:12} 12 A "loading" of 15 per cent to government valuation as a minimum value on alienation was enacted by s100 Maori Affairs Amendment Act 1967.

{FNTXT:0-86472-088-2:4.9:13} 13 The commissioner subsequently referred to the proclamation as the "Native lien" (F1:att 19).

{FNTXT:0-86472-088-2:4.9:14} 14 The view that the Maori were a "menace" to the security of the forest and therefore the Crown should purchase their land, was personal to the commissioner of Crown lands is borne out by correspondence with the undersecretary who disagreed with that view (B9:42-43; F1:58).

{FNTXT:0-86472-088-2:4.9:15} 15 Perhaps the letter also reflects a prejudice prevailing at the time against "Austrians" who were the enemy in the first world war.

{FNTXT:0-86472-088-2:4.9:16} 16 On 30 June 1923, Rewiri Kingi wrote to the Minister of Forests, on behalf of "low class" Maori and Pakeha seeking permission to dig for gum in "Ngaruki Swamp in Waipoua" (B8:52)

Waitangi Tribunal, Department of Justice, Wellington.