

CHAPTER 8

THE GOVERNMENT TRANSACTIONS TO 1865: WESTERN AND NORTHERN DISTRICTS

The next step, and one which is now in successful progress, is to acquire large tracts of land by purchase from the Natives, out of which blocks, varying in extent from 100 to 2,000 acres, should be reconveyed under Crown grants to the principal Chiefs upon the extinction of the tribal title, such blocks consisting not only of cultivable but also of forest land, in order to secure to them a continued revenue . . .

Governor Gore Browne, land acquisition policy for the Far North, 1857

We have also for several years been leading the Natives to acquiesce in the desirability of ceding their lands to the government. There are many large districts which we are in actual negotiation for, and in the course of a few years confidently look forward to the total extinction of Native title.

Resident Magistrate White to the Native Minister, 1861

8.1 CHAPTER OUTLINE

This chapter continues the account of the re-allocation of the Muriwhenua land, looking now at the western and northern districts. It is helpful to be reminded, at the outset, of the official programme. The aim was to acquire everything and hand back part, but under a new tenure arrangement so that Maori and Pakeha would be on the same footing. This is evident in the quotation above, from Governor Gore Browne, and gives a more precise meaning to the resident magistrate's programme to extinguish native title.

But what areas were reserved? This chapter concludes with an assessment of the transactions in English legal terms, considering the adequacy of the purchase price and the like. The main concern, the adequacy of reserves, is left until after the following chapter, where the final result is made known.

8.2 WESTERN DIVISION

8.2.1 Bell's operations

In the western division, from Ahipara to Mangatete and centring on Kaitaia, the Government's buying programme had again to await the resolution of outstanding pre-Treaty matters. Although the scrip issue did not arise, Resident Magistrate White still found a role for himself in assisting Land Claims Commissioner Bell to define and adjust the previous grants and surplus, and in arranging for purchases to follow. As no Maori issues arose, in Bell's view, the cases were heard at Mangonui. He did not travel to Kaitaia, as Godfrey had done. Maori attended nevertheless, possibly at the instigation of the missionary Joseph Matthews, in whose company they came.

Maori evidence
and reserves

Maori appear to have attended to support Matthews and James Berghan, and to protect their own use rights through continued joint occupation, or otherwise to have part of the land kept for them as a reserve. Bell did not record their concerns, however, only that matters were discussed or explained. Some particular reserve proposals are now referred to.

8.2.2 Okiore reserve

On our reading of the circumstances, Maori were entitled to the greater part of the Okiore block. It was more than 8000 acres (3238 ha), but Ford had stated it was held in the same way as Oruru, from which he may be taken to have meant the greater part was for Maori according to such allocations as Panakareao might make. It is consistent with that view that Ford claimed 2000 acres (809 ha) only. Godfrey assessed his entitlement at 1357 acres (549 ha).

Some 19 years after the original transaction, the matter was reviewed by Bell. Ford had left the district and Panakareao was dead. The local Maori may have known little of the initial arrangement. In any event, the Government assumed that all the land in the original transaction not taken by Ford was its, and Maori appear to have thought the most they might be entitled to was a reserve on the west coast.

We have no idea of the debate. Bell recorded no evidence and kept no minutes of the discussions. It appears, however, that, by reference to the description of boundaries in the deed, Bell asserted the Government's right to the total area. He recorded no reasons but simply the result: Ford's entitlement was increased to 2627 acres (1063 ha), nothing passed to Maori, and 5653 acres (2288 ha) was Government surplus.

8.2.3 Awanui reserves

A similar situation applied to Henry Southee's land at Awanui, in that both Panakareao and Southee were dead (the latter dying in 1854). It will be recalled

that numerous Maori had been living on this large block of 13,685 acres (5538 ha). Dieffenbach had noted about 300 occupying part near the Awanui River in 1840, and there may have been more elsewhere. Cordial relationships were enjoyed with Henry Southee, who had married Eliza Ati, the daughter of Ruanui, a prominent local rangatira.

Southee fell into debt, with the result that most of his land passed to others, and eventually to William Maxwell. We suspect that part of Southee's problem may have been his willingness to accede to Maori expectations of continuing tribute. He wrote briefly to the Governor about his claim, and the amount he had paid, but protested that the Government was unaware of the nature of a Maori gift, implying that continuing tribute had to follow.

Maxwell, who possibly knew the cause of Southee's problem, took a severe line with Maori from the start. To Maori thinking, the relationship with Southee was personal and lands could not pass from his line without their agreement. Maxwell did not recognise any continuing Maori interest, however. There is evidence of some tension, with Maori presuming to occupy part of the land as before, and to run stock or take gum from the balance, and with Maxwell regularly complaining.

Before Bell, there was no question that the group living in a village on part of the land, at Waimanoni, should have that part reserved for them. Once more, however, Maori claimed land along the west coast, next to the reserve sought from out of Okiore, presumably to make one continuous block. The whole was to stand in the name of Puhipi, a further rangatira of the district. Again, Bell did not record what was said or how he came to his decision. He awarded 4198 acres (1699 ha) for Maxwell, 500 acres (202 ha) for Southee's estate, 400 acres (162 ha) for the surveyor, 200 acres (81 ha) for the Waimanoni Maori group, another 200 acres for Maori to the west to stand in the name of Puhipi, and 8360 acres (3383 ha) for the Government.

Somehow, the second Maori reserve was never created. Maori appear to have complained that it was not large enough for the stock of all affected, but Bell noted there was a considerable area of Government surplus which Maori could use for their cattle until the Government, or settlers, had need for it. Bell then recorded that Maori should apply to the resident magistrate to settle the location of the 200 acres, and after that nothing happened. Bell simply wrote that, as he had heard nothing from White, he presumed no provision was sought.

Much later, Puhipi's son complained that the reserve had never been defined. Crown historians investigated the matter and thought that, when the complaint was made, the file was not adequately examined. Had this been done, in their view, it would have been apparent that the reserve was promised and should have been gazetted.¹

It struck us as extraordinarily severe that the reserves for Maori were given so sparingly. Dr Rigby's explanation seems plausible: that Maori had continued in

1. See D Armstrong and B Stirling, 'Surplus Lands: Policy and Practice, 1840–1950' (doc J2), p 8

occupation of large areas, that they appeared to assume that any land not occupied by settlers was free for them to use, and that, in recovering that land, the Government could allow no latitude to Maori which might be seen as confirming their beliefs. Accordingly, reserves were given *ex gratia*, without recognition of a right, and they were also of limited extent. Professor Oliver expanded on that view. Relying on contemporary opinion of Commissioner Bell, he considered the commissioner was motivated to prove his worth to the Government, and his suitability for other appointments, by recovering for the Government all he could. Certain of his operations in Taranaki point to the same conclusion.

8.2.4 Tangonge reserve

One of the blocks where shared use appears to have continued, although there was no joint-occupancy clause in the deed, was the Otararau block of the Reverend Joseph Matthews. According to Maori, Matthews promised that an area at the south of that block, adjoining Lake Tangonge, would be reserved for Maori, title to be taken in the name of Puhipi Te Ripi. It is alleged that, to this end, 685 acres (277 ha) were surveyed as the Tangonge block. On its part, the Government has consistently claimed that area as surplus to that part of Otararau block to which Matthews was entitled in terms of the land claims legislation. For reasons given later, we consider the land was surplus to the Otararau block, but there is a reasonable inference that this land was promised for Maori.

The Otararau block is shown on figure 49 with the disputed Tangonge block on the southern boundary. It appears that, while the elevated parts of Otararau to the north of the swamp were preferred for European pastoral and horticultural farming, Maori tended to aggregate at the edges of the Tangonge wetland, which was by far the greater resource for food and materials. It was valued for its fish and fowl, raupo and flax. The sharply rising ground on the eastern or Pukemiro end of the Tangonge block was especially preferred, as it adjoined and overlooked the swamp grounds.

Because in the course of the hearing there were doubts as to where the Otararau boundaries were, and whether the 685 acres, or any other area that Maori may have been claiming, were part of the Otararau block, it is necessary to state at the outset that, after careful examination of the early sketch and survey plans, we are satisfied that the area Maori claimed was indeed the 685 acres, being the land between Pukemiro and the lake, and that this was part of Otararau. The Otararau deed of 20 July 1835 purported to convey 1000 acres bounded on the north-west by the Kaitaia or Awanui River, 'until you come to Tangonge', from thence to Wai o Rukutanga ('Waiarukutanga' on the plan) and on the east by 'the missionaries' land', that is, the Kaitaia mission block. That area encompasses both 'Otararau' and 'Tangonge block' as shown in figure 49. We note, in this respect, that the deed gave Otararau as 1000 acres (405 ha) only, that

Figure 49: Otararau and the Tangonge block claim

the area marked Otararau on figure 49 is 1170 acres (473 ha) alone, and that the area marked 'Tangonge block' is 685 acres (277 ha), making 1855 acres (751 ha) in all. This may suggest that Tangonge block was not part of Otararau, but we are satisfied that, notwithstanding the assessed acreage in the deed, the deed boundaries circumscribed the entire area.

The background appears to be as follows:

- When the matter was before Commissioner Godfrey, no survey was done, and Godfrey simply calculated that Matthews was entitled to a certain acreage within an approximate area.
- Fifteen years later, in 1858, the matter was before Commissioner Bell. After certain survey and other allowances were added, Matthews' entitlement in Otararau was 840 acres (340 ha). However, by transferring 330 acres (134 ha) from land to which Matthews was entitled elsewhere, at Aurere (and thus enlarging the Government's surplus there), Matthews was able to take 1170 acres (473 ha). Accordingly, he surveyed out that amount.
- In writing to Bell, however, Matthews noted that at his request 685 acres (277 ha) had been 'cut off from the [Otararau] land', as he put it. Matthews did not say why he had it cut off, but Bell assumed that this was the balance of the land, or the surplus. The intitlement on the surveyor's map supported that assumption, the whole area of 1855 acres (751 ha) being given as the Otararau block (or 'Summerville', as Matthews had decided it should be named).
- It was not an assumption that could be made, however. There is evidence that Matthews supported the Maori contention that this land was cut out to be reserved for them.

Nothing happened on the ground to cause Maori to think this land had ceased to be theirs, until 1890. It turned out that Tangonge block was zoned as part of the Tangonge kauri gum reserve, that it was used for gum extraction, and that in 1890 Timoti Te Ripi, obviously considering the land was Maori land, demanded royalties for gum extracted from it. When told the land was the Government's, however, in 1893 he and 23 others petitioned Parliament. Matthews joined the petition. A hearing was not granted, however, and Matthews, who must have been the principal witness, died soon after, in 1895.

How could Matthews have supported that petition if the land was so clearly surplus? The answer appears to us to be as follows. It is known that at all times prior to 1843, when Commissioner Godfrey sat, Matthews was close to Panakareao. Both he and Panakareao knew of the Government's intention to give part only of the land to the Europeans and to take the surplus. It is obvious, further, that they knew the transactions would require Maori affirmation to have effect. And that was the main point. When Godfrey attended at Kaitaia in 1843, he was addressed at the outset by Panakareao, who made his position most plain that the whole of the transactions in western Muriwhenua were approved by him, but on the basis that the surplus was retained by Maori.

Matthews was there. He heard that word, and since no land would pass except to the extent that the transactions were affirmed, both he and Panakareao had good cause to consider that the surplus was to be cut out and reserved for Maori. Accordingly, Maori continued to live on the land and Matthews saw them as entitled to it. He had cut it out for them. He signed the petition.

We consider the Maori view must prevail, for these reasons:

- It was never part of the contract as affirmed that the surplus was to pass to the Government.
- This area was clearly important for Maori, for the reasons given, and should have been reserved for them. It appears they continued to reside there, on the elevated lands of the Pukemiro slopes.
- The Government should not have the benefit of its own lapses. Commissioner Bell ought properly to have inquired into the matter, to have obtained evidence from Maori of their position when the plans were submitted to them, and to have recorded their evidence. He rarely did so in any case, and did not do so in this one.
- In addition, the matter might also have been resolved in the petition, had it been dealt with while Matthews was still alive, but the Government did not refer the petition for inquiry or arrange for Matthews' statement to be taken.
- It is true that Bell recorded no Maori objection at the time, but why should there have been any? If the plan showed a severance on the southern boundary, and if Maori considered that area was promised to them, it would be natural for them to assume that the plan had been arranged in fulfilment of that promise.

Four petitions followed that of 1893. Crown historians challenged them on the grounds that Maori gave the wrong areas. In one petition the area was given as 1024 acres, in another as 200 to 300 acres, leading Crown historians to contend that they may have been referring to another area. The misunderstanding about acreage is not surprising, however, for Maori had no access to the necessary maps and documents. The area of 1024 acres was simply the area gazetted as the Tangonge gum reserve, of which the disputed area had formed part, and 200 to 300 acres was obviously no more than that which Matthews had guessed at, when they spoke to him about the petition. The petitioners were clear, however, that the land in question was to the immediate south of the line from Pukemiro to the lake, and that was all which was needed by way of identification.

In response to the further petitions, in 1906 (well after Matthews' death) the matter was referred to an inquiry. The Houston commission recommended the return of the land, but largely on humanitarian grounds. On visiting the area in 1906, the commission found that Maori were still living on the land. Resident Magistrate Houston, who was a local parliamentary representative and a gum trader who knew Maori well, described these people as otherwise landless, and urged that the Government make this land available to them.

Despite the plight of the Maori affected, the Government prevaricated and then referred the matter to two further commissions of inquiry, in 1924 (Judge MacCormick) and 1927 (Justice Sim). The matter was dealt with in the context of the surplus land issue generally, however, and, with the Sim Commission, in association with a raft of similar surplus land petitions. Neither inquiry was privy to the evidence subsequently found, that the Kaitaia transactions had been affirmed by Maori on the condition that the surplus returned to the Maori people.

These inquiries did not resolve the occupation of the land. By the 1960s large parts of the area had been given out on licences by the Government for sawmilling; this made local living uncomfortable, but seven Maori families still clung to their homes, without titles, on the perimeter. There are reports that the families were large but the homes well cared for. Witnesses described with anger how those seven families, with young children, were finally forced from their homes, landless and with nowhere else to go, more than a century after the Europeans had been so well provided for. The Government finally won the Tangonge block, and with it the undying bitterness of the local Maori people.

8.2.5 Ohinu, Kaiawe, and Ahipara transactions

The Government purchases were effected almost immediately after Bell's awards in 1859, suggesting they may have been arranged during his inquiries. White and Kemp completed three purchases: Ohinu, Kaiawe, and Ahipara. There are few particulars about them but, as shown in figures 37 and 50, the effect was to secure almost the whole of the remaining part of the Ahipara–Kaitaia–Awanui flats and the bordering hills. Maori were left with small areas at Ahipara and Pukepoto and the steeper lands in more rugged country south of Kaitaia. As figure 50 shows, those remaining lands, which were mainly in the south-east, were acquired by the Government in intensive purchase programmes in the 1870s to 1890s.

The Government acquired Ohinu of 2703 acres (1094 ha) for £100, Kaiawe of 1375 acres (56 ha) for £58 and 'Ahipara, containing 9,470 acres (3833 ha) of the finest land'² from 19 Maori for £800. Added to the Ahipara block later was certain 'forest land', the Kokohuia block, in an acquisition from eight Maori in 1861, for £50.

Few reserves

The only reserves were some very small ones from the Ahipara purchase. Maori negotiated to exclude a coastal strip from the Ahipara block, just as they had sought a similar strip in the reviews of the Okiore and Awanui old land claims, but most of the Ahipara coastal strip was sold in 1877. It is not clear to us why Maori were so concerned at this time to keep the coastal areas, which were largely in extensive sandhills, although it may have been to keep their interest in Te Oneroa a Tohe, Ninety Mile Beach.

2. Kemp to McLean, 12 September 1859, no 80, AJHR, 1861, C-1, p 38

Figure 50: Government transactions, western Muriwhenua

No change on the
ground

The extent to which Maori saw these transactions as sales in the same way as the Government did, or could picture the future as Europeans could, remains doubtful, for again there was not the reality of a sale on the ground. As in all other cases except Oruru and part of Mangonui, where occupation was taken in advance, there was no immediate surrender or taking of possession. Maori kept areas for cropping. Cattle were still running on what the Government saw as its land. Access to traditional food resource areas, the lakes, rivers, and seas, was the same as it had always been. Throughout the 1850s the only settlers on the land were Southee, Matthews, and Puckey and some workers at the Kaitaia mission. Davis and Ford had both left. In other words, the European presence was insignificant, and the Maori desire was still for more Europeans to come.

8.2.6 European settlement

Some did come in the 1860s, however, following the definition of the Government's surplus land and the purchases described. There was a minor land boom when those lands were opened for settlement, but it did not last and much of the Government land was not occupied until the 1890s or later.

One new settler on the Ahipara block, R Pickmere, described the mission settlement in 1860:

Inland, on the road to Mangonui, is Kaitaia, for thirty years a missionary settlement, at which reside Rev Joseph Matthews and Mr Puckey. They both have large families. Mr Puckey is what they call a lay catechist. He has two very good looking daughters, two sons grown up, besides two smaller children. Both his sons have large farms or sheep runs. Mr Matthews is an exceedingly nice man, pious without affectation, mild in his manners, kind, thoughtful, considerate and wise. He has two grown-up sons, one daughter about seventeen, and two younger boys and a girl. The improvements in this place were chiefly done many years ago by the natives. They have fine orchards, full of excellent apple trees, chiefly American varieties, fine pasture fields etc. About their homes are beautiful flowers, shrubs, Australian bluegums, etc. Mr Matthews' eldest son Richard has a fine sheep and cattle run, and the second, Herbert, is just going to locate on his, at Aurere river, about six miles from Mangonui . . .

There live besides in Kaitaia a shoe and saddle maker, a blacksmith, several sawyers and a storekeeper. . . .³

He also described progress on the settlement of the Ahipara block:

I could scarcely give you an idea of the way in which this country is progressing. . . . The whole almost of this block, Ahipara, is taken up by land orders and cash purchasers at ten shillings per acre. Many parties still keep coming to examine what is left of it. You must understand that such blocks are only to be found here and there, consequently they are taken up very briskly. There is at the present time

3. S C and L J Matthews, *Matthews of Kaitaia: The Story of Joseph Matthews and The Kaitaia Mission*, Dunedin, Reed, 1940, pp 205–206

a large number of emigrants trying to find land suitable for them on various Government blocks open to their choice for their land orders, and they find great difficulty in suiting themselves, as many of the blocks are very remote from town, some too hilly, poor land etc. A large party, about a hundred people are coming to locate on the Awanui River, three or four miles below Kaitaia . . .

The natives are all peaceable up here in the north, and have always steadily been so for a great number of years. They are of great assistance to the Europeans in many ways; indeed at the first attempts at settling we should feel the want of them very much. The missionaries have a quiet but steady influence over them.⁴

8.2.7 Lake Tangonge

Maori could not see, however, what the settlers could foretell. It could not have been apparent to them that Lake Tangonge, for example, their largest food resource, might be threatened. Pickmere also wrote:

There is still a quantity of land for sale on this block, at the upset price of ten shillings [per acre] principally marsh. The Rev Duffus and Captain Butler both bought hugely. Captain Harrison and others bought large tracts of marsh. A quarter of a mile only separates it from Awanui River, and as soon as the marsh is all bought, and they agree as to the expense, the marsh will be drained by a cutting connecting with the river. . . . The Lake Tangonge, which holds the surplus waters of the marsh, has thousands of black ducks, and the eels caught in it are about three to five feet long, and range up to 60lbs weight.⁵

We understand it was not unusual to speculate in wetlands at this time, which could be more cheaply bought, in anticipation of assistance. The national injunction was to clear forests and drain swamps and the Government appeared willing to subsidise the latter.

8.3 NORTHERN PENINSULA

The sequential review of the transactions by districts – central, eastern, western, and now the north – may suggest that the transactions proceeded in that order. They did not. While the main focus was initially on the centre, there were negotiations at other places at the same time. The largest transactions were in the north, and were actually the first of the Government purchases entirely free from tidying up old pre-Treaty matters. These transactions, for the Muriwhenua South and Wharemaru blocks, involved 100,440 acres (40,678 ha) and were completed in 1858. They will be described shortly.

As in all other districts, Resident Magistrate White went ahead of Land Claims Commissioner Bell to secure the Maori word to large sales. These could not be

The sequence of transactions

4. Ibid, p 208

5. Ibid, pp 205–206

Draining the Kaitaia swamp early this century. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (G10661*1*/*i*).

sealed before Bell's boundary determinations were made, but they needed to be settled soon after and before the influx of settlers which secure titles were expected to bring. In that way Maori would not be selling small parcels at a time for increasingly higher returns, or would not be holding onto their land once its value to Europeans was evident.

8.3.1 Kaimaumau

In the northern peninsula White envisaged a township at Kaimaumau on Rangaunu Harbour (see fig 51). In fact this township never developed, as the harbour was too shallow, but White's first concern was to secure that area and clear off the only old land claim there, by William Potter. The Land Claims Ordinance gave an authority to decline grants in order to protect town sites and William Mackay, who had purchased Potter's entitlement, was persuaded to take scrip. The township did not proceed and the land was included with other Government property when White and District Land Purchase Commissioner Kemp acquired the whole surrounding block, Wharemaru, of 13,555 acres (5486 ha).

8.3.2 Ruatorara

Even while the Wharemaru purchase was proceeding, White and Kemp were negotiating for the much larger Muriwhenua South block. It encompassed so many Maori localities that there was no single Maori name for it, and a name had to be devised. The transaction could not be completed, however, without clearing off the unusual Stephenson claim to Ruatorara, the 'shipland', as it was described.

In October 1842, when George Stephenson's schooner *Eclipse* ran aground at Ahipara, its remnant cargo was taken by local Maori in accordance with the Maori law that anything delivered by the sea, a stranded whale or even a boat in distress, was Tangaroa's gift to the people at the place of deposit. Stephenson petitioned the Government and the Chief Protector of Aborigines, George Clarke, was instructed to pursue compensation. Maori considered that they had been more than fair in not keeping the washed-up crew as well. However, they may have recalled the Ranginui incident, which still features in local oral tradition, as described in chapter 2. So Panakareao, no doubt keen to maintain good Government relations, offered a perfect and protected coastal strip, south of Houhora Harbour, as amends. A deed of conveyance was produced to suit. There is no record of whether Panakareao consulted those affected, either of Ahipara, where the ship ran aground, or of Houhora, where Te Aupouri and Ngai Takoto appear to have resided.

Although Stephenson submitted a claim for the land, Godfrey did not touch it, as this was clearly not a pre-Treaty transaction. For his part, Stephenson had

Figure 51: Land transactions, southern Aupouri Peninsula

never taken up the land and would have taken scrip. Maori, however, would not proceed with the Muriwhenua South transaction unless the shipland was severed first, as it is not 'tika' to walk away from agreements. Accordingly, the shipland was surveyed, at the same time as the Muriwhenua South and Wharemaru transactions, and Bell made an award even although no Maori attended to support the claim. Stephenson was awarded 1000 acres (405 ha), since the evidence was that that quantum had been agreed to, and this was to be taken from between two points along the coast. For reasons that we have not been able to fathom, however, the Government surveyed out 2482 acres (1004 ha) and took the balance of 1482 acres (600 ha) as though it were surplus (see fig 49). We have not been able to find any basis for the Government's right to that area.

8.3.3 Muriwhenua South and Wharemaru blocks

Although oral tradition has it that the sale of Muriwhenua South and Wharemaru arose from a quarrel between Paraone Ngaruhe and Wiremu Te Mahia over a whaling incident, there are insufficient particulars to link this to the European written account of the purchase. The significance of the traditional account was not apparent to us, unless a whakahe was involved – that is, where one person retaliates for a personal injury by causing a loss to everyone.

Kemp and White first explored the blocks with a view to acquisition early in 1857. On 10 June 1857, Kemp suggested that Muriwhenua South might be about 25,000 acres (10,117 ha) and Wharemaru about 3000 acres (1214 ha).⁶ About the same time, he wrote in a private letter to McLean that the area could not be far short of 40,000 acres (16,188 ha), but that he had given it as 30,000 acres as ‘it is better to be under rather than above the mark’. On 7 December 1857, however, he recorded the correct areas of 86,885 acres (35,162 ha) and 13,555 acres (5486 ha).⁷ It is not known whether these figures were advised to Maori.

The discrepancy
over size

The record discloses only that the deeds for Muriwhenua South and Wharemaru were both signed on 3 February 1858. The amounts paid were £1100 and £400 respectively. Notwithstanding that the lands were assumed to have been about 28,000 acres (11,332 ha) at the commencement of the negotiations, and notwithstanding that Kemp and White had since learnt that the true area was nearly 100,000 acres (40,470 ha), no survey plans were appended to the deeds and the deeds did not record the area. Based on the areas actually surveyed, the first block gave a return to Maori of threepence per acre and the second, sevenpence per acre.

Crown counsel noted that, whatever the acreage, the area must have been known to Maori. This seems sensible, for although there was later a boundary dispute, affecting several hundred acres, it was small in the overall scale, and from the boundary descriptions the general expanse of country must have been apparent.⁸ It is not the Maori awareness that is in issue, however, but the Government’s conduct: that, when it knew the area was much more than that bargained for, the price remained the same.

The northern boundary of Muriwhenua South block was described in the deed as running from Wairahi on the eastern coast westwards to Otumoroki and from there to ‘a well known rocky point’ on the western coast named Te Arai. This boundary was the subject of a dispute in the 1890s, known as the ‘Wairahi’ claim, and eventually it was inquired into by the Native Land Court in 1933. It is reviewed in the next chapter.

Excluded from Muriwhenua South were two areas: Houhora block of 7710 acres (3120 ha), and Te Rarawa ‘reserve’ of 100 acres (40 ha). Te Rarawa was

The disposal of
reserves

6. Kemp to McLean, 10 June 1857, no 35, AJHR, 1861, C-1, p 20

7. Kemp to McLean, 7 December 1857, no 42, AJHR, 1861, C-1, p 22

8. We are sceptical, however, of Kemp’s claim that in this and other cases the boundaries of the land were walked with the Maori alienors. The boundaries of Muriwhenua South alone were over 100 kilometres.

8.3.4

never formally reserved and both were sold in 1866. It appears the smaller one may have been transferred to settle a debt. There were no areas excluded from Wharemaru.

8.3.4 Muriwhenua Peninsula

Surplus or trust?

If Muriwhenua South was the largest alienation, Muriwhenua Peninsula gave rise to the largest surplus issue, though in this case the Government abandoned any right it may have had. Previous chapters have described how, following Godfrey's inquiry, Governor FitzRoy issued to the Reverend Richard Taylor and his partners a grant or entitlement to 1706 acres (690 ha). Taylor surveyed out his half-share, for 852 acres (345 ha), to which he presumed to add 12 acres for roads, making 864 acres (350 ha). This he surveyed out as the Kapowairua block. His partners, Duffus and Lloyd, reached an arrangement with Resident Magistrate White and took their share of 426 acres (172 ha) each in Mangonui East. It is not known whether Bell did anything to tidy the position, for the old land claim file was lost some time last century. Later action would show, however, that White assumed the surplus – some 64,000 acres (25,901 ha) – was the Government's, despite the fact that, under the original agreement as Taylor understood it, the area was meant to be kept as a home for Maori people.

Attempted acquisitions

At the same time, Kemp and White attempted to acquire the lands to the south and east outside the Taylor claim boundary. They were mainly interested in land at Ohao, on the north head of Parengarenga Harbour, where low-grade coal deposits had been found, but their efforts were resisted by the local people.

The Government's surplus was never surveyed and defined, and no land purchase was completed. The position remained unresolved in 1865, when the Native Land Court was established to determine the title to Maori land. Matters remained at a standstill until the court could consider this area in 1869. In the interim, a number of people had taken up residence on the land. They presumably belonged to Aupouri and Ngati Kuri, since both are associated with the area, but an 1870 report referred only to Te Aupouri at North Cape. These were divided into two hapu: Te Ringamaui of 250 people, and Ngati Murikahakaha of 150. Ngati Kuri were apparently scattered as far as the Bay of Islands and Hokianga, but 260 people were recorded as living in Muriwhenua, at Herekino, Ahipara, and Motukahakaha though not at North Cape.⁹ These assessments, however, may reflect the influence of Resident Magistrate White, who had some antipathy to Ngati Kuri from the time they had formed Panakareao's 'police' force.

Who owned the title: the Government, or Taylor on trust for Maori?

In 1869 representatives of the local Maori, whose tribal calling is not known to us, applied to the Native Land Court to determine their rights to the land in Taylor's original claim. They may have been assisted. An application for title investigation required the completion of a surveyor's scheme plan for the land

9. 'Return Giving the Names of the Tribes of the North Island', AJHR, 1870, A-11, p 3

concerned, and this necessitated some expenditure. Behind a Maori application for title investigation at this time was usually a European purchaser for all or part of the land, who provided the necessary funds. In this case it was the trader William Yates, who had already taken up residence. Later he and White enjoyed a very cordial relationship, but initially, when the Maori application went to the court, White was opposed. He wrote to the Native Minister that the Crown had a claim on these lands and he sought the file so that the Government's position could be argued before the Native Land Court. He reported that Taylor's intention to hold the land for Aupouri:

will, I fear, tell with the Court against the Government claim, and I am most anxious to prevent an adverse decision by the Court . . .¹⁰

The matter was referred to the Registrar-General of Lands, who advised:

The native title strictly speaking seems to have been extinguished over the land described in Taylor's purchase deed – with the exceptions and subject to the occupation on sufferance [by Te Aupouri].¹¹

On the back of this memorandum, G S Cooper of the Native Department wrote a note dated 5 September 1870 for Native Minister McLean, advising:

It seems that [Taylor] bought to prevent war, and with the intention of restoring it to the original owners (Aupouri). Under these circumstances it is a question whether it would not be advisable for the Crown to abandon its claim to the land in favour of the original Maori owners.¹²

A legal opinion was sought from Attorney-General James Prendergast, who responded on 16 December 1870:

There is no doubt that the jurisdiction of the Native Land Court is limited to questions affecting land over which the native title has not been extinguished and to questions affecting lands passed through the Court and to reserves.

Assuming the land has been purchased and the sale confirmed by the [Land Claims] Commissioners, the native title is extinguished and the Court cannot legally entertain the question. But I observe that Judge Maning [of the Native Land Court] and Mr White suggest as a matter of policy that government should not insist on the Crown's possession in this case.¹³

10. White to McLean, 11 November 1870, res 2/5/2, Department of Conservation Head Office, Wellington (see doc F1; doc 13, p 151)

11. McLean to G S Cooper, 3 September 1870, res 2/5/2, Department of Conservation Head Office, Wellington (see doc F1, p 161)

12. G S Cooper to McLean, 5 September 1870, res 2/5/2, Department of Conservation Head Office, Wellington (see doc F1, p 161)

13. Prendergast to McLean, 16 December 1870, res 2/5/2, Department of Conservation Head Office, Wellington (see doc F1, p 146)

In response to a further query as to whether the Crown could legally abandon its claim, Prendergast replied that the Government could do so by authorising an agent to appear in the Native Land Court and state that the Crown made no claim and by not providing any evidence of sale.

And that was done. The case had already been adjourned several times in the Native Land Court but in the end Resident Magistrate White appeared and withdrew the Government's opposition. The court then vested the land in various persons, but only their names survive, on a title order. Particulars of why they were chosen are not known, for not only did the old land claim file go missing at this point, but the court's minute book later went missing too.

The Muriwhenua
transfer

In 1873, two years after the titles for the main Muriwhenua block were issued, a deed was produced for the transfer of one part, 56,628 acres (22,917 ha), to Samuel Yates and Stannus Jones, gum traders. There are grounds for thinking that the transaction was arranged before the title was investigated. Yates had been living on the land since the 1860s. As a gum trader and storekeeper, who had married a local Maori, he offered what Panakareao had regularly promised: that the installation of Pakeha on the land would provide long-term benefits. His wife, Ngawini, would in fact link Yates to Aupouri, Te Rarawa and Ngati Kuri. Taylor had made promises but had delivered no return. In 1843 he had accepted a posting to the mission at Whanganui, where he had remained, revisiting the North only once from 1841 to his death in 1873. In Maori law, therefore, there were no longer any obligations. It must also have been apparent to local Maori that the Government was claiming the surplus lands throughout Muriwhenua, and there was no reason to think it would change its mind here. Yates, on the other hand, offered security: he was a European, and would the Government be prepared to take the land from him? He was also friendly with White and, further, he had married into the local people. It appears to us that, to the Maori mind, Yates must have presented a solution to the problem.

White's position

White took it upon himself to deliver the purchase money of £1050. He later reported to McLean, after distributing the money at Parengarenga:

This was a portion of the Rev Mr Taylor's claim, which I some time ago recommended the Government to give up to the natives. I feel assured that the course adopted was the best: the Government could not have taken possession without compensating the resident Natives. This would have led to much excitement and discontent; whereas by the present course of allowing the Natives to sell, the Government without trouble or expense, derive a revenue both directly by fees and indirectly by the beneficial occupation of the land by Europeans.¹⁴

Taylor's position

Having heard that the Muriwhenua block had been sold, Taylor wrote to Chief Judge Fenton of the Native Land Court:

14. White to McLean, 22 April 1873, no 2, AJHR, 1873, G-1, p 1

My object in making that purchase was that the conquered tribe of the Aupouri might return to their ancient homes. I therefore gave back to them the chief part of the land at the North Cape conditionally receiving a document signed by the Aupouri chiefs promising never to alienate any portion of it. If they have done so I must appeal to you as the Judge of Native Lands whether Mr Stannus Jones [Yates's partner] can have a valid title to the land of which I was the original purchaser without my sanction. [I]f the natives have broken their covenant with me then I have returned to my original position as the first purchaser.¹⁵

We have no reason to doubt Taylor's sincerity. In their own way, each of the missionaries Taylor, Matthews, and Davis, and also Dr Ford, had sought to reserve, set aside or protect substantial areas of land for Maori. But if the world had ceased to be that of the Maori, it was also no longer the missionaries to control, and each failed. Taylor died soon after this letter, in October 1873.

Meanwhile the 1860s had been marked by the arrival of Pakeha gum traders in the north, and gum extraction had become the principal occupation of the local people. Prior to the sale to Yates there had been nothing to suggest to Maori that land sales could affect gum digging rights, for Maori had been allowed to dig on land conveyed to the Government. It was not until after the transfer to Yates that restrictions on gum digging were seen to apply on land that had been alienated, but by then Maori were dependent on gum traders, who also operated as storekeepers, and were caught in a cycle of indebtedness.

By the 1890s almost the whole of the Aupouri Peninsula had been alienated. Maori land was limited to the district around Parengarenga Harbour, the remotest point in Muriwhenua and, indeed, in the North Island, and the Parengarenga block itself was leased.

Land ownership
and gum rights

8.4 OVERVIEW OF THE PARTICULAR TRANSACTIONS

Challenges to the Government purchases and the winding up of pre-Treaty matters may be made on each of three tiers: on the particular facts; on the general performance of fiduciary responsibilities; and on the adequacy of national policies. Each is considered in turn.

8.4.1 On the particular facts

The record reveals numerous grounds for complaint, but some of the more serious are these:

- The scrip lands in Mangonui township were never investigated or purchased by the Government.
- Parts of Mangonui township were not directly and specifically purchased, and parts that were treated as purchased may not have been acquired at all.

15. Taylor to F D Fenton, 19 June 1873 (see docs B15, 12)

- When Oruru was claimed by purchase, the Government had already sold parts to settlers and possession had been taken.
- The Government's right to 4414 acres (1786 ha) of Mangatete was not established by the prescribed process of law, and it appears this area should have been retained by Maori.
- The Government's right to 2600 acres (1077 ha) of Raramata was not established either, and that area was clearly meant to be a Maori reserve.
- Puheke was estimated at 6000 acres (2428 ha) and was found after the transaction to be 16,000 acres (6475 ha).
- The Government had provided for pre-Treaty purchases to be effectuated, but had not provided for trust arrangements to be respected in order that Maori might retain their lands.
- Trust or guardianship arrangements appear to have been intended, through the missionaries, for Oruru, Raramata, Mangatete, Okiore, Tangonge, and 65,000 acres (26,306 ha) of Muriwhenua North at Parengarenga. The trust arrangements were not respected in those cases.
- Whakapaku was estimated at 2688 acres (1088 ha) and after the transaction was found to be 12,332 acres (4991 ha). At the turn of the century Maori did not know this block had been sold. They complained in 1901 that Europeans were cutting timber there.
- The 1863 Mangonui purchase for some 22,000 acres (8903 ha) east of Mangonui Harbour was so lacking for certainty on the face of the deed, and so lacking for mutuality on the underlying facts, that we consider it was ineffective as a valid extinguishment of native title over the area concerned.
- Taemaro reserve was wrongly reduced by over 65 acres (26 ha).
- The basis for the Government's right to 1482 acres (600 ha) of Ruatorara has not been established and appears to us to have no proper foundation.
- Muriwhenua South and Wharemaru were negotiated for on the basis that they were about 30,000 acres (12,141 ha) when survey showed they were over 100,440 acres (40,648 ha). Although the Government was obliged to maintain a proper record of the documentation, it cannot establish that the true area was made known before the deeds were executed.
- The Government enabled and facilitated one European to acquire over 56,000 acres (22,663 ha) in Muriwhenua North and later more, leaving over 400 Maori on much less, when the original arrangement was to maintain the whole area under a tribal trust, and when the Government's own claim to the 56,000 acres as surplus land made the private alienation inevitable.

8.4.2 The protection of Maori interests

Basis for the duty
to protect

At this point we consider the Government's management of the transactions as a whole, in European terms, and the protection accorded Maori interests, having regard to principles that were seen as important when the colony was founded.

The duty to protect may be seen to have arisen from the uneven power relationship that existed between the Government and Maori following the Treaty of Waitangi. First, unlike Maori, the Government could foretell the consequences of the land deeds once English authority was established in fact. Secondly, the Government had a monopoly and thus a control on the alienation of Maori land. The right of pre-emption in the second article of the Treaty of Waitangi had been legislated for in the Native Land Purchase Ordinance 1846, which prohibited the sale, lease, or licence of Maori land except through a Crown agent. In practice, no leases were arranged, although a lease was probably the form of alienation that was most natural for Maori. The primary issue here, then, is not the intentions of Maori in alienating, but the integrity of the Government in buying.

To make that assessment we consider below the adequacy of title and representation for effective alienations to have been made, the adequacy of boundary and other descriptions in the deeds, the adequacy of the purchase price and the sufficiency of reserves. While these things were not necessarily important to Maori at the time, or were not seen as important for reasons apparent today, they became important once the Europeans' way of working was known. At this point, however, we note the absence of protective mechanisms generally. The office of Protector of Aborigines had been abolished as early as 1845, and although there had been some problems with that office, nothing similar was put in its place. The need for protective measures was even greater, as the Government was buying land at a massive rate and scale, and there was no shortage of reminders from the Colonial Office that the Government had this responsibility. None the less, there were no arrangements for an independent audit or judicial examination of the Government's purchases. Nor would the general courts intervene in Government purchases at this time, as they were seen as acts of State.

The absence of protective mechanisms

In 1840, a significant rationale for reserving to the Government the exclusive purchase of Maori land was to protect Maori from rapacious private land-buyers who would rapidly deprive the hapu of their patrimony. By 1860 the question had become: who would protect Maori from the Government, which was doing the same thing?

(I) *The adequacy of title and representation*

As Dr Rigby pointed out, the Government purported to extinguish Maori land rights without knowing what those rights were.¹⁶ It could not have been satisfied that all Maori interests were properly represented in a transaction if no proper inquiry had been made. The Government was aware of the problem. In 1856 a board of inquiry under C W Ligar confirmed that Maori land interests were more complex than had previously been thought. There were doubts whether all Maori

Uncertain ownership and inquiries thereon

16. B Rigby, 'A Question of Extinguishment: Crown Purchases in Muriwhenua, 1850-1865', 14 April 1992 (doc F9)

interests could be adequately extinguished in any sale. Partly to overcome this problem, by 1862 legislation was in place for lands to be surveyed into blocks and apportioned to Maori in shares. Although the tribal nature of Maori land ownership was known, the Government did not propose the alternative: that the land might be vested in some corporate body representing the hapu.

We consider the 1862 legislation, and that which replaced it in 1865, was defective in failing to accommodate tribes, but none the less they show the perception of the time, that reforms were needed for sales to be made. It was known especially that Maori land ownership was too uncertain for the purposes of land sales, to the extent that in Taranaki the ownership dispute was seen as the cause of war.¹⁷ The 1862 legislation followed as a result. Our first point is that, in Muriwhenua, purchases went ahead under the old system, before reforms were made and though the uncertain title position was known.

We do not say, however, that this tenure reform was the appropriate solution. We accept that the Maori system was philosophically antagonistic to a land sale and that it had no title system for that purpose, so that it was called upon to do something it could not do. The answer, however, was not to change the local system, but adapt to it. Maori were willing to give land provided their own interests were safeguarded, so that what was needed was not a land sale but a settlement plan. As we see it, land sales were really to satisfy European idiosyncrasies, and were irrelevant, to Maori, to the larger goal.

Crown counsel contended there were few subsequent protests that the wrong people sold. We do not consider the number of protests to be much help in this instance. Prior to the Government purchases, Te Aupouri had complained that Panakareao had no authority to make an arrangement with the Reverend Richard Taylor for their area. There had always been title problems over Oruru, Mangonui, and the east. There were complaints from groups outside Muriwhenua that their interests had not been respected. There could very well have been many more complaints, were it not for the fact that there was some history to show that, generally, such complaints were not seriously inquired into.

(2) *The adequacy of boundaries and descriptions*

'Unregisterable'
documents

Were the Government required to register its conveyances, and to have those conveyances meet the standards of a reasonable registry system, we doubt that many of the Muriwhenua deeds would have passed muster. The resident magistrate's deeds were defective at Whakapaku, Mangonui, and Mangonui township. In the 1854 Oruru transaction, the resident magistrate had anticipated that land might pass by the mere production of a receipt for purchase monies, and both White and Kemp relied upon a simple form of receipt, again, at Ohinu and Kaiawe in September 1859.

Survey plans

The more regular problems in other cases were the lack of a survey plan, and the failure to specify acreages in the documents or miscalculation of the areas

17. See Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996

involved. Uncertain boundary descriptions also led to later disputes (as with Mangatete, Mangonui, Oruru, and Muriwhenua South), as did the vague references to reserves or the failure to mention them at all. The whole process was casual and second-rate.

It is tempting to assume that the dearth of qualified surveyors and the rudimentary land registry system at this time meant that survey and greater specificity in conveyancing were impracticable. We do not agree. Both the Government and the New Zealand Company entered into the colonisation of New Zealand knowing the primary need to survey land and control land titles if matters were not to get out of hand – earlier colonisation operations had shown that. Both the Government and the company brought in many surveyors as early as 1840. Specific instructions requiring the survey of Crown and Maori land were issued by Lord Russell to Governor Hobson on 5 December 1840 and 28 January 1841. To put the position beyond doubt, survey was made a pre-requisite to the release of a Crown grant by a proclamation on 27 September 1842. Survey requirements were relaxed by Governor FitzRoy for a period in 1844, but thereafter the dangers of proceeding without survey became all too apparent. A special commission had to be established under Bell to resolve the problem, and from 1856 surveys were undertaken of all the land claims in Muriwhenua where grants were proposed.

Contemporary capabilities

We therefore see no reason why survey plans could not have been completed for the transactions before deeds of conveyance were finally signed. Indeed, most of the Government purchases came after strict survey requirements had been imposed on private persons. Moreover, since surveys were done soon after the deeds were signed, it seems they could equally have been done beforehand. Even Maori had to comply with a higher standard than the Government adopted. From 1862 they were required to survey their lands before they could apply for a title. Yet it appears that survey plans were not available to Maori at the time of the execution of documents in many cases, including Mangonui, Oruru, Puheke, Muriwhenua South and Wharemaru. In the latter two cases, it appears the survey was done but not attached to the deeds. It may be speculated that they were not attached to those deeds because Ruatorara, the shipland block, was included in the same survey, and the plan disclosed that the Government was taking surplus when clearly it had no right to.

The lack of the necessary standards

Why, then, did the Government accept a lesser standard for itself? In part, the reason was probably structural. The Government was never bound to prove its acquisitions of Maori land. It was not required to register a conveyance. Native title was simply extinguished by a Government declaration that it had been purchased. Nor did the Government's acquisition have to be scrutinised by an independent judicial agency. The system enabled Government agents to take unacceptable liberties where Maori lands were concerned.

We would make special mention, too, of the lack of adequate recording. It is impossible to tell today what sketch plans, if any, were before Maori when the

The lack of adequate recording

deeds were executed. There are undated plans, missing plans and plans that are held with deeds that were completed after the deed was signed. The simple expedient was not followed of having such plans before Maori at the time, signed and dated at the same time as the deed, and then held with it. Nor were surveyors' field notes kept which may have recorded any Maori objections.

(3) *The adequacy of the purchase price*

The issue of price
was more
important later

The sufficiency of the price was not such an issue for Maori at the time, as discussed in section 5.6, for, though as high an earnest as possible may have been sought, the transaction was not seen as the end of all matters. The question of the price was raised later, when it was apparent that Europeans were working to another system. Issues of adequacy were then entertained by the Government, for, although in English law an inadequate purchase price did not in itself invalidate a contract, it was by then assumed that a fair price should be paid in dealings with indigenous peoples.

It appears to us, however, that that was not so initially. In the beginning the policy was that colonisation would be funded from the on-sale of Maori land, by buying cheap and selling well, and no injustice to Maori would follow, since they would benefit more in time, and from the increase in value to their remaining land, as Lord Normanby had said. Accordingly, in the foundation years of the colony, the first 25 years to 1865, the adequacy of the purchase price is not so important as the arrangements to ensure that Maori were in fact recompensed by additional benefits in the longer term. What lands were reserved for them, and to what extent were they assisted to develop them?

No market-
oriented
approach

For the moment, however, looking at the matter purely in terms of the prices paid, this far removed in time, it is difficult to say what a fair price might have been – especially since, in Muriwhenua, immediate on-sales to settlers were infrequent. It is telling, however, that the fairness of the price to Maori was not something market forces could settle. The Government had a monopoly. Moreover, the Government was buying rapidly to acquire large areas before settlers came, and before an influx of settlers pushed up prices to show what the land might really be worth.

How price was
assessed

Moreover, the Government was judge in its own cause as to how that monopoly might be exercised. The Chief Land Purchase Commissioner simply set the Government's maximum figure, usually at 80 percent or more below the on-sale price to settlers. In addition, district land purchase commissioners were encouraged to negotiate for less where they could. Resident Magistrate White, who was not authorised to act as a purchase commissioner but assumed the role nevertheless, was successful in achieving the lowest price: fourpence per acre for Whakapaku and threepence per acre for Muriwhenua South. District Land Purchase Commissioner Kemp was unable to match his South Island achievement of three-hundredths of a penny per acre, but he did obtain Wharemaru for sevenpence per acre and Puheke for fourpence per acre.

In 1858 Governor Gore Browne declared a national average price of 1s 6d per acre for Maori land, at a time when on-sales to settlers were at 10 shillings an acre. By the 1860s, the prices paid were more generally around two or three shillings per acre, but this was at a time when Maori had taken up arms in Taranaki and Waikato and the need was seen to show generosity in the ‘loyal’ districts.

In practice, however, the adequacy of the price could not have been considered, in most cases, for accurate acreages for the lands being acquired were not known. Where surveys had not been done before the sale, there was no provision for a pro rata increase in the purchase price if, after survey, the acreage was found to be higher. And invariably it was higher – an additional 61,000 acres (24,687 ha) in Muriwhenua South block, for example.

Nor was the value of the timber reserved, or a royalty reserved for kauri gum. It is likely that the amount recovered for timber exceeded the price paid for the land, in many cases. The value of the gum extracted probably exceeded the price of the land from which it was taken, several times over. Thus Muriwhenua South of 86,885 acres was acquired in 1858 for £1100. It was then used for gumdigging. In about 1900 it was said of the gum trader there that his shipments to Auckland every fortnight occasionally amounted in value to over £1100.¹⁸

We do not attempt to assess a fair price in these cases. We note simply the unfairness of the structure. There was no means whereby a fair price could be impartially settled with reasons given for the decision.

(4) *The adequacy of reserves*

The key to fair buying, as we see it, was the assurance of fair shares: that Maori might keep sufficient lands for themselves to enable them to benefit from European settlement and participate in the new economy. The need for such reserves was a very old assumption. The missionaries had taken lands to protect them for the tribes from well before the Treaty of Waitangi. The New Zealand Company had proposed a fixed share in reserves. The principle underlay the royal instructions under the hand of Lord Normanby, and was also expressed during the Treaty debate. In Muriwhenua, however, there was no concerted plan of action to determine what Maori might need to keep for themselves as reserves, where those reserves should be located, or how they should be constituted, managed, or retained in Maori control. In fact, no genuine consideration seems to have been given to this principle at all.

Although the Chief Land Purchase Commissioner had required adequate native reserves, he fixed no guidelines, made no systematic check – or any check at all – to see that adequate reserves were provided, and substantially changed his mind on what might be required. Reports were few; opinions were vague. Resident Magistrate White concluded:

Fixing prices for unknown quantities

Timber and minerals

The need for reserves was foreseen

No adequate reserves policy

18. See *The Cyclopaedia of New Zealand*, 1902, vol 2, p 601

An early photograph of Te Kao School, Mangonui. Photograph courtesy of the Alexander Turnbull Library (F15202¼).

I have always dealt liberally with the natives in land matters. They have plenty [of] reserves and generally the best parts.¹⁹

Such opinions were hardly proper reports, and were not only self-serving but unsustainable in fact.

Moreover, the reserves were not protected for future generations or made and kept inalienable. Most of the reserves that were made were never formally gazetted as reserves, although the law required this. Instead, the Government purchased most of them soon after they were created, or they were put through the Native Land Court process and private individuals sold them. In other words, the creation of ‘reserves’ in Muriwhenua had no reality: reserves were provided for one day, and then purchased the next.

The areas reserved from sale were inadequate, in any event. A hapu of several hundred people would have less land than one European family. Given the declared intention to provide for a Maori future, it was no answer that Maori were able to live at a subsistence level. Even if they were, traditional Maori subsistence required access to a much larger area, for hunting and foraging, than is needed for commercial farming.

On our review of the evidence, the Government agents were locked into an alternative design to gain as much Maori land as they could. In November 1861 Resident Magistrate White wrote to the Native Minister advising that he and Kemp had been:

assisting each other and acting together, as we have often done, for the advancement of the Natives . . . We have also for several years been leading the Natives to acquiesce in the desirability of ceding their lands to the Govt. There are many large districts which we are in actual negotiation for, and in the course of a few years confidently look forward to the total extinction of Native title.²⁰

We presume the intention was that Maori lands would be converted to native reserves, but the reserves were in fact few and small, and were never formally gazetted. There was no training to provide farming skills, and there were few employment opportunities. The purchase programme, on the other hand, was conducted like a military manoeuvre: first to secure a continuous band from coast to coast, then to expand outwards from either side, acquiring complete blocks with no or minimal Maori reserves, and forcing Maori on to less fertile lands on the remote perimeter. We will need to address this key question of the reserves once more, after the final result of the buying programme has been considered in the following chapter.

19. OLC 5, pp 58–566

20. BAFO-A 760/11, pp 100–104

(5) *The adequacy of national policy*

Most especially, however, as considered in the previous chapter, the Government failed to produce and maintain an appropriate settlement plan, in order to secure Maori a proper place in the future social and economic development of the district, when in all the circumstances such a plan was required.