Crown Impacts on Customary Maori Authority over the Coast, Inland Waterways (other than the Whanganui River) and associated mahinga kai in the Whanganui Inquiry District

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Introduction

This report was written for the Waitangi Tribunal over an eight month period between August 2002 and April 2003. Some of the early part of this period was worked on a part-time basis due to other research commitments. An additional ten weeks research assistance was provided later in the project by Jenny Skinner. Research for this report began with a preliminary search of all relevant claim documents for the Whanganui inquiry and a search of published documents for the Whanganui region, including various planning and policy documents produced by district and special purpose authorities. This was followed by a research hui held at Putiki marae on 7 September 2002 to establish communications with claim groups and discuss relevant claim issues in more detail.

Following this, more detailed primary research was undertaken using file records from a variety of relevant government agencies at Archives New Zealand and diary and manuscript material from the National Library and the Alexander Turnbull Library. Searches were also made at the Ministry for the Environment and Department of Conservation libraries in Wellington and the Earth Sciences Library at Victoria University Wellington. Other agencies contacted in Wellington included the Ministry of Fisheries and the Fish and Game Council. Research visits were also made to various agencies in the Whanganui region. These included current territorial authorities, Horizons.mw and the Whanganui District Council as well as the Wanganui conservancy of the Department of Conservation. Various regional repositories of historical records were also contacted and visited including the Whanganui Regional Museum, the Whanganui Library, the Whanganui Maori Land Court and the Whanganui District Council Archive. Following this initial research, the report was largely written up in the period from February to mid-April 2003 while additional research continued to fill gaps as they were identified.

Research for this report began at a time when the boundaries of the Whanganui inquiry district still had to be finally established. The research brief therefore outlined tentative preliminary boundaries, as will be described, on the understanding that further research might be required if final boundaries were extended. The focus of this report is also on coastal and inland waterway areas and therefore natural features such as watersheds, river courses and mountain ranges feature more prominently than exact boundaries based on legal tenure.

The focus of research for this report is the waterways, coast and associated mahinga kai within the Whanganui district largely bounded by the Whangaehu, Whanganui, and Waitotara Rivers as shown in the attached map. Beginning at the coast at the Whangaehu River mouth the boundary follows the course of the Whangaehu and then Mangapapa rivers into the interior towards Waiouru before rejoining the upper reaches of the Whangaehu to its source on Ruapehu. The boundary then follows along the volcanic peaks of Ruapehu, Ngauruhoe and Tongariro to the source of the Whanganui River at Tongariro on the volcanic plateau. The boundary follows the Whanganui River from its source in a northwesterly and then generally westerly direction. It skirts inside and excludes Rotoaira Lake, following the Whanganui River past Taumarunui. It then leaves the Whanganui River extending further west towards the Matemateaonga Range before turning towards the coast and following along the Waitotara River almost as far as the coast. The boundary leaves the Waitotara River just before the coast, skirting around the Waitotara block and then following the Okehu stream to the Tasman Sea. The boundary follows along the coastline from the Okehu Stream mouth, past the Whanganui River mouth as far as the Whangaehu River estuary and the starting point.

The major waterway within this district is the Whanganui River itself. However, as the Waitangi Tribunal has already reported on the Whanganui River, the research brief excluded that river from direct consideration in this report. Instead it is intended that the focus should be on issues relevant to other inland waterways and the coastal part of the district. The report was also not intended to investigate the whole coastal area and remaining waterways and associated mahinga kai in detail. Much detail is likely to be held by claimant groups and at the time of writing this claimant information was still being prepared. Instead, this report is intended to provide an overview of major historical developments impacting on iwi use and management of the coast, waterways and associated mahinga kai, including relevant Crown policies and legislative and administrative developments. It is hoped that this will provide a useful framework for claimants to use as they wish when presenting their own claims.

Given the time constraints and the overview nature of this report, there is also no intention to ascribe iwi or hapu ownership or authority over particular waterways, coastal areas, or natural resources to any particular claimant group. Instead, customary management and use are described in a general way and it is left to claimants to identify themselves with particular areas or resources. The focus of research for this report is also on published, documentary sources and the official records of central and local government agencies. This is where the

author's particular expertise lies and it is assumed claimants may want to add further to this with information from traditional evidence.

It is acknowledged that a number of other significant issues in the claim district are closely linked to issues concerning traditional authority and use of the coast, inland waterways and associated mahinga kai. For example, land alienations and the activities of the Native Land Court appear to have had a significant impact on the loss or limiting of customary authority over inland waterways and mahinga kai associated with such land. However, these issues are major topics in themselves and therefore this report touches only on those aspects of them that appear to be particularly relevant. Separate reports have been commissioned to investigate those topics in more detail and where these have been completed they have been relied on for general information. Separate reports have also been commissioned on particular land areas containing waterways and mahinga kai in the district and their alienation from traditional authority, including scenic reserves and National Parks. This report will therefore only touch on such developments and associated issues such as the later management of indigenous forests within parks, the harvesting of traditional resources from within them and the use of poisons such as 1080 and other pest management strategies. Instead, this report concentrates on issues concerning inland waterways and the coast that have not been separately addressed.

For the purposes of this report, inland waterways are regarded as any area of inland moving or still water, including lakes, ponds, rivers, springs, streams, swamps and wetlands. Catchment areas are inland waterways such as wetlands, rivers, streams and lakes that are interconnected. Coastal areas in this context include the inshore coastal area, foreshores and associated lagoons, bays, harbours and estuaries although the open seas and associated deep sea fisheries are not included.

Mahinga kai associated with coastal areas and inland waterways of the Whanganui district are also interpreted fairly broadly to include all traditional sources of food, as well as places and resources associated with obtaining, harvesting transporting, storing and trading for food. It also includes sources of plant, animal and mineral products used for rongoa or medicinal purposes or spiritual or cultural purposes and methods and procedures associated with these. For example, numerous waterways and wetlands supported a range of fisheries and plant and bird life that were consumed as food. They also sustained resources such as flax used for snaring, storing and transporting food, mud used for dying materials and herbs used for medicinal and cultural purposes. However, minerals such as coal and gold are not generally

considered in this report except in so far as their extraction might impact on waterways and associated mahinga kai and traditional authority over them.

A number of claims for the Whanganui district refer to some form of inland waterways and/or flora and fauna/mahinga kai issues. Further concerns relating to these areas were raised at research hui held at the beginning of this project. Issues raised included damage to the health of the catchments of the upper Tongariro, Moawhanga, Hautapu, Turakina, Whangaehu, and Mangawhero rivers as mentioned in Ngati Rangi claim documents and the Kokohuia swamp environmental damage referred to in a claim by Ken Mair. Further issues arising from discussions with claimants included the threat of waterway pollution from the possible redevelopment of the Tatu Coal mine in the Whitianga block and issues concerning low water flows as a result of hydroelectric development and the impact of this on wildlife. The destruction or decline of traditional resources such as plants, birds, and fish through developments associated with urbanisation, forest clearance, farming and horticultural activities were also mentioned as matters of considerable concern. These included the apparent decline in health of many waterways and their indigenous fish stocks as a result of farm pollution, fertiliser runoff, and silting from soil erosion. Particular problems with regard to this, such as the impact of carrot and vegetable washing on waterways in the Waimarino area were also mentioned.

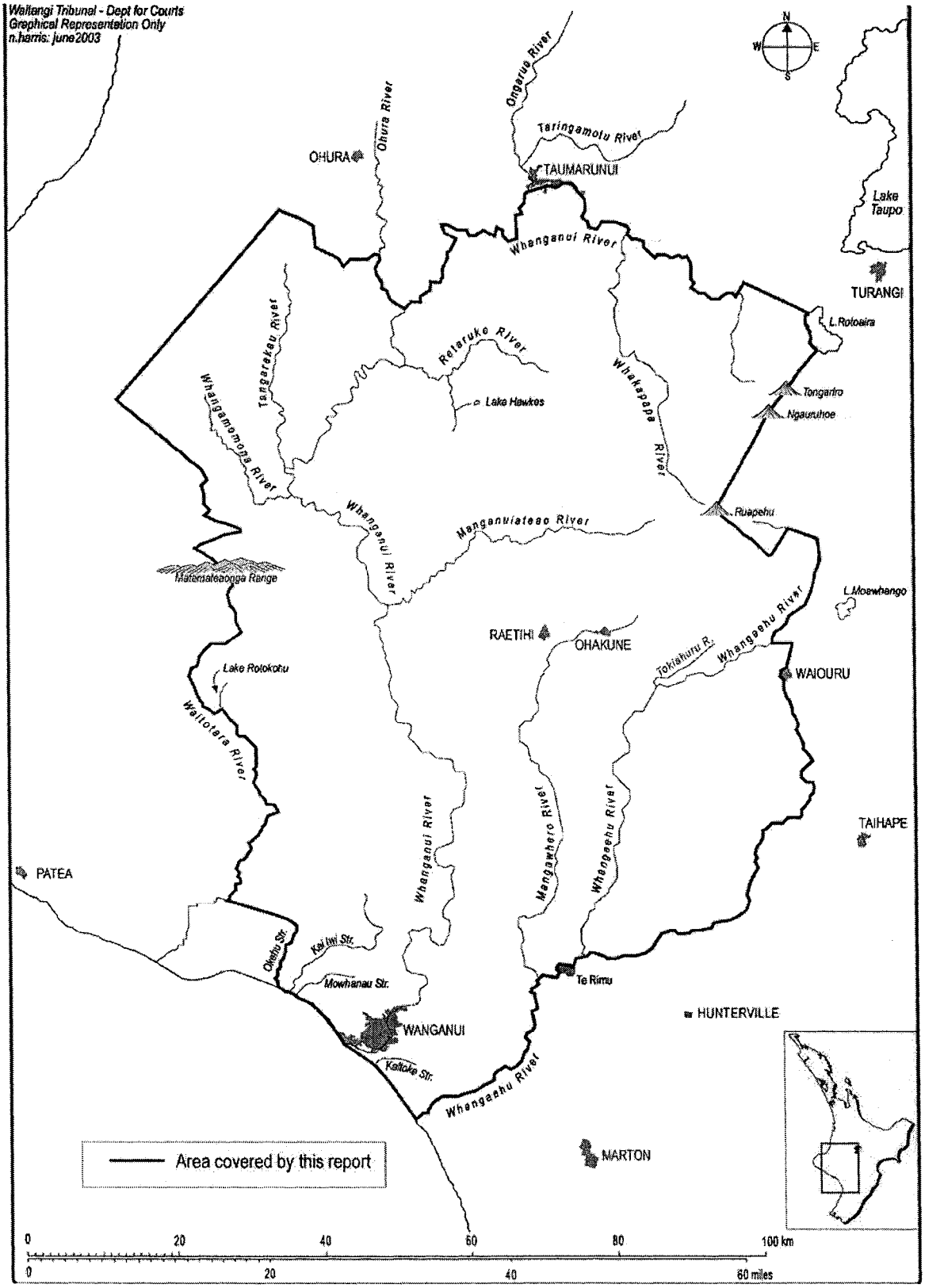
As well as issues of damage to or loss of resources associated with waterways and the coast, general concerns were also expressed about the loss or undermining of traditional forms of Whanganui Maori authority over these waterways, coastal areas and associated mahinga kai. This included concerns that traditional forms of authority could no longer be practised or were not adequately recognised as well as issues of exclusion or marginalisation from new systems of management and authority increasingly imposed over these areas. This was often expressed in terms of a failure of new systems to recognise and accommodate traditional knowledge and authority systems and an inability to effectively participate or influence new systems of decision-making, leading to damage and destruction of important traditional resources. This was apparent even where communities had managed to retain legally recognised ownership of adjoining lands such as the bed of a dune lake, although considerable concern was also expressed at the non-recognition of continuing guardianship obligations for important areas even where land ownership had been lost. In addition, there was some concern as to whether traditional authority over areas such as the foreshore, or particular fisheries had ever been willingly and deliberately given up as required by Treaty guarantees.

All relevant issues mentioned in claim documents and in research hui were taken into account in the writing of this report. However, in many cases official and other documentation of issues has largely been lost and what survives is very sparse. For example, relatively few historical records were found on Kokohuia/Balgownie wetland, Lake Rotokohu or use of artesian waters. Searches for material on the proposed redevelopment of the Tatu coal mine also turned up little information. There is also a paucity of material on quantifying actual historical destruction or damage of particular resources. What information there is also tends to be very difficult to find. Environmental issues, as recognised today, were not generally treated as proper subject headings for filing relevant material before the 1970s. For example, before this time, wetlands, if they come to official attention at all, tended to be discussed largely in the context of swamp drainage. The file records also reflect the predominance of land based issues concerned with farm settlement and development. Waterways issues therefore tend to be hidden among general information on land-based issues. In the Whanganui district, the long legal litigation over authority over the Whanganui River also tends to dominate and subsume other waterways issues. Nevertheless, an attempt has been made to provide a general historical framework for relevant developments and to indicate in the text where further more detailed research than was possible for this report might prove useful.

This report follows the general convention used in the Waitangi Tribunal *Whanganui River Report* in using the spelling 'Whanganui' for the district generally, the people and the river but 'Wanganui' for the city and its immediate environs.[1]

[1] Waitangi Tribunal, *Whanganui River Report*, GP Publications, 1999, editorial note p xxi

Figure 1: Area covered by this Report with Selected Natural Features



Chapter 1 Whanganui inland waterways, coast and associated mahinga kai pre 1839

Introduction

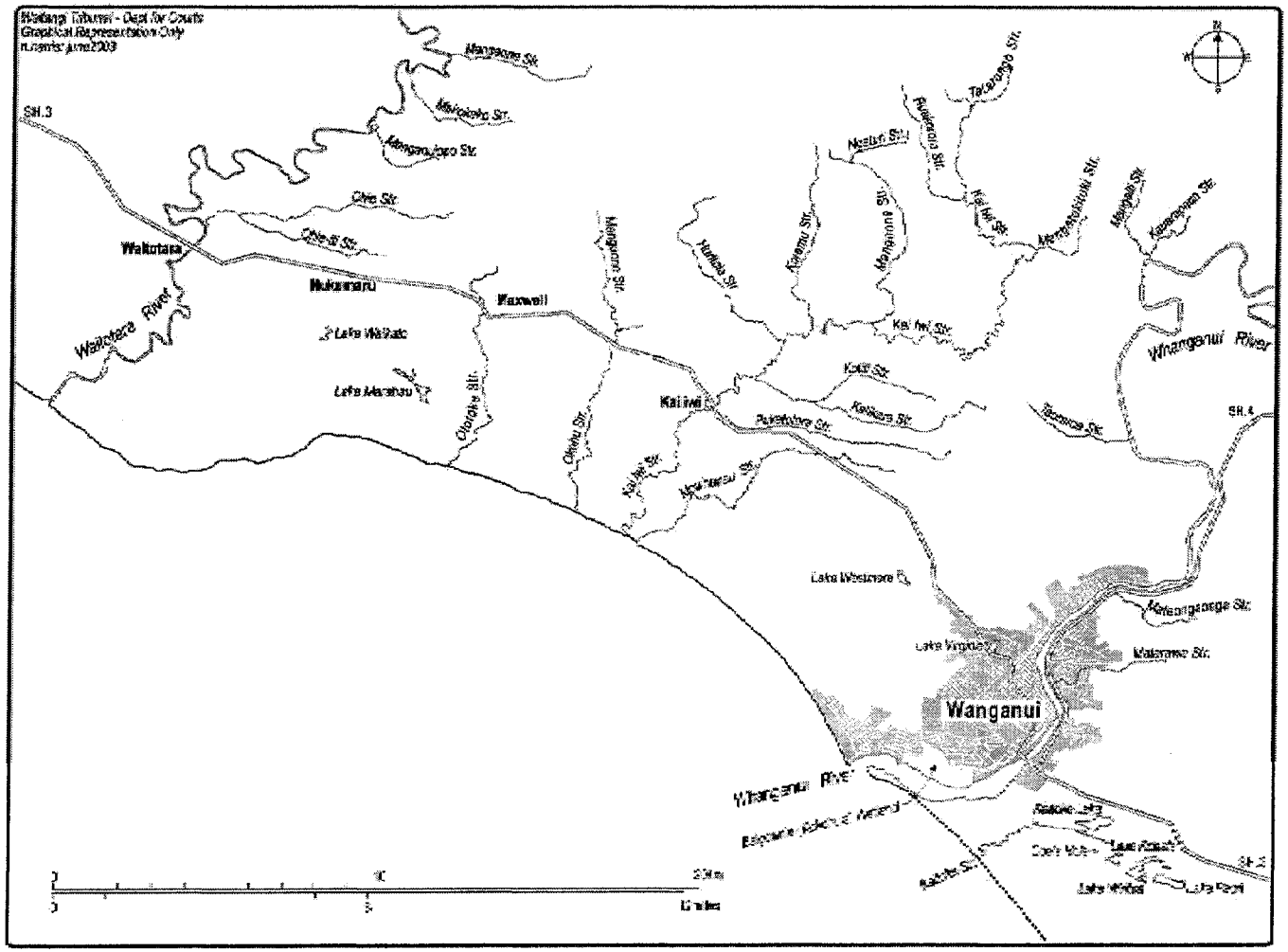
The intention of this chapter is to present an overview of the coastal area, inland waterways and associated mahinga kai of the Whanganui district and their importance to Whanganui iwi before 1839, when land purchases were first claimed to have been made in the district. Research reveals evidence of a long history of iwi and hapu occupation of the Whanganui district in which authority and use of coastal areas, inland waterways and associated mahinga kai played a major role. This value was not just for material and economic well being but also of considerable cultural and spiritual importance and this is reflected in sophisticated forms of traditional authority and management of these areas.

1.1 The Whanganui coast and inland waterways

As noted in the introduction, the Whanganui inquiry district has a coastal boundary extending from the Okehu stream mouth to the Whangaehu River estuary, a distance of just under 30 kilometres. This portion of coastline is part of a much larger western North Island coastal system extending from as far as Mokoia near Hawera in the north to Paekakariki in the south. The characteristic feature of this coast is a dynamic dune system. It has been described as the largest duneland in New Zealand and one of the largest of its type in the world.[2] It also has dune-related landforms such as dune lakes and swamps, dune flats, coastal sand spits and tidal streams and rivers.

[2] Young and McNeill, *Measures of a Changing Landscape*, Horizons.mw, 1999, p 3

Figure 2: Waterways and Coast: Whanganui Coastal District



The coastal dunelands of this system are broken only by a number of river estuaries and stream mouths.[3] In the case of the Whanganui district part of this coast, major rivers entering the coastal area are the Whanganui and the Whangaehu rivers as well as a number of smaller streams such as the Okehu, Kai Iwi, Mowhanau and Kaitoke. These waterways carry sands from interior volcanic sediments, inland mountain ranges and river lowlands and deposit them on the coast, contributing to the constant feeding of sand and sediment into the wider dune system. The dune sands are then carried predominantly in a southerly direction while the prevailing westerly winds blow the sand inland forming extensive fragile dunes that are largely wind shaped.[4] The resulting extensive networks of dunes tend to align generally in a west-northwest to east-southeast direction.[5] Some of these dunes also extend well inland.[6] Iron sands and ilmenite are common in the dune sands although decreasing in abundance to the south of the Whanganui River mouth.[7] Along the Whanganui district, the coastline between the Okehu stream and the Whanganui river estuary is characterised by sandy dune beaches backed by lahar cliffs.[8] Southeast of the Whanganui River, the backing cliffs are lower or absent and the sand dunes more low lying and undulating.[9]

This coastal dune system historically supported a variety of indigenous coastal plants. Towards the tide line plants such as sea lettuce and algae predominated. Dune vegetation included spinifex, pingao, tauhinu, taupata, sedges, rushes and coastal herbs.[10] Further inland, but still in the dunes, toetoe, cabbage trees, flax, and kanuka predominated before giving way to coastal forest trees such as akeake, mahoe, ngaio, totara and matai. In dune swamp areas kahikatea and rimu swamp forests predominated. There were also extensive flax swamps and flax shrublands. Around dune lakes vegetation commonly included rushes, toetoe, flax, and cabbage trees. Estuaries sustained a variety of native herbs, sedges, rushes and shrubs such as taupata.[11]

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[3] Horizons.mw, *Regional Coastal Plan*, 1997, p 13; Manawatu-Wanganui Regional Council, *Proposed Regional Land Management Plan*, 1995, p 18
[4] Horizons.mw, *Regional Coastal Plan*, p 15
[5] Horizons.mw, *Regional Coastal Plan*, p 13
[6] Department of Conservation, *Coastal Resource Inventory*, 1990, p 9
[7] Horizons.mw, *Regional Coastal Plan*, p 13
[8] Department of Conservation, *Coastal Resource Inventory*, p 12; Wanganui District Council, *Proposed Wanganui District Plan*, 1998, pp 1-27
[9] *Proposed Wanganui District Plan*, pp 1-27, Ravine, p 11
[10] Horizons.mw, *Regional Coastal Plan*, p 15
[11] Ravine, pp 10-12

The coastal area, although subject to considerable dune movement, also supported a number of fisheries including shellfish such as mussels, pipi, paua, and toheroa, as well as crabs, crayfish and kina. Tidal streams and river mouths contained whitebait. Coastal and estuary fish included snapper, black flounder, gurnard, tarakihi and kahawai.[12] Coastal birds included shag, heron, oystercatchers, gulls and godwits.[13]

A major feature of the west coast dune system is the dune lakes. These are characterised by being contained within dunelands and formed by sand movement, although they may be fed by springs, streams or groundwater. Scientists identify two main types of dune lake. The generally shallower basin lakes are created when new dunes restrict water runoff from an older sand plain.[14] They are often unstable in shape and form due to the mobile nature of the dunes that contain them.[15] They tend not to be 'fixed' in position and can move with sand movement in the face of prevailing winds. The valley type of dune lake is often deeper and more permanent in location. It is typically created by sand dunes blocking water run off from gullies. Valley dune lakes tend to be deeper, steeper sided and more permanent than basin lakes although they are still created by sand action. An example is Wiritoa in the Whanganui coastal area.[16] All the dune lakes vary in size and often support a rich ecology of fish, plant and birdlife. Many also provide a habitat for a range of unusual and ephemeral plants.[17]

The dune lakes located within the Whanganui district are part of a larger string of lakes that once spread right through the Whanganui coastal area and down to Horowhenua. Present day survivors of this system in the Whanganui district include Lakes Westmere (Roto Mokoia) between the Mowhanau stream and the Whanganui River, and the cluster of dune lakes between the Whanganui and Whangaehu Rivers. Part of the latter cluster includes four interconnected dune lakes south east of the Whanganui River. These are Wiritoa (Whiritoa), Kaitoke, Kohata and Pauri (Paure). The largest of this cluster is Wiritoa located about five kilometres southeast of present day Wanganui City and with a surface area of approximately 26 hectares. It is also the deepest at around 18 metres.[18] In the 1840s it was renamed 'Dutch Lagoon' by early New Zealand Company settlers. It connects with Pauri towards the

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[12] Horizons.mw, *Regional Coastal Plan*, p 15
[13] Horizons.mw, *Regional Coastal Plan*, p 15
[14] Ravine, p 9
[15] Department of Conservation, *Coastal Resource Inventory*, p 9
[16] Ravine, p 9
[17] Young and McNeill, *Measures of a Changing Landscape*, p 3
[18] Kelly D 'A Plant Distribution Survey of Twelve Coastal lakes' prepared for Rangitikei-Wanganui Catchment Board, 1978, held by Horizons.mw, p 24

southeast and has an outlet to the southwest. Like most dune lakes, Wiritoa is largely fed by groundwater infiltration, which is in turn influenced by rainfall.[19] It has a large catchment area extending east towards Lake Rotokauwau. Traditionally this lake supported a rich fishery including eels and kokopu as well as abundant birdlife.[20] Pauri lake, also named 'Widgeon' by settlers, is the most easterly of the four interconnected dune lakes. It is located approximately six kilometres southeast of present day Wanganui city. It has an inlet to the east and a permanent outlet to the southeast, which flows into Lake Wiritoa. Its catchment area also extends east to Lake Rotokauwau.[21] It is a relatively deep dune lake with a maximum recorded depth of around 14 metres.[22]

Kaitoke (also named by early settlers 'Lake St Mary's') has a surface area of approximately nineteen hectares and is located approximately four kilometres southeast of present day Wanganui City and approximately four kilometres from the Whanganui coastline. It is a relatively shallow lake with a maximum depth of just over two metres.[23] It is fed by inlet streams to the east and the Kaitoke stream forms an outlet to the west. It also has a large catchment and traditionally supported important fisheries including whitebait and eels as well as birdlife. It is the only one of the dune lakes where ownership of the lake bed is retained by Maori to the present.[24] Kohata (named 'Medina' by early settlers) is the smallest of the chain of four coastal lakes and is located about five kilometres southeast of Wanganui. It has a surface area of approximately eight hectares but is relatively deep with a maximum recorded depth of around 14 metres.[25] It has no natural inlet or outlet stream. The water level is set by surrounding catchment runoff and ground water infiltration from a relatively small catchment area. Traditionally it supported koura (freshwater crayfish) and water birds.[26]

The rest of the cluster, Lakes Rotokauwau and Grassmere, are smaller dune lakes located closer to the Whangaehu River. Lake Rotokauwau is located approximately 13 kilometres southeast of present day Wanganui city and has a major inlet to the east and a smaller one to the north. It has a surface area of around five hectares.[27] Although highly modified and often

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[19] correspondence 1985, Rangitikei-Wanganui Catchment Board, Horizons.mw file, Water general – lakes 1977-89, WG 270.
[20] Leslie, *Lakes District of Wanganui*, 1990, pp 11-12
[21] Leslie, *Lakes District,* p 14
[22] Kelly D 'A Plant Distribution Survey of Twelve Coastal lakes', p 18
[23] Kelly D 'A Plant Distribution Survey of Twelve Coastal lakes', p 14
[24] Leslie, *Lakes District,* pp 10-11
[25] Kelly D 'A Plant Distribution Survey of Twelve Coastal lakes' , p 15
[26] Leslie, *Lakes Districti,* pp 12-13
[27] Leslie, *Lakes Districi*, p 14

not recognised as a dune lake today, Virginia Lake (Rotokawau) in present day Wanganui also appears to have originally been part of the dune lake system. The dune lakes characteristically supported a rich ecology of fish, plant and bird life, including short and long finned eels, whitebait, freshwater crayfish, raupo, flax, and abundant waterfowl.[28] Water birds included brown and grey teal, paradise shelduck, shoveler, white heron, black and little shags, pukeko, dabchicks and spotless crake.[29]

The coastal river mouths of the Whanganui district constantly naturally change position due to sand movement and flooding.[30] The Whanganui and Whangaehu river estuaries are particularly ecologically rich, providing important nurseries for freshwater and estuarine species of birds and fish and were also important bird feeding and roosting areas.[31] The Whanganui River estuary is characterised by dunes and tidal flats. This estuary traditionally supported numerous wading birds for roosting and feeding.[32] It also supported many fish species including flounder, cod, gurnard and bream and freshwater native species during part of their life cycles.[33] The Whangaehu River estuary consists of tidal mudflats, bounded by sand dunes. It has traditionally been an important habitat for bird species providing valuable feeding and roosting areas for wading birds. In between these major estuaries a number of smaller rivers and streams also open into the coastal area. The Okehu stream flows through a narrow gorge in the Rapanui Terrace cliffs. Further south the Kai Iwi, Mowhanau and Kaitoke streams flow through wider valleys to the coastal area also helping to support bird, fish and plant species.

The coastal flats of the Whanganui district also historically contained numerous swamps, wetlands and springs. For example, the sand dunes on which present day Wanganui township is located contained a number of wetland areas. These supported fish and swamp plants such as raupo. The most significant of these within what became Wanganui town was Kokohuia, later to be known as Balgownie Swamp. This area was originally rich in eel and raupo.[34] It is described by Young as a 'vast wetland overflow' from the Whanganui River.[35] It was located

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[28] Leslie, *Lakes District*, pp 10-14
[29] Ravine, p 16
[30] Horizons.mw, *Regional Coastal Plan*, p 13
[31] Department of Conservation, *Coastal Resource Inventory*, p 9
[32] Horizons.mw, *Regional Coastal Plan*, p 27
[33] Horizons.mw, *Regional Coastal Plan*, p 27; Rees, 'Report on the Medical Topography of the Whanganui District' July 1851, *NZ Gazette* (New Munster) vol 4, no 29, 27 November 1851, p 175
[34] Smart and Bates, *The Wanganui Story*, 1972, p 30
[35] Young, *Woven by Water*, p 1

on the west bank of the river not far from the river mouth between present day Castlecliff and Gonville. Most of this swamp was drained and filled from the 1930s including with a rubbish dump that has only recently been closed. Present day Wanganui City also contained a freshwater spring, Wahipuna or Waipuna, located near the cliff face at what is now Languard Bluff.[36] A number of streams also flowed through the present town. These included Karamu stream, which flowed past some small dune lakes or lagoons known by early settlers as 'The Duck Ponds'. It was later renamed Churton's Creek.[37] The Mangawhero stream was an outflow from Roto Kawau (Lake Virginia). The Tangingongoro stream ran from near the Lake Westmere area and at one time took the overflow from another small dune lake Rotoiti (Pickwick Lake) which was later drained.[38] These numerous streams and waterways generally supported freshwater fisheries, wetland plants and birds such as black shag.[39]

The Whangaehu river mouth was similarly associated with nearby swamps and wetlands. For example, what are now termed the Whangaehu River Mouth Dune Hollows are currently regarded as a significant wetland by the Department of Conservation. Early visitors and settlers noted that the whole low lying coastal area of the Whanganui district appeared to contain numerous swamp and wetland areas, including the string of dune lakes, which Europeans commonly called 'lagoons'. These were rich in fisheries, birdlife and swamp plants. The importance of the small, coastal, ecologically rich waterbodies or lagoons appears to have encouraged the use of the less common meaning for 'lagoon' as a similar, small but rich waterbody located near larger freshwater rivers or waterways in the interior. For example, the term 'lagoon' often appears in Maori Land Court evidence for such small interior waterways in the district.[40] While the Whanganui coastal district may once have supported significant forests, for some hundreds of years before European contact it appears the coastal area was characterised by the absence of heavy bush and contained mostly indigenous scrub, grass, rushes and flax.[41] This may have been assisted by long term Maori manipulation of this environment.[42]

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[36] Smart and Bates, *The Wanganui Story*, p 36
[37] Smart and Bates, *The Wanganui Story,* pp 31-32
[38] Smart and Bates, *The Wanganui Story,* pp 33-34
[39] Smart and Bates, *The Wanganui Story,* pp 28-37
[40] For example, evidence re 'lagoon called Rotokohu' in Mangapapa no 2 block on Waitotara River, MLC Whanganui MB 4 p 101
[41] Rees, George, 'Report' July 1851, *NZ Gazette* (New Munster) vol 4, no 29, 27 November 1851, p 174,
[42] Ravine, *Foxton Ecological District*, p 12

While it is at times useful to describe coastal area and inland waterway areas separately, in reality they were closely connected. For example, inland rivers and streams formed ecological corridors linking inland areas to the estuaries and sea for fish and birds, many of which migrated between inland waterways and coastal areas during parts of their life cycles. Most rivers and streams in the Whanganui district have their headwaters in the interior and flow towards the western coast, providing this type of link between inland areas and the coast. They also contribute significantly to the regular flooding and overflow necessary to maintain swamps and wetlands.

Evidence provided to the Whanganui River Tribunal described the importance of the links between coastal and inland areas for many fish species. While some freshwater fish species such as non-migratory upland bully and giant kokopu spend their lifecycles in inland waters many spend part of their time in marine areas and migrated or spawned at sea. Some such as common bully and various whitebait including inanga, spawn in freshwater but have marine larval development. Others such as yellow-eyed mullet, black flounder and kahawai are marine species that feed in freshwater. Some marine species that also use a freshwater environment include common smelt and lamprey. There are also freshwater species that must spawn at sea such as various eel.[43]

The numerous interior waterways of the Whanganui inquiry district include rivers, inland lakes, streams and their associated springs, swamps and wetlands. The Whanganui River and its tributaries naturally dominate any consideration of the inland waterways of the district. The Whanganui River is the second largest river in the North Island by rate of flow and the third longest in New Zealand. Approximately 320 kilometres in length, it drains a catchment of approximately 7000 square kilometres. From its source high on Mount Tongariro on the central volcanic plateau, the Whanganui initially flows north before turning west and south to eventually enter the sea at present day Wanganui City.[44] Through most of its length the river gradient is mild with most of the drop to sea level occurring above Taumarunui. Numerous tributaries flow into the Whanganui River. Along the western catchment, these include the Ohura, Tangarakau and Whangamomona rivers carrying waters from inland Taranaki. A major tributary to the east, the Manganui a te Ao rises at the southwest base of Mount Ruapehu and extends to its confluence with the Whanganui River, south of Whakatina.

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[43] Waitangi Tribunal, *Whanganui River Report*, 1999, p 61, citing expert evidence from Ronald Little, fisheries biologist.
[44] Manawatu-Wanganui Regional Council, *Whanganui Catchment Strategy* , 1997, p 3

Tributaries of the Manganui o te Ao include the Waimarino, Makatote, Mangaturuturu and the Orautoha Rivers.[45] Other major tributaries include the Ongarue, Whakapapa and Retaruke, rivers.[46]

The Whanganui River itself has already been reported on by the Tribunal, and has therefore been excluded from direct consideration of waterways issues as part of this research report. However, its dominance among the waterways of the region and its importance as a taonga to Maori cannot be ignored and its influence looms large in any consideration of inland waterways of the district generally. One of the difficulties of researching this report has been the dominance of the river as the focus of many inland waterways issues generally.

The next major river system of the Whanganui inquiry district is that of the Whangaehu River. This river has its source in the Crater Lake of Mount Ruapehu and drains the eastern and southern sides of the mountain before flowing south west to enter the sea about twelve kilometres southeast of present day Wanganui City.[47] Major tributaries of the Whangaehu include the Mangawhero and Tokiahuru rivers as well as numerous streams. The Whangaehu River also has associated sulphur springs in the Te Pohue Valley (Ruakiwi). These were identified by early Pakeha settlers of the district as a site for bathing to cure rheumatism.[48]

Periodic overflows from the crater lake (lahars) are characteristic of the Whangaehu River, increasing water levels, water acidity and sediments. At these times high acidity can restrict aquatic life in the river as the waters are heavily charged with alum and sulphur.[49] Five notable lahar events have been recorded on the river since 1859. Taylor described a huge lahar in 1859 that brought large quantities of timber and ice down the Whangaehu piling up level with the newly built coastal bridge until finally the pressure swept the bridge away.[50] Official records also describe a huge lahar in 1861 that swept ice and snow to the river mouth undermining the recently rebuilt bridge.[51] The most recently destructive lahar was in November 1953, when the railway bridge at Tangiwai was partially destroyed. The subsequent derailment of the Auckland Express resulted in the loss of 151 lives.[52]

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[45] Horizons.mw, *Regional Plan for Beds of Rivers and Lakes and Associated Activities*, 2001, p 22
[46] Horizons.mw, *Regional Plan for Beds of Rivers and Lakes and Associated Activities*, p 19
[47] Horizons.mw, *Regional Plan for Beds of Rivers and Lakes and Associated Activities*, p 35
[48] Gilling, T, 'Whanganui Waterways Scoping Report' 2001, p 6
[49] Ministry of Works, *National Resources Survey, Wanganui Region*, p 76
[50] Taylor, *Te Ika a Maui*, pp 463-4
[51] Wellington Province, WP 3, 1861/86 letter from Engineer James Hogg to Superintendent, 14 January 1861, ANZ, Wellington.
[52] Ministry of Works, *Wanganui Region*, p 76

There are contradictory reports about the capacity of the Whangaehu River to support aquatic life given that it is commonly described as 'naturally polluted' by periodic high acidity. However, even this river appears to have had significant periods when it may have been a productive fishery. For example, early Pakeha settlers recounted how before the lahar of 1861 the Whangaehu ran clear and had many eels. They further noted that while the 1861 lahar reduced fish quantities for a while, it later ran clear again with plentiful whitebait.[53] The numerous tributaries of the Whangaehu also appear to have sustained abundant fisheries.

The northern boundary of the Whanganui inquiry district is partly delineated by the eastern catchment of the Waitotara River system. This river has its headwaters in the Matemateaonga Range and also has numerous tributaries that fall within the Whanganui inquiry district. As well as these major river systems, a number of smaller rivers and streams also enter the coastal area directly from the interior as previously noted.

The interior Whanganui district also has numerous small inland lakes and wetlands. The numerous tributary streams flowing through steep, naturally unstable hill country often produce slumps that dam gullies creating many of these lakes and wetlands.[54] Many of these are so small they do not appear on most maps. However, some are mentioned in various sources. Young has described Kawau Tahi or Lake Hawke located upstream from the Retaruke River as being located in a remote bush filled basin.[55] Early Native Land Court records also contain references to small inland lakes and wetlands valued by Maori communities as eel and whitebait fisheries. For example, witnesses gave evidence to the Court about Lake Rotokohu on the Pokeka tributary of the Waitotara River.[56] The Rotokohu wetlands including a number of small lakes and ponds are now designated a scenic reserve and are located along the Pokeka stream two kilometres above its confluence with the Waitotara River.[57] A Lake Wikinui also existed in the Te Rimu block although this later dried up or was drained. Witnesses also spoke of Lake Rotokawau at the northern end of the Rangataua block near Ruapehu.[58] Koaro springs were located on the western shore of Lake

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[53] Campion, M, *The Road to Mangamahu*, p 10, citing accounts from settler H Serjeant
[54] Ravine, *Matemateaonga Ecological District*, p 12
[55] Young *Woven by Water*, p 181
[56] MLC Whanganui MB 4 evidence on Mangapapa block with maps between pages 154-155
[57] Ravine, *Matemateaonga Ecological District*, p 41
[58] Whanganui MB no 3 pp 291-2

Rotoaira.[59] There are also other areas of significant wetlands in the interior of the district such as in the north of the region near Waiouru and Ohakune.[60]

A number of ecological surveys also report on significant wetlands now remaining in the district, including Parikino swamp, a source of pupu mud used by Maori for dyeing purposes.[61] Karakia swamp is located southwest of present day Taumarunui, and present day Mathieson wetland is located near the Retaruke River.[62] There are also significant wetlands located near present day Fordell.[63] Many of the alluvial plains and terraces of the district are also underlain by groundwater aquifers.[64] Most of these are confined, with an impermeable layer between the land and the aquifer although there can be links with above ground water systems. Artesian water was first recorded in Wanganui City from the 1890s.[65]

The numerous inland streams, rivers, lakes and wetlands of the Whanganui inquiry district supported a wide variety of fish, plant and birdlife. For example, many of the inland waterways contained bullies, smelt, inanga, koaro, kokopu, torrent fish, eels and lamprey (piharau). The interior Lake Hawke or Kawau Tahi was also apparently known for its succulent eels.[66] The various small fish collectively known as whitebait were also abundant in a number of smaller streams entering the sea. For example, the Okehu, Kai Iwi and Kaitoke streams.[67] The waterways and wetlands also provided an important food source for birds such as shag, dabchick (weweia), New Zealand Falcon (kareara), bittern (matuku), fernbird, spotless crake and the whio or blue duck.[68] The fast flowing upper reaches of many rivers such as the Manganui o te Ao and Whakapapa rivers and their tributaries provide particularly suitable whio habitats.[69]

The wetlands, swamps and springs associated with many inland waterways also supported a rich variety of plant life. These included flax swamps and flax shrublands, swamp forest trees such as kahikatea, swamp scrub, herbs, rushes and sedges such as raupo, toetoe, and a variety

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[59] MA1, 1924/379 , ANZ petition re Koaro Springs, cited in Berghan doc bank re Okahukura 8M2 block
[60] Manawatu-Wanganui Regional Council, *Regional Policy Statement for Manawatu-Wanganui*, 1998, p 27
[61] Ravine, *Matemateaonga Ecological District*, p 36
[62] C James Bibby et al, *Taumarunui Ecological District*, pp 121, 173
[63] Lake C M and K Whaley, *Rangitikei Ecological Region*, p 75
[64] Manawatu-Wanganui Regional Council, *Regional Policy Statement* , p 27
[65] Ministry of Works, *Wanganui Region*, p 38
[66] Young, *Woven by Water*, p181
[67] Horizons.mw, *Regional Plan for Beds of Rivers and Lakes and Associated Activities*, appendix 10
[68] For example, Lake and Whaley, *Rangitikei Ecological Region*, pp 17, 28; C James Bibby et al, *Taumarunui Ecological District*, pp 31-33; Ravine, *Matemateaonga Ecological District*, p 16
[69] Ravine, *Matemateaonga Ecological District*, p 16

of ferns and herbs.[70] The many river systems also sustained characteristic river and cliff side plant communities including lancewood, mahoe, ribbonwood, houheria, koromiko, five finger, ferns, toetoe, and kowhai.[71]

As previously noted, the many inland waterways also provided useful corridors for the indigenous fish and birds that migrated between inland areas and the sea during their life cycles. The generally low gradient of many connecting inland waterways also encouraged considerable inland movement of fish that might normally be restricted to more lowland areas.[72] Many of the birds that relied on waterway and wetland areas also resorted to nearby forest resources for additional food sources during certain parts of the year or their life cycles.

The numerous inland waterways also had a significant impact on the various interior landforms and associated vegetation of the district. Moving inland from the relatively narrow coastal floodplains, the landscape of the district is characterised by steep V-sided valleys, intersected by numerous rivers and streams. A distinctive large area of 'papa' rock known as Mangaweka mudstone lies to the east of the Whanganui River. Further inland the district opens out again to plain areas including part of the volcanic plateau in the northeast of the inquiry district along with the volcanic cones of Ruapehu, Ngauruhoe and Tongariro. The steep broken hill country was particularly subject to naturally high erosion but this was ameliorated to some extent by the sponge-like effect of the heavy forest cover that extended over most of the hill country district inland of the coastal area. An early visitor to the area, S Percy Smith, described the district as

> almost entirely forest-clad, with the exception of a strip along the coast some three to four miles wide, and parts of the open plains of Okahukura lying on the western slopes of Ruapehu mountain. It is, moreover, a very broken country with deep gorges, in the bottom of which flow the streams all more or less discoloured by the *papa* rocks of which nearly all this country is formed. [73]

Similarly J C Crawford on an early exploration of the Whanganui interior in 1862 described the district as divided into rough zones. He identified the first of these as the open country of

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[70] Ravine, *Matemateaonga Ecological District*, p 14
[71] For example, Lake and Whaley, *Rangitikei Ecological Region*, p 14
[72] Horizons.mw, *Regional Plan for Beds of Rivers and Lakes*, p 19
[73] S Percy Smith, 'History and Traditions of the Maoris of the West Coast', *Memoirs of the Polynesian Society*, no 1, 1910, reprint 1984, p 152.

natural fern, flax, toetoe and other shrubs along the Whanganui coast from the seashore to about ten miles inland. Inland of this was a zone of 'immense forest' growing in the broken hill country and sheltered river valleys. Inland again and east of the forested upper Whanganui was another elevated open grassland on pumice land extending towards Ruapehu.[74]

The indigenous vegetation evolved to suit the natural conditions of the district. It provided dense cover and moderated the impact of natural erosion. Beech forests grew on ridge areas and otherwise there were widespread podocarp and broadleaf forests. Species included northern rata, rimu, rewarewa, tawa, kamahi, hinau, maire, miro, totara, titoki, matai and pukatea. The dense understorey often contained numerous tree ferns, pigeonwood, horopito, rangiora, supple jack, kiekie, coprosmas and tree fuchsia. In wet, swamp areas kahikatea often predominated.[75] Where the volcanic mountain area penetrated the district, the vegetation was also characteristically submontane with shortened kamahi, fuchsia, horopito, toro and tawheowheo.[76]

These forests supported birdlife such as brown kiwi, kokako, kereru, New Zealand falcon (kareara), kaka, kakariki, fantail, grey warbler, tui, bellbird, shining cuckoo, kingfisher, whitehead and North Island robin. Many of these birds, such as the kingfisher, falcon and kereru relied on both forest and wetland and waterway resources for food.

1.2 Traditional Maori authority over the Whanganui environment

A variety of evidence indicates that the Whanganui coastal area, inland waterways and associated mahinga kai were of significant traditional importance to Maori of the inquiry district in the period before 1839 and contributed significantly to the long history of settlement of the district. Archaeological evidence indicates the existence of semi-nomadic moa hunter culture peoples in the region between from around the fifteenth century, predating larger tribal settlements.[77] Significant moa hunter sites have been found in the district. Early signs of occupation such as middens, settlement sites and shellfish pits have been found along coastal areas.[78] Dense archaeological sites have also been found adjacent to the Whangaehu

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[74] J C Crawford report 1862, *Wellington Province Votes and Proceedings* 1861-2, pp 16-17
[75] For example, Lake and Whaley, *Rangitikei Ecological Region*, pp 14-14; Ravine, *Matemateaonga Ecological District*, pp 13-14; C James Bibby et al, *Taumarunui Ecological District*, pp 20-23
[76] C James Bibby et al, *Taumarunui Ecological District*, p 23
[77] Manawatu-Wanganui Regional Council, *Regional Policy Statement*, 1998, p 23
[78] Leslie, *Lakes District of Wanganui*, p 9; Department of Conservation, *Coastal Resource Inventory*, p 10 ; Smart and Bates *The Wanganui Story*, pp 28-37

River estuary.[79] Waves of occupation also appear to have occurred along the main river systems. Since the 1700s, the Whanganui River was one of the most intensively settled areas of the lower North Island.[80]

The coastal area, inland waterways and associated mahinga kai of the inquiry district appear to have had considerable importance in supporting Maori settlement of the district. The coastal areas and associated estuaries, dune lakes and wetlands were valuable food sources. The offshore coastal seas were an important fishery and seasonal camps were established to seasonally take and preserve the fish caught. The tidal coastal area was also an important fishery for harvesting a variety of shellfish and kina, while the rich estuaries supported numerous species of fish and birds. The importance of the coastal fishery was noted by a number of early European visitors to the district. For example, Wakefield described how when he arrived at the Whanganui coast in summer 1840, a fleet of canoes were engaged in daily fishing near the Whanganui river mouth. He passed through the fleet on his way to visit a village and also noted a great deal of activity in drying fish for later use. At the time Wakefield visited, that part of the coast was settled largely on a seasonal basis with temporary fishing camps and preserved fish were transported inland to more permanent settlements.[81] An early missionary Mason also noted in 1840 a summer influx of Maori to the coastal area taking 'fish in great abundance' for the summer coastal fishing season.[82] Young also cites oral evidence about the gathering of special pipi named tuangi at the coast near Castlecliff.[83]

The freshwater springs, dune lakes and wetlands of the coastal areas were also important sources of useful plants, fish and birds. For example, the dune lakes and swamplands of the coastal flats supported important eel fisheries. Young cites oral evidence of harvesting of kakahi or freshwater mussels where Corliss Island is now, near the Wai Puna spring traditionally used for freshwater.[84] Smart and Bates, note the many ancient coastal settlements, pa and fishing villages around the Whanganui river mouth.[85] The coastal swamps and wetlands also provided swamp plants such as flax and rushes which were useful for food, medicine (rongoa), dyes and for the raw material for equipment for fishing, transporting and

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[79] Manawatu-Wanganui Regional Council, *Proposed Regional Coastal Plan*, 1994, p 29
[80] Manawatu-Wanganui Regional Council, *Regional Policy Statement*, 23
[81] Wakefield, *Adventure in New Zealand*, p 178
[82] *Rev John Mason, Letters and Journal 1839-1842*, Whanganui branch NZ Founders Society, transcribed and edited by J Mackenzie, 1994, p 20, journal entry 13 December 1840
[83] Young, *Woven by Water*, p 190
[84] Young, *Woven by Water*, p 190
[85] Smart and Bates, *The Wanganui Story*, pp 28-37

preserving food items. For example, in 1851 George Rees reported on the swamp mud of the Whanganui coastal district being used by Maori as black dye. He also noted uses for coastal swamp plants. Flax flowers were used for honey while raupo and bracken fern root or aruhe were processed for food. Flax root was also used for medicinal purposes.[86] Smart and Bates also cite the early missionary Richard Taylor as noting how pua, a form of Maori bread, was made from raupo pollen at the village of Kokohuia.[87]

The inland waterways of the district, particularly the Whanganui and its tributaries but other waterways as well appear to have provided the focus of Maori settlement in the district by 1839. These major waterways and their numerous tributaries were important for a variety of living purposes. They provided a variety of aquatic food sources, access to nearby forest resources and the valleys and cliffs created by the rivers provided fertile sheltered areas for growing crops, and defensive positions in times of war. The major waterways were also important communications and transport routes enabling access through and between areas of the district for seasonal harvesting of various resources, trading and travel for various purposes. At the same time, Maori harvested seasonal resources right across the district, including at the coastal areas.

Fish species recorded in the inland waterways of the district include: eel (tuna) of various types and taken at various stages of their lifestyle such as elvers (tuna riki); various forms of whitebait such as inanga and kokopu; freshwater crayfish (koura); freshwater mussels (kakahi); shrimp (mawhitiwhiti); bully (toitoi); small freshwater fish (pariri); grayling (paneroro or upukororo); and lamprey (piharau). As well as fish from waterways, waterfowl such as whio or blue duck was also a food source in fast running streams.

The fertile river flats and sheltered valleys created by the inland waterway system provided favourable sites for cultivating crops along waterways. These included kumara, taro, gourds and karaka groves. These fertile, sheltered flats along waterways encouraged the settlement patterns along major waterways noticed by early Europeans. As well as the major focus of settlement along the Whanganui River there were also settlements along many of its tributaries and along waterways such as the Whangaehu River and its tributaries. For example, important settlements were noted along the Manganui o te Ao River in the Waimarino area, which was also regarded as an important source of eels, lamprey, inanga,

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[86] Rees, George, 'Report' July 1851, *NZ Gazette* (New Munster) vol 4, no 29, 27 November 1851, p 175-6
[87] Smart and Bates, *The Wanganui Story*, p 30

freshwater mussels and whio.[88] The Whangaehu River valley was also an important settlement area with the fertile river flats used for cropping. Kauangaroa Pa on the Whangaehu was a major settlement and early surveyors in the valley in the 1880s recorded they could still live on pigeon and eels as well as pork.[89]

The inland waterways also provided access to nearby forest resources important for food and the materials required for snaring preserving and transporting food items. Forest birds such as kereru, kaka, tui and kokako were important food sources while their feathers were also used for a variety of purposes, including for personal decoration or for korowai or cloaks. The importance of these resources is reflected in place names such as Kokakoriki.[90] Waterways also gave access to rat (kiore) trapping areas such as at Te Hinau south of Taumarunui.[91]

Later evidence to the Native Land Court indicates that even areas that were not permanently settled were still well utilised for various resources. For example, witness evidence given on the coastal Kai Iwi block in 1889 noted many settlements in the area but also large surrounding areas where resources were used and traditionally managed. These included numerous eel fisheries in streams and swamps, as well as coastal sea fishing. Other resources harvested on the block were tawa and hinau berries, and deliberately planted karaka groves. Rats, pigeon, weka and kaka were snared; fern root dug and crops such as kumara cultivated in many places on the block.[92] Evidence on the Mairehau block given in 1899 also noted the use of inland waterways and other resources such as totara for canoe building. The area was also considered an important hunting ground before the arrival of Europeans. Rats and birds were hunted and important bird snaring miro trees and kaka perches were named.[93] Witnesses in the Rangiwaea block hearing in 1893 also described numerous eel weirs in streams and swamps, bird snares, and many named snaring trees. A number of streams were also named as bird 'snaring streams' presumably because of the attractiveness of these streams and nearby plants to such birds. Witnesses also mentioned the importance of digging fern root, and the hunting of mutton birds (titi) weka, kiwi and rats on the block. This harvesting was carried out

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[88] Voelkerling, p 138
[89] Campion, *The Road to Mangamahu*, p 13
[90] Young, *Woven by Water*, p 9
[91] Downes, T W, 'Maori Rat trapping Devices, Whanganui District', *JPS*, vol 35, 1926 pp 228-234
[92] MLC Whanganui MB 14, Kai Iwi block hearing 1889, pp 272-285
[93] MLC Whanganui MB 42, pp 213-215; 225-244, evidence on Mairehau block 1899

according to the appropriate season and occurred over large parts of the block at various times.[94]

Witnesses also described how a variety of resources had been harvested from the Mangapapa blocks along the Waitotara and Mangapapa rivers and tributaries. They described in hearings of 1880 and 1881 how they and their ancestors had hunted fished and cultivated on the blocks. They had settlements, numerous eel fisheries and a fishery on the small interior Lake Rotokohu. Nearby were forest areas where they snared birds and obtained timber for canoes.[95] Similarly in the interior Rangataua block hearing, witnesses noted that although some of the land near the slopes of Ruapehu was generally rocky and bare with stunted sub-alpine vegetation, other parts were used for hunting. Mention was made of bird snaring trees, and the fishery of Lake Rotokawau at the northern end of the block.[96] In 1881 witnesses in the Waiakake block hearing near Rangataua described the streams crossing the block and also mentioned bird snaring near the lake. Rat, kaka, weka and kiwi hunting were also noted. Another known and traditionally used resource on the block was a red ochre pit, indicated by the name Kokowai. One witness also described flax dressing on the block.[97]

Other forest and land based resources were important in activities directly associated with the use and management of waterways. For example, manuka stakes were used to anchor pa tuna to the beds of rivers and kareao or supplejack was often used to lash the pa tuna together. Totara was also used in the construction of pa tuna and waka. Flax was important for numerous uses including the construction of hinaki or eel baskets and in the manufacture of rope for various purposes. Tough kiekie and akatea vine were also important construction materials for a variety of bird, kiore and fish snares.[98] Totara bark was also used in the Whanganui district for making patua or baskets in which birds were preserved.[99] Other plants such as rau nikau were used to wrap eel for cooking also providing greens to eat with eel.[100]

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[94] MLC Whanganui MB 16, pp 403-482
[95] MLC Whanganui MB 4, pp 34-37, 101, 106.
[96] MLC Whanganui MB 3, pp 216-298
[97] MLC Whanganui MB 3 pp 162-174
[98] Downes, T W, 'Notes on eels and eel weirs' *Transactions and Proceedings*, vol 50, 1918, pp 308-310; Downes TW 'Bird-snaring etc, in the Whanganui River District', *JPS*, vol 37, 1928; pp 3-29; TW Downes, 'Maori Rat trapping Devices, Whanganui District', *JPS*, vol 35, 1926 pp 228-234.
[99] Downes T W, 'Bird-snaring etc, in the Whanganui River District', *JPS* vol 37, 1928 pp 10-11
[100] Young, *Woven by Water*, p 183

Plant materials were also important for a wide variety of medicinal or rongoa purposes. For example, the top leaves of koromiko were used for an upset stomach.[101] An early medical authority in the Whanganui district also noted the traditional use of hinau bark, toetoe root, flax root, clematis juice and kahikatea berries for rongoa.[102]

The waterways and coast of the Whanganui district were not just important for food and associated materials. They were also important communication and transport routes. The Whanganui River itself was a major transport route linking the interior North Island with the western coastal area. Its length and relatively easy gradient meant that canoes could travel over much of its length. The various tributaries and other river systems of the district also provided many important internal transport links. Many of these routes have been described in a number of published accounts and early maps and plans. For example, Young describes two main routes from the west as the Tongaporutu and Taumatamahoe tracks. The northern Tongaporutu track bridged the headwaters of the Tongaporutu River in north Taranaki and the Tangarakau River, which is part of the Whanganui watershed. The Taumatamahoe track joined the Whanganui at Puketapu about one and half days paddling above Pipiriki. These two tracks were networked by several north-south subsidiary connections and it was possible to join the Taumatamahoe track from several feeder tracks further west and south, like one from Te Ngaere in Taranaki, which Richard Taylor took in 1846. The Ohura River entering the Whanganui at Maraekowhai was another link in this system.[103]

There were also tracks from east and west of the district feeding into Pipiriki from where travellers could paddle up or down river. Further south of Pipiriki at Tawhitinui near Moutoua Island a track ran to Waitotara. Up the river from Pipiriki the Manganui a Te Ao tributary also provided an important link for trading to and from the interior Taupo region.[104] Early Pakeha explorers such as Richard Taylor and Jerningham Wakefield were to use a number of these routes.[105] In pre-European times these tracks were used for a number of purposes, including access to seasonal resources such as the coast for summer fishing, travel for a variety of community purposes such as to attend tangi and also as important trade routes. For example, the upper Whanganui people traded piharau for a particular koaro unique to Lake Rotoaira on

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[101] Young, *Woven by Water*, p 154
[102] Rees, George, 'Report' July 1851, *NZ Gazette* (New Munster) vol 4, no 29, 27 November 1851 p 176
[103] Young, *Woven by Water,* p 21, Voelkerling, p 11
[104] Voelkerling, p 138
[105] Voelkerling, pp 138-139

the edge of the district and would also trade for karengo (seaweed) with the Ngati Kahungunu people of the East Coast.[106]

The coastal area, inland waterways and associated mahinga kai were also important not only for material resources such as food, equipment and construction materials but also for a variety of cultural social and spiritual purposes that were important for establishing and maintaining hapu and iwi identity and mana. These included the maintenance and transmission of knowledge and belief systems and the development and maintenance of relationships within wider kin groups and with outsiders. The special relationship of Whanganui people with the Whanganui River has already been described in some detail in the Waitangi Tribunal's Whanganui River Report of 1999. For example, the Tribunal noted that:

> The river was central to Atihaunui lives, their source of food, their single highway, and their spiritual mentor. It was the aortic artery of the Atihaunui heart. Shrouded in history and tradition, the river remains symbolic of Atihaunui identity.[107]

Although the Whanganui River was clearly a major focus for people of the district, there is evidence that other waterways and associated areas were also of considerable spiritual and cultural significance and presumably claimants will provide more evidence on this. For example, David Young has recorded oral evidence of the importance of the Mangatiti stream on the upper Whanganui for the Ngati Haua people who consider it tapu, being the site where important knowledge about the food and medicinal properties of a type of tawa tree was obtained from an early encounter between their ancestors and spirits.[108] Young also notes that the interior Lake Kawau Tahi (Lake Hawke) was reputed to be the birthplace of the Hine Ngakau people of the area. It was considered to have a taniwha and was considered very tapu.[109] The uses of the coast and inland waterways for purposes such as fisheries also provided a means of transmitting knowledge and cultural beliefs to younger generations.

The evidence indicates that the coastal area, inland waterways and associated mahinga kai of the Whanganui district were of considerable importance to the hapu and iwi who settled in the district. Early Pakeha visitors often assumed that the district was one of abundance where Maori could simply pluck and eat when they got hungry. For example, a traveller Thomas

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[106] Young, *Woven by Water*, p 85
[107] Waitangi Tribunal, *Whanganui River Report*, p xiii
[108] Young, *Woven by Water*, p 150.
[109] Young, *Woven by Water*, p 181

Kelly noted in the early 1890s that the people of the upper district simply fished when food was short, hunted pigs when the larder was empty, planted potatoes, kumara and corn in season and on the whole led lives of 'leisured ease'.[110]

However, the evidence available suggests that instead, the New Zealand environment was not an easy place to live, as Pakeha who were lost in the 'bush' without Maori assistance soon discovered. Instead the apparent success of Maori, materially and in their rich cultural life relied to a large extent on the sophisticated systems of knowledge and management they had developed over coastal, inland waterway and mahinga kai areas. These traditional systems of knowledge and authority have been described generally elsewhere.[111] For example, methods of fishing in coastal or inland fisheries were closely based on extensive knowledge of fish species, their habits and lifecycles. They were also closely associated with appropriate rituals and they employed active systems of managing or enhancing the environment such as modifying a wetland environment to encourage an eel fishery, channelling rivers and tributaries for eeling and seeding shellfish beds in a coastal area. Management and resource conservation methods also employed techniques such as rahui and tapu to restrict and conserve use of resources.[112] These management systems were not always evident or fully appreciated by early Pakeha visitors. They tended to only associate systems of management of resources with systems they were well acquainted with, such as settled systems of agriculture or horticulture, while dismissing seasonal harvesting as opportunistic 'plucking' of available resources.

Most of the evidence available to this author of traditional systems of authority over the Whanganui coast, inland waterways and associated mahinga kai comes from official records and published accounts, as at the time this report was written claimant oral evidence was still being prepared and was not readily accessible. It is likely that more detailed evidence will be provided from claimant sources.

Much evidence about fishery management practices in inland waterways in the district have been reported on by the Waitangi Tribunal with regard to Whanganui River, but similar practices such as the use of eel weirs also appear to have been employed on other inland

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[110] Kelly, p 13
[111] For example, NZ Conservation Authority, *Maori Customary Use of Native Birds, Plants and Other Traditional Materials*, 1997
[112] NZCA, *Maori Customary Use*, pp 92-94

waterways in the district. For example, the report cites conservation management practices such as ensuring only a certain size fish were taken

> 'they didn't go out fishing and eeling and just stay there and take hundreds – which they could have done because there were plenty at that time - they just went to get sufficient food...The little ones were always put back, and you only took a certain size so as the population was plentiful all the time'.[113]

The Whanganui River report also notes that similarly, restraints were placed on fishing when stocks were low, to allow numbers to increase.[114] The missionary Richard Taylor also described traditional management techniques such as rahui and tapu. Places were tapu for certain periods, rivers till fishing was ended, cultivations until planting or harvesting was completed, districts until either the hunting of rat or catching of birds was done and woods until the fruit of the kiekie was gathered.[115]

Eels were a major source of food in the Whanganui district and taken by a variety of methods from numerous waterways at various stages of their lifecycle. They were often the primary source of meat in the district and could be kept for future use by either preservation or by being kept alive for some time in special holding hinaki. An early observer of eel fishing techniques in the district, T W Downes, noted how carefully local Maori distinguished between various types of eel for various purposes. He noted twenty-one varieties of eel described to him by a Waitotara informant.[116] So detailed was the knowledge of eel fisheries at various waterways in the district, Downes noted various linguistic and procedural differences in the naming and undertaking of eel harvesting along the Waitotara, Whanganui and Whangaehu waterways.

Downes and other observers also noted the variety of methods employed to snare eel at various types of waterway and at various times of their lifecycles. This included pa tuna and hinaki commonly employed in fast moving water, many of which could be extremely large and sophisticated. Accounts also note the many other methods used according to the type of waterway involved. For example, spear fishing was used in some suitable streams. The small

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[113] Waitangi Tribunal, *Whanganui River Report*, p 59, citing evidence from Mr Mareikura
[114] Waitangi Tribunal, *Whanganui River Report*, p 60
[115] Taylor, *Te Ika a Maui*, 1974, pp 55-56
[116] Downes T W, 'Eels and Eel Weirs', *Transactions and Proceedings*, vol 50 1918, p 305

elvers moving upstream were also caught in special traps. [117] Witnesses in the Mangapapa block Native Land Court hearing in 1881 also noted that on the Mangapapa eels were caught by hand rather than weirs.[118]

Observers also note Maori willingness to engineer and modify certain wetland areas to increase the eel catch. For example, European observers described 'eel cuts', which were commonly made to encourage eel into weirs and snaring areas where they could be caught in abundance. Cuts varied according to the situation of the fishery. For example, in the low lying swampy coastal flats among the dune lakes in the area between the Whanganui and Whangaehu Rivers, a cut or drain would be dug from the 'lagoon' or swamp to an area well out on the coastal sand flats. When heavy rains caused the waters in the swamps or lakes to rise, the eels were enticed down the cuts and could then be easily harvested as they came out on the sand flats. Some cuts would also direct eels into weirs. The dune lakes, being relatively low lying and also having natural waterway connections appear to have been an area where extensive cuts, weirs and similar fisheries modifications were made. [119]

The missionary, Richard Taylor also described eel cuts as drains made from lakes or swamps with eel weirs at their outlet to catch fish, which flowed in great quantities during floods. These cuts were important and carefully managed by their owners who according to Taylor were extremely jealous of them.[120] Eel cuts were apparently not confined to the coastal swamp fisheries but were also often used in suitable locations along interior streams, wetlands and lakes. For example, a witness explained during the Mangapapa block hearing in 1881 that there were eel weirs at inland Lake Rotokohu 'where the eel cuts join it with the Waitotara River'.[121] This indicates that many waterways and wetlands of the district were not only fished but also modified to encourage and promote fishery catches. These modifications were deliberate and treated as being subject to ownership and management rights.

The lamprey or piharau was also considered an important delicacy and could be kept fresh for some days in holding baskets although it was difficult to preserve. These fish were also taken by specialist methods. Downes notes that while it was rarely seen swimming upriver, it was

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[117] For example, Downes T W, 'Eels and Eel Weirs', *Transactions and Proceedings*, vol 50 1918; Mair, 'Notes on Fishes in Upper Whanganui River' *Transactions and Proceedings*, vol 12, 1880.
[118] MLC Whanganui MB 4, p 35
[119] Downes T W 'Eels and Eel Weirs' p 305
[120] Taylor, *Te Ika a Maui*, 1974, pp 384-5
[121] MLC Whanganui MB 4, p 106

nevertheless caught in considerable quantities in traps constructed for the purpose.[122] The catches were also accompanied by appropriate ritual to ensure continued success and the continued health of the resource.

Many of the rituals also had a practical purpose. For example, waste was generally moved away so as not to pollute a fishery. Mair noted that when the papanoko fish was caught 'great ceremony 'was observed in cooking them and they were 'taken some distance from the village for the purpose'. [123] Young records oral evidence that when freshwater mussels or kakahi were gathered near the Whanganui River mouth they were not opened there but carried away to eat.[124] Downes also described how eel weirs, sea fishing grounds and fishing rocks were traditionally assigned proper names in the Whanganui district.[125] As noted, later Native Land Court evidence has many examples of particular snaring and hunting areas in the district being named. This reflected their importance, the authority exercised over them and the specialist knowledge built up around them.

The knowledge and management of these natural resources contributed to hapu and iwi mana and to spiritual and cultural beliefs and practices. For example, Whanganui was associated with the travels of the great explorer Kupe whose adventures are recalled in place names such as 'Kai Hau o Kupe' (Castlecliff).[126] Knowledge of resources was transmitted through place names and cultural traditions, such as the creation story for Virginia Lake or Roto Kawau or the name of Kaikokopu pa in present day Wanganui after the abundant fishery of that name in a nearby stream.[127] The resources provided from the coasts and inland waterways were also important for maintaining and developing reciprocal social relationships between kin groups and with outsiders. Resources such as eel and lamprey were apparently important trade and gift items. Dyes and ornaments such as feathers were important to cultural traditions. The successful use of coastal areas and inland waterways through the exercise of traditional forms of authority appears to have been a significant factor in the successful and lengthy settlement of the Whanganui district in the years before 1839. It was also likely to prove crucial in new economic opportunities opening up for the district.

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[122] Downes, T W, 'Eels and Eel Weirs' p 306
[123] Mair, 'Notes on Fishes' *Transactions and Proceedings*, vol 12 , May 1880 p 315.
[124] Young, *Woven by Water*, p 190
[125] Downes, T W, 'Eels and Eel Weirs' p 307
[126] Smart and Bates, *The Wanganui Story*, pp 20-21, 30
[127] Smart and Bates, *The Wanganui Story*, pp 23-25; p 34

By the early nineteenth century complex tribal relationships had developed in the area. It is not the intention of this report to describe in detail these relationships. They are likely to be covered in more detail in other reports and by claimants themselves. However, very briefly, the grouping known collectively as Te Ati Haunui a Paparangi with the ancestral strands Hine Ngakau, Tamaupoko and Tupoho occupied the central area along the Whanganui River. Within this overall grouping were numerous hapu and iwi groups. For example, the people from the lower reaches of the river include Ngati Paerangi, Ngati Pamoana, Ngati Poutama and Ngati Hau. Further up the river are Ngati Tupoho, Ngati Tuera, Ngati Hineoneone, Ngati Kura, Ngati Ruaka and Ngati Rangi. Ngati Haua are of the upper river with Ngati Patutokotoko based on the Manganui a te Ao.[128] The central Te Atihaunui peoples of the Whanganui river were surrounded by other groups who also have interests in the inquiry district. These include Ngati Tuwharetoa at the northern headwaters of the Whanganui River, Ngati Maniapoto and Ngati Maru towards the north west boundaries, Ngati Ruanui and Nga Rauru of the western catchment area and Ngati Apa to the south and east. Through intermarriage, hapu of the border areas could relate to descent groups on either side.[129]

There was apparently a long history of inter group conflict and ebbs and flows in the fortunes and competitive strength of various groupings within the district but also a very long history of intermarriage, interrelationships and interconnections many based on relationships and use and access to inland waterways, the coast and associated mahinga kai. These relationships provided a means by which various groups of the district could act together when their mutual interests were threatened, especially by outsiders. This gave rise to a number of ancient proverbs or whakatauki to describe such relationships such as (in translation) 'a spliced rope, entire from source to mouth' and 'a spliced rope, if broken, is made whole again'.[130]

1.3 Early contact

The earliest forms of contact between people of the Whanganui district and Europeans appear to have largely been indirect and through other Maori along well established traditional trade and communications routes. An early introduction appears to have been some forms of disease brought into the district from northern areas through trade routes. Downes records traditional accounts of an epidemic of disease, possibly small pox, which spread through the

[128] Young, *Woven by Water*, p 16
[129] Waitangi Tribunal, *Whanganui River Report*, 1999, p 32
[130] Young, *Woven by Water*, p 18

district towards the end of the eighteenth century apparently originally from sailors. This was known as Ngerengere or Rewarewa (after the spotted timber).[131] The term Ngerengere also appears to have been used for later diseases such as leprosy.[132]

Other early introductions also presumably acquired through trade routes were more welcome and appear to have been adopted enthusiastically. For example, pigs appear to have been well established by the 1830s when the trader Nicol bartered for them along the Whanganui river.[133] The Reverend John Mason also noted in 1840 that Maori living up the Whanganui River already had plantations of potatoes, kumara and maize.[134]

The Whanganui district also felt the impact of some of the consequences of the musket wars of the early nineteenth century. As a result of wars further north, around 1819 or 1820 a musket-armed northern taua of Kawhia/Taranaki allies moved through the Whanganui region on their way south to seek possible opportunities for settlement in the southern North Island area. During this time the taua attacked and defeated an Atihaunui pa at Purua near the river mouth. A combined force of Atihaunui with help from their allies Ngati Tuwharetoa confronted the party on its return journey and eventually defeated them well upriver at Kaiwhakauka.[135]

This was followed by further disturbances when a heke of Kawhia and Taranaki allies moved through the district again in the early 1820s on the way to a successful conquest of the lower North Island area. At this time the Whanganui peoples appear to have withdrawn into the interior as the heke passed along the coast although people of the district were involved in fighting with their kin in a number of later battles in the lower North Island area. In 1821 Wanganui people were also involved in successfully fighting off a taua from the East Coast.[136]

The Kawhia/Taranaki allies were successful in establishing themselves in the lower North Island, although not without some opposition from local iwi. Some Wanganui warriors were involved in this resistance and in retaliation, Te Rauparaha attacked the Whanganui district again in 1829 when a number of important Whanganui chiefs escaped into the interior. There

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[131] Downes, *History and Guide to the Wanganui River*, 1921, p 70
[132] Rees, George, 'Report' July 1851, *NZ Gazette* (New Munster) vol 4, no 29, 27 November 1851 p 178
[133] Young, *Woven by Water*, p 18
[134] Mason, John, *Letters and Journal 1839-1842*, journal entry 19 November 1840, p 15
[135] Downes, *Old Whanganui*, pp 119-124
[136] Chapple and Veitch, *Wanganui,* 1939 p 11

was more fighting in the district in 1832 when a Taranaki heke reached Whanganui. The successful Kawhia/Taranaki allies quickly gained control of the trade routes around Cook Strait including patronage of European involvement in the whale trade. This enabled them to largely control the trade with European in arms and powder as well as other valuable imports.

This success not unnaturally caused considerable concern among neighbouring iwi who felt vulnerable and on the periphery of trading opportunities. This perceived vulnerability may have been a factor in a population shift from coastal Whanganui to upriver areas, with only seasonal visits to the coast. Downes' records that by the 1830s no Maori were living permanently at the Whanganui River mouth, largely due to Te Rauparaha's raid.[137] Early Pakeha missionaries such as the Rev John Mason also noted that around the Whanganui river coastal area, Maori had temporary huts for fishing season while their pa and cultivations were mainly upriver.[138] On visiting Whanganui Wakefield noted the large fishing camp at the Whanganui river mouth. He recorded that his Maori informants had told him that their main pa and cultivations were up river, which was more fertile for crops and safe from hostile attacks. The villages near the sea were only used during the fishing season when the fishery was abundant and constant fine weather allowed daily fishing. To Wakefield this temporary occupation explained why the villages seemed so poorly built and badly fenced. The fences were in fact little more than windbreaks.[139] It seems that by this time the Whanganui people favoured the interior for more permanent settlements. The river valleys provided sheltered fertile areas for cultivations while they were also more easily defended.[140]

The movement from the coastal area suggests that by the late 1830s people of the district still felt vulnerable from possible predatory raids from their southern neighbours, particularly when those neighbours also controlled the main centres of European trade in the district including arms. The same monopoly on trade threatened future opportunities for Whanganui peoples to take advantage of trade and new imports as a means of reasserting or increasing their mana in the region. This logic may have encouraged them to seek their own independent trade outlets they could more fully control. One possible means of achieving this was to have their own Pakeha traders and their own independent supply of arms and other goods.

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[137] Downes, *Old Whanganui*, p 168
[138] Mason, *Letters and Journal*, letter to CMS 20 September 1840, p 10
[139] cited in Downes, *Old Whanganui*, pp 180-1
[140] For example, Voelkerling, p 11

Many Whanganui based chiefs had relatives in the Kapiti-Waikanae region and they could see the benefits accruing from Pakeha trade. However, the Whanganui input into this trade appears to have been peripheral. There were some early visits by Pakeha traders to the Whanganui region with mixed success. Many appear to have been more independent traders from the Kapiti region extending their search for resources rather than the establishment of more permanent trading centres at Whanganui.

The early trading visits were most concerned with trade in resources such as flax, seals and whales. The demand for flax was driven by a world wide demand for quality rope for purposes such as rigging. This led to traders visiting a number of localities to bargain with local Maori for supplies of dressed flax or muka in return for trade goods. Much of the low-lying land along the Whanganui coast was swampy and flax grew well. It is likely that flax traders would have visited especially during the boom years of the late 1820s although there is little in the way of documented evidence. By the early 1830s the flax trade had begun to decline but Wakefield later recorded that a trader named David Scott told him in 1840 that he had operated a flax trading station at Whanganui in 1831.[141] Scott had operated as a trader out of the Cook Strait area and other early trading settlements although documented records of his activities are sparse. It seems likely that he may have periodically called in to Whanganui to barter for flax as part of his trading activities.

The deep sea area off coastal Whanganui was also a known travel route for whales, including the more sought after sperm and right whales, as whale as the occasional humpback, fin, small pygmy sperm, beaked and blue whales.[142] Wakefield described whales calving at 'Motherly' bay or the Taranaki Bight along the coastal area between Kapiti and Cape Egmont.[143] It seems likely that these were first hunted by off-shore sea-based whaling ships. These off-shore whalers are likely to have had little contact with local people. However, by the late 1820s shore-based whaling stations were being established around New Zealand, including around the Cook Strait area. The first documented shore based whaling station was not established at Whanganui until the early 1840s when an independent settlement was already being established.[144] However, there may have been some interest on the part of Whanganui

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[141] Barret, T M, 'David Scott-An Early Flax Trader' p 26
[142] Burgess, 'Whaling' 1997, p 8
[143] Wakefield, *Adventure in New Zealand,* p 245
[144] Burgess, p 7

chiefs in encouraging independent whalers into the district earlier, although such whaling may have been opportunistic rather than from an organised station.

Even though direct contact with traders was relatively peripheral, Whanganui was still linked with the outlying Cook Strait area and tended to attract some of the more independent traders of the Kapiti region. One of the first reasonably well documented visits by one of these traders was that of Joe Rowe and a small trading party to the Whanganui River mouth in 1831, largely because it resulted in the capture and killing of some of his party. Rowe was a Kapiti based trader who dealt in arms to Te Rauparaha, and also as a sideline business, the dried human head trade.[145] His group met with some Ngati Tuwharetoa people near the river mouth and after a scuffle some of Rowe's party were killed and others taken prisoner. One of these, Andrew Powers was taken by an interior river route to Taupo and in the process made the first recorded visit of a Pakeha through that interior district. He was later released on payment of a ransom by the East Coast trader Tapsell and later told his story to the Reverend Taylor.[146] In 1861 he moved on to the Australian goldfields.[147]

Three years later, in 1834, another Kapiti based trader John Nicol known as 'Scotch Jock'. moved to the Whanganui River area.[148] He had the advantage of his wife's kinship with the people of Kahura just north of Pipiriki and traded arms and ammunition for pigs, flax and articles such as flax mats.[149] As part of this trade he made frequent runs between the Whanganui River and the market at Kapiti. Although he was offered the use of some land to operate a trading store on the river he left the district after about thirteen months and later opened an accommodation house at Paekarariki.[150]

From the mid 1830s there was also some missionary influence in the Whanganui area. Reflecting the largely indirect contact with Pakeha in the district, the first missionaries were apparently Maori. Some were killed by local people but from 1838 Wiremu Te Tauri from Taupo apparently successfully preached in district.[151] The Pakeha missionaries who visited and began working in the district from the late 1830s found that Whanganui people already had some familiarity with Christian practices and had adopted some. For example, when

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[145] Young, *Woven by Water*, p 15
[146] Young, *Woven by Water*, pp 15-16
[147] Chapple and Veitch, *Wanganui*, p 14
[148] Smart and Bates, p 46
[149] Chapple and Veitch, *Wanganui*, p 18
[150] Smart and Bates, pp 46-47, Chapple and Veitch p 20
[151] Voelkerling p 48; Chapple and Veitch pp 21-22

Henry Williams visited Putiki in 1839 he noted how he found Maori already interested in Christianity.

The evidence by the late 1830s suggests that Maori of the district were showing some interest in establishing more direct and ongoing contacts with Pakeha and Pakeha innovations, ideas and introductions. As part of this they appear to have had some interest in having their own independent outlet for trade. However, their expectations with regard to this were also based on previous experience. They did have some experience of trading with Pakeha and they knew from what they had seen of Kapiti that Pakeha traders generally operated in small groups and were more interested in resources such as flax, whales and pigs than in acquiring large areas of land. These traders tended to move on if resources failed or if they stayed it was generally by marrying into a community and maintaining ongoing reciprocal relationships. Their presence undoubtedly brought new influences and ideas and some pressure for change, but overall they were fundamentally reliant on Maori patronage and support and lived under traditional forms of authority.

At the same time, while the idea of having their own trade outlets and alliances with Pakeha appeared increasingly attractive the Whanganui district was also becoming more attractive to Europeans largely because of its proximity to the trading centre at Kapiti and the new settlement being planned at Port Nicholson. Early Admiralty charts apparently described the Whanganui River as the Knowsley River and the mission ship, Active mapped the coast in 1814 showing the river as Knowsley and the river mouth as Knowsley Bay.[152] However, other than this, official European knowledge of the district was sparse.[153] By the late 1830s missionaries and traders were providing more information as were Maori informants visiting the Kapiti area. When the New Zealand Company decided to set up a speculative colonisation scheme and wanted to acquire as much land as possible to do so, the proximity of the Whanganui district to the already relatively known area of Cook Strait immediately made it more desirable. However, the colonising plans of the New Zealand Company introduced a whole new focus on land and resources well outside what Whanganui Maori generally may have expected or imagined at the time.

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[152] Smart and Bates, *The Wanganui Story*, p 45
[153] Downes, T W, *Old Whanganui*, p 171

Conclusion

The coast, inland waterways and associated mahinga kai of the Whanganui inquiry district appear to have contributed significantly to the extensive and successful Maori occupation of the district in the years before 1839. These areas not only provided practical necessities such as food, medicines and materials for equipment, shelter and construction materials. In many cases they were also important communications, trade and access routes. The knowledge and belief systems and cultural and spiritual practices associated with coastal areas, inland waterways and associated mahinga kai were also significant contributors to hapu and iwi identity and mana and the development and maintenance of relationships with outside groups.

The use of these areas was not the simple process assumed by some early Pakeha visitors. Instead, evidence suggests that success relied on detailed knowledge built up over long experience and the application of traditional forms of authority and management. There had been some changes in the traditional balance of power in the lower North Island by 1839 and although it may have caused Whanganui Maori to focus settlement on their interior they were still exercising traditional authority over coastal areas through seasonal use.

The Whanganui peoples were part of traditional trade routes through the North Island as evidenced by their indirect acquisition of many European introductions by the 1830s. They were willing and apparently keen to develop their own trade outlets with Pakeha. They were also motivated by the need for security and the opportunities seemingly offered by independent trading to enhance mana and wealth through new opportunities. However, their experience and expectations of contact with Pakeha was based on what they had already seen and experienced by the late 1830s. This was predominantly small groups of Pakeha traders who were interested in trade in resources rather than extensive land holdings, and who maintained reciprocal relationships with the Maori communities they traded with while leaving traditional systems of authority fundamentally intact.

Although recent upheavals had possibly caused some population shifts from the coastal areas, the Whanganui district still very much under traditional authority. The coast may not have been permanently settled but this did not mean that authority over it had been abandoned. As Wakefield could see for himself by the busy fishery, the coast was still very much subject to traditional usages and management. There may have been some shifts within the traditional

balance of power as periodically happened, but traditional systems of authority themselves over the coast, inland waterways and associated mahinga kai remained.

Chapter 2 The impact of the Whanganui purchase 1839-1860s

Introduction

In 1839 Whanganui hapu and iwi exercised rangatiratanga over the entire Whanganui inquiry district including the coastal area, inland waterways and associated mahinga kai. By 1860 this situation had begun to change and settlers and their government were beginning to challenge Maori authority in the coastal area at least. However, this challenge may be more apparent with the benefit of hindsight than it was at the time. The major challenge to Maori authority at this time was through land alienation and in particular the claimed New Zealand Company purchase and its 'completion' in the Whanganui coastal area by the Crown. This was claimed to have extinguished Maori customary authority over the purchased area and replaced it with an authority emanating from the Crown. It was also assumed that the purchase was based on English legal concepts including the primacy of land ownership over other associated resources such as adjoining waterways. In fact, for much of this time these presumptions may not have been entirely obvious to Maori but by the 1860s settlers were more confident of imposing their views.

The process of land alienation in the Whanganui district began with the New Zealand Company claim to have purchased the whole district in the years from 1839 to 1840. This was followed by a lengthy process of Government attempts to investigate and 'complete' a smaller purchase area around the Whanganui river mouth. As part of this, a new deed was signed in 1848 to finally 'complete' the purchase. However, even this deed left many details of the purchase uncertain, particularly with regard to the reserves to be set aside for Maori. These do not appear to have been fully 'settled' until the early 1860s, by which time the district was close to becoming engulfed in war.

The Whanganui purchase area was still a relatively small proportion of the whole claim district by the early 1860s. However, it was significant in that it reflected Crown policies and assumptions concerning legal recognition of Maori authority over waterways and mahinga kai once land purchasing began in the district that were to have long term importance. Even so, this may not have been so obvious to Maori communities for much of the period to the 1860s. Instead, it seems that at this time differing Maori and settler understandings and expectations concerning the settlement were able to co-exist to a large extent, particularly with regard to inland waterways and associated mahinga kai. Maori appeared to believe that the settlement

would fulfil their expectations of a relatively small trading settlement and indeed for some time this appears to have been the practical reality. As part of this Maori tended to encourage this settlement by sharing use of waterways and their resources without necessarily feeling their overall authority was being undermined. Settlers in particular often expressed impatience that their expectations of developing an extensive farming settlement intended to eventually be independent of Maori support were being thwarted. It appears that settlers and officials were also often reluctant to clearly explain their views and assumptions on the full implications of land ownership to Maori where it was thought this might provoke conflict. The practical reality of the first two decades of the settlement and the early success of Maori participation in the new economy may well have tended to encourage them that their own expectations and understandings were being fulfilled.

Nevertheless, settlers were able to coopt government officials to largely seek to promote their aims. The Crown became involved in completing a purchase area considered sufficient to meet the needs of farm settlement and in the process appeared to negotiate reserves that 'interfered' least with settlement and placed Maori at a disadvantage in the new economy. By the late 1850s it does appear that there was a growing concern among sections of Whanganui Maori that continued Pakeha pressure to alienate lands in the district might prove more disruptive of traditional authority than had originally been anticipated. There were significant differences of opinion among iwi and hapu about how best to address this concern. Opinions ranged from favouring continued support for the settlement at Whanganui in an effort to more effectively manage European influence, to those who decided to join in physical resistance to the extension of Pakeha authority and continuing land sales. This was reflected in the differing stances among Whanganui peoples with regard to involvement in the New Zealand wars beginning in the 1860s.

2.1 The New Zealand Company Purchase 1839-40

In 1839 the New Zealand Company sent a hasty expedition to New Zealand to buy land as cheaply as possible for its speculative colonisation scheme. The catalyst for this haste was the imminent official intervention of the British Government in New Zealand, which would oblige the company to buy land for a higher price through the Government.[154] On arriving in the Cook Strait area, Company representatives, William Wakefield and his young nineteen

[154] Burns, *Fatal Success*, p 84

year old nephew Edward Jerningham Wakefield set about buying as much land as they could in as short a time as possible, on both sides of the Cook Strait. From August to November they visited areas around Cook Strait and encouraged chiefs to sign a number of deeds that purported to buy very large areas of land. As they were about to head north in November to inspect Company claims at Kaipara and Hokianga they were delayed by strong winds. During this time on 16 November 1839, three Whanganui chiefs visited their ship, the *Tory*, then anchored off the Waikanae coast. After 'all the usual explanations' and having described the boundaries of their claimed lands, and receiving a gun each in part payment they signed a deed which had been translated to them.[155] This deed claimed to purchase 'all their district from Manawatu to Patea'.[156]

The chiefs, Te Kiri Karamu, Te Rangi Wakarurua and Kuru Kanga, had been persuaded to sign a deed, which purported to sell a very large area of land to the New Zealand Company. The land claimed ran from the mouths of the Patea and Manawatu Rivers and inland to the volcano or Mountain of 'Tonga Ridi'.[157] The deed claimed all the lands, and islands, tenements, woods, bays, harbours, rivers, streams and creeks within the area claimed. Within the area ceded, the New Zealand Company promised to reserve a portion 'suitable and sufficient for the residence and proper maintenance of the said chiefs and their families'. The deed was written in English only and was apparently translated to the chiefs before they signed it. One of the chiefs, Kuru remained on board the ship, which then sailed to the Whanganui River mouth. Poor weather prevented the ship anchoring and the chief landed alone with the promise that on their return from the Hokianga the Wakefields would complete the purchase transaction.[158]

Shortly after this, in December 1839, the CMS missionary Henry Williams visited the Whanganui coast and attempted to protect some of the inhabitants from purported sales of large areas of land. At the recently re-occupied Putiki-Wharanui pa near the river mouth he secured signatures to a document claiming to buy and hold in trust 'Ngati Awa' land from Rangitikei to Patea for those affected Maori for their benefit alone.[159] It is not clear what those chiefs involved understood by this. In any event, such trust deeds do not appear to have been regarded favourably by either the Church Missionary Society or by the British Government.

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[155] Wakefield, *Adventure in New Zealand*, p 104
[156] Burns, p 119
[157] Copy of deed of sale NZC 3/8, no 60 p 387
[158] Spain report 1845, *BPP* (IUP) vol 5 p 81
[159] Downes, *Old Whanganui*, p 182-3

The Waitangi Tribunal in the *Whanganui River Report* notes that when the Land Claims Ordinance 1841 was later passed to investigate pre-1840 transactions, no provisions were made to validate such trust deeds and although the Government was aware of them, trusts such as that of Williams 'fell into obscurity'.[160] It is also possible that Whanganui Maori saw no need for any kind of trust at this time and preferred to deal directly with possible new sources of trade and economic opportunity. In addition, they may have felt that the trust was overtaken by Williams' later promotion of the Treaty of Waitangi and its guarantees in the district.

A couple of months later, in March 1840, William Wakefield sent Edward Jerningham Wakefield to 'complete' the claimed Company purchase of the Whanganui area. EJ Wakefield then made two visits to the Whanganui river mouth. In March 1840 he travelled overland to Waikanae and then headed by canoe to the Whanganui River mouth. A storm forced him to land at the Whangaehu and so he walked the last part of his journey. At Whanganui he met with Kuru and travelled a short way up river with him where he met the chiefs Peehi Turoa, Rangi Tauira and Hori Kingi Te Anaua and around 300 of their people. He was shown Henry William's trust document but discounted it, claiming it was an 'arrant falsehood'.[161] He also apparently felt able to ignore the new Governor's instructions of January 1840 stopping private purchases on the grounds that he was simply 'completing' one already begun. Wakefield crossed the river and with some guides met more people at the Waitotara, Whenuakura and Patea rivers. He did not present much in the way of goods on this visit but promised to return. He left for Waikanae in mid April and immediately began praising the potential of the Whanganui district for European settlement.[162]

E J Wakefield returned to the Whanganui River on 19 May 1840 with goods to 'complete' the New Zealand Company transaction for Whanganui. His ship anchored about a mile above Putikiwaranui and Wakefield claimed they saw 'very few' Maori in the villages near the sea.[163] Instead Kuru, who had sailed with him, set off up river to gather people from the interior to conclude the purchase.[164] In the meantime, on 23 May 1840, the missionaries Henry Williams and Octavius Hadfield visited Putikiwaranui and presented and explained the Treaty of Waitangi to the chiefs and people there. It was apparently explained as an

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[160] Waitangi Tribunal, *Whanganui River Report*, p 115
[161] Wakefield, *Adventure in New Zealand*, p 177
[162] Chapple and Veitch pp 27-28
[163] Wakefield, *Adventure*, p 205.
[164] Wakefiled, *Adventure*, p 205

agreement for ongoing relations between Maori and Pakeha with promised Crown protection including through pre-emption in land. Representatives from various parts of the river were present and ten Whanganui chiefs signed the Maori text on 23 May, while a further four signatures were collected on 31 May.[165] Henry Williams later reported to Governor Hobson that chiefs on both sides of Cook Strait including on the northern side 'as far as Wanganui' had signed the Treaty 'with much satisfaction'. He described them as much gratified that the Treaty would act as a check to the 'importunities of the Europeans to the purchase of their lands' and that 'protection was now afforded to them in common with Her Majesty's subjects'.[166]

In the meantime, Kuru apparently encouraged numbers of people from the interior to gather near the coast to negotiate with Wakefield. This gathering was held at the seasonal fishing settlement on the opposite bank to Putiki.[167] This fishing settlement is most likely to have been Pakaitore. It seems that Wakefield had made little effort to include the Putiki people and by this time most of the principal chiefs who had gathered there to sign the Treaty had apparently left.[168] It is possible Pakaitore was regarded as a more 'neutral' venue for a meeting of people from all parts of the district, but nevertheless important chiefs of the coastal river area were absent.

Accounts of the reading and signing of the Company deed at Whanganui and the accompanying distribution of goods are confused and highly variable. Evidence later given to Commissioner Spain was also highly contradictory as to various understandings of the meaning of the event. Estimates of those present varied from 400 to 800. The English version of the deed was apparently translated to the gathering and then according to Wakefield's evidence 27 chiefs boarded his schooner and placed their marks on the 1839 deed.[169] Later that day £700 worth of goods were laid out on the shore and Wakefield watched an unruly scramble for them from his ship.

The Reverend Richard Taylor was critical of the way E J Wakefield had conducted the purchase. He believed that Wakefield had failed to ensure that those chiefs who had signed received their due share. Instead, according to Taylor, he abandoned the goods before their

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[165] Orange, Claudia. *The Treaty of Waitangi*, pp 62-63
[166] Henry Williams to Captain Hobson, 11 June 1840, *BPP* (IUP) vol 3 p 227
[167] Wakefield, *Adventure*, p 206
[168] Spain report, 31 March 1845 *BPP* (IUP) vol 5 p 87.
[169] Wakefield, *Adventure*, p 208

delivery and his own agent Kura appeared to secure 'much the largest portion of the booty'.[170] Importantly, Taylor also considered that Maori were likely to have viewed the procedure as a trading transaction, rather than a land sale because the next day ten tons of potatoes and thirty pigs were left for Wakefield. Wakefield viewed this as a separate 'private speculation' of his own. He took the goods back to Wellington for resale and left a blanket for every pig and tobacco for the potatoes. However, to Maori the potatoes and pigs could just as easily be seen as a trade transaction for the goods earlier received from Wakefield at the deed signing. Spain was later critical that chiefs such as Kuru who were principal promoters of the sale appeared to gain most of the goods while the payment made to the Putikiwaranui people was 'very trifling' and their principal people were absent. He was also critical of Wakefield entering a private speculation at the very time he was supposed to be paying the same people in similar goods for the sale of their land.[171]

It is beyond the scope of this report to investigate the claimed Company purchase in detail and the focus of this report is limited to those issues relevant to coasts, waterways and associated mahinga kai. Nevertheless a number of serious criticisms have been made of the 1839-40 purchase. Commissioner Spain who reported on his official investigation of the matter in 1845 was critical of the New Zealand Company for entrusting such an important transaction to someone of such 'youth and inexperience'.[172] As noted, Spain was also critical that the deed and its intent seemed to have been only imperfectly explained to Maori at the time. He noted the questionable conduct of Wakefield in confusing claimed payments for land with private speculations he was already engaged in and that he had continued at the same time the claimed sale took place.[173] Spain also found that the payment goods had been distributed inequitably and several major chiefs especially from Putikiwaranui had been unaware of the transaction.

Historians have also criticised the purchase deed for the large amount of land claimed, the vagueness of the boundaries, the generally poor translations and the failure to consult all those with interests in the land. Further criticisms include the lack of adequate protocol, the appearance of gift exchange or trade rather than a land transaction, and formal Maori evidence

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[170] cited in Waitangi Tribunal *Whanganui River Report* p 117
[171] Spain report p 87, *BPP* (IUP) vol 5
[172] Spain report *BPP* (IUP) vol 5 p 87
[173] Spain report, *BPP* (IUP) vol 5 p 87

to Spain that there was no general agreement to sell land, merely a willingness to allow settlers to occupy certain designated places.[174]

There is also some doubt as to Maori understanding of the concepts involved in the deed. There does not seem to be any doubt that many Whanganui Maori were keen to develop some kind of direct relationship with Europeans that would provide them with an independent and ongoing source of trade. These expectations were based on previous experience and the kind of trade that Wakefield appeared to be engaging in on the beach may have seemed to support this. In return for this trade many chiefs were apparently willing to grant some kind of occupancy rights and the idea of a small permanent settlement of Europeans within the district providing markets for goods and sources of new products and technologies is likely to have been appealing. Previous experience indicated that while these new communities might be expected to cause some change and possibly stress, they could ultimately be absorbed into traditional cultural and political structures without significantly undermining them.

However, the New Zealand Company was promoting a new form of settlement that was quite outside the experience and expectations of the Whanganui people. This involved large numbers of European settlers interested not only in resources and extractive industries but in obtaining exclusive and permanent possession of large areas of land. The Company relied on speculation in large areas of cheaply acquired land to succeed. This was a new unexpected focus and it is not apparent that it was clearly understood by Maori.

There are also issues about the Maori understanding of the concept of a land 'sale'. A number of historians have already noted that it is not at all clear whether Maori generally fully understood the concept of a sale at this time as a complete transfer and loss of all recognised interests, relationship and authority over the land involved. Instead, Maori may well have based their involvement in such transactions on their previous experience and cultural understandings which were much closer to granting occupancy rights and use of resources while relationships with those occupying were maintained.[175] By the late 1830s those Maori from areas where there had been a flurry of claimed land sales had begun to understand that Europeans had different ideas of land transactions, but understandings of how different were still far from clear. Ultimately powerful chiefs could still repudiate claimed sales if they chose. As the Whanganui River Tribunal noted, Maori use of the word 'sale' was not

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[174] For example, Burns, *Fatal Success;* Wards, *The Shadow of the Land*
[175] For example, Ward, Alan, *An Unsettled History* , chapter 4

necessarily evidence of their understanding of its legal meaning. It was simply the Pakeha term for whatever they were doing. Traditionally Maori had no word for sale. Further, in the context of making contracts with people of an oral culture, 'the written contract may not represent the intentions of both parties.'[176] It is also not clear that even as understandings developed further over the transfer of land ownership in a sale, it was fully appreciated that this land transfer also automatically included associated waterways and mahinga kai.[177]

Little of what was discussed in detail around the 1839 Whanganui deed has been recorded and much of the deed seems on the surface to have inherent contradictions. For example, the deed claimed to have purchased all interests in islands, woods, bays, harbours, rivers, streams and creeks as well as lands. This indicated that the Company understood Maori might have a variety of interests in these areas all of which needed to be extinguished if such districts were to be 'freed' from all customary interests for the purpose of settlement.

At the same time, the deed promised suitable and sufficient lands would be reserved for Maori within the purchase area. There were clearly differing assumptions by the Company and Maori about what this might entail. It was in the Company's interest to reduce this area as much as possible, while Maori customary use required ranging over large areas of territory for seasonal resources. The Company had a complicated system of providing reserves for Maori out of its land purchases, which appears to have generally been simplistically explained as providing Maori with 'sufficient' for all their needs. However, even while the system may have seemed plausible in theory the Company appeared to put much less thought into how it would work in practice. For example, there was considerable confusion over how 'investment' and 'occupation' reserves would be selected and protected. The system also assumed that Maori had large areas of 'waste' land of no use to them that could only be made valuable by 'civilised' European settlement.[178] This underlying assumption of what the Company thought Maori might require as 'sufficient' does not appear to have been adequately explained to them. The concept of purchase reserves was only vaguely referred to New Zealand Company deeds and although Wakefield insisted it was perfectly well explained at Whanganui, this is by no means clear.

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[176] Waitangi Tribunal, *Whanganui River Report*, p 111
[177] Ward A, *National Overview*, vol 1, p 97
[178] For example, see Burns, especially chapter 12

It may have seemed perfectly natural to Company officials that Maori would willingly give up their traditional authority over land, waterways and resources in return for around one tenth of their former district. However, it is by no means clear that Maori chiefs were willingly and deliberately agreeing to this through the deed. Burns has described this assumption as 'ludicrous' especially when it went against known Maori preferences for communal living and use of resources.[179] Nevertheless, Maori may well have been reassured by verbal promises of being left with sufficient for all their needs. The apparent conflict between this promise and the large areas of land required by the Company may not have been obvious to chiefs with little or no experience of land speculation or large scale immigration.

Maori confidence that the Company transaction would meet their aim of establishing more secure trading opportunities appeared to be well founded at this time. Trade, rather than planned settlement was the most noticeable activity for some time. The missionary Mason noted in 1840 a growing traffic in small trading vessels between Whanganui and the Kapiti area including the new Port Nicholson settlement. He recorded that Whanganui Maori were anxious to trade pigs for articles such as guns, powder, blankets and tobacco.[180] E J Wakefield himself appears to have engaged in the kind of trading many Whanganui Maori were expecting. As noted, he had apparently already been trading with Kuru, exchanging Wellington blankets and other goods for Whanganui pigs even before the deed signing at Whanganui.[181] As noted, he continued trading even while arranging the deed signing, although he insisted the claimed land purchase and trading should not be confused.[182]

Wakefield also continued trading with Kuru after 'completing' the purchase deed. He returned to Wellington in June 1840, having asked local Maori to build houses near the river to accommodate the expected white people.[183] Mason's assistant Richard Matthews noted in late 1840 that Maori were very keen to have some promised settlers among them and were expecting good prices for the houses they were building to sell to them.[184] Wakefield returned to Whanganui in August of 1840 where he again promised to establish a trading station.[185]

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[179] Burns, p 89
[180] Mason, *Letters and Journal 1839-1842*, p 13, journal entry 11 November 1840
[181] Wakefield, *Adventure*, p 211
[182] Wakefield, *Adventure*, p 212
[183] Wakefiled, *Adventure*, p 212
[184] Matthews, *Letters and Journal 1838-1846,* letter 13 November 1840 pp 10-13
[185] Wakefield, *Adventure*, p 279

This time he noted that some European traders had begun operating in the Whanganui river mouth area and a new dockyard was being established there with Maori permission.[186]

Wakefield returned with trade goods to Whanganui in October and again in November 1840.[187] He followed this with several trading trips over a number of years. He hired trading ships for several months at a time, loading them with goods for Whanganui while his trading partner Kuru collected pigs and later potatoes in the Whanganui district to trade in return. Wakefield also noted other trading crews engaging with groups of Maori in the Whanganui area from 1840.[188]

In early 1841, the Company in its haste to find 'overflow' land for Wellington settlers attempted to begin establishing a settlement at Whanganui before the Government had recognised a valid sale. A number of surveyors were sent to Whanganui in early 1841 closely followed by a group of Company settlers. The missionary Mason noted the influx and while he was concerned about the possible corrupting influence of Europeans with low morals, he also admitted that Maori themselves were excited by the arrivals. He described how many Maori came from upriver with produce to trade.[189] He further noted that when he visited some of the upriver settlements in late 1841, he found communities very keen to trade, wanting him to buy baskets of potatoes as white people did. When he refused in favour of preaching the gospel, he described a number of the people as being very put out.[190]

As well as continuing trading, E J Wakefield was also involved with the new settlement, accompanying the surveyors to Whanganui in 1841. He opened his large house (built and gifted to him by Maori) to settlers and operated it partially as a trade store. Wakefield noted in early 1841 that the white population had become 50 to 60 and nearly all the houses built by Maori in expectation of the settlers had been bought.[191] This perhaps indicates the approximate size of settlement Maori were expecting. Wakefield also noted that many Maori were employed in building fences, assisting to land goods and similar measures and that some of the settlers were trading with Maori while waiting for their land and buying up Maori

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[186] Wakefield, *Adventure*, pp 278-9
[187] Wakefield, *Adventure*, pp 291, 297
[188] For example, Wakefield, *Adventure*, pp 291-2
[189] Mason, *Letters and Journal 1839-1842*, journal entries 4 and 10 January 1841, p 22
[190] Mason, *Letters and Journal 1839-1842*, journal entry 20 November 1841 p 16
[191] Wakefield, *Adventure*, p 321

produce to keep themselves going.[192] This again tended to confirm Maori expectations of a trading village.

Maori generally appeared to favour the new settlement as long as it provided the expected trade opportunities and did not expand outside the areas allocated. Settlers were at first very small in numbers while trading opportunities flourished. The missionaries had already noted that the coastal area around the Whanganui River mouth had become in a large part only seasonally used by Maori. The settlement at Putiki was apparently thriving again but large parts of the other side of the river were apparently largely used for seasonal fishing. Maori apparently believed that settlers could occupy some of this area without necessarily interfering with their own continued use. This was most probably based on an expectation of a small, largely trading settlement. Mason later described how he and his assistant had initially felt obliged to live one on each side of the river to placate both communities at Putiki and Pakaitore. However, a number of Maori had then moved to the Putiki side of the river having sold much of their side to Wakefield.[193]

The missionaries also described continuing events that indicated Maori traditional systems of authority and cultural norms were still very much in operation in the district including the coastal area. For example, their letters and journals describe the periodic visits of war taua to the district pursuing traditional concerns during August 1840 and again in April 1841.[194] Mason also noted that while there had been some population movement to the coast as a result of the new trade opportunities, in general most Maori still seemed content to remain living in the interior along the large rivers. Some never visited the coast, and as a result, the missionaries were obliged to travel frequently up river.[195] This indicates that far from being willing to abandon their traditional way of life, Maori tended to view the new settlement as a largely welcome trade outlet to be absorbed into traditional ways of living rather than supplanting them.

From the beginnings of planned settlement at Whanganui there appears to have been a flourishing trade between the new town and Maori with Maori providing pork and potatoes in abundance.[196] This was added to within a short time by fruit, vegetables and poultry.

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[192] Wakefield, *Adventure*, p 322
[193] Matthews, *Letters and Journal 1838-1846*, letter John Mason to CMS April 1842 p 50
[194] Mason, *Letters and Journal 1839-1842,* journal entry 6 April 1841 p 26 and letter 30 June 1841 pp 28-29
[195] Mason, *Letters and Journal 1839-1842*, letter 30 June 1841 pp 28-29
[196] Voelkerling, p 28

However, although Maori enthusiastically adopted goods, plants and animals considered beneficial, they were selective. Henry Churton noted in 1844 that Maori only grew some new plants and vegetables and did not bother with others offered to them. He wrote that Maori asked how much any new introduction might bring in trade with whites and if there was no chance of it selling then they took no further interest.[197] Again, this indicates that Maori were focused on trade.

Maori permission for settlers to occupy some coastal land reflected their wish to have a small trading settlement. However, the Company and settlers had quite different expectations of more extensive settlement. From 1841 the Company surveyors, in contravention of Maori understandings, began surveying on both sides of the river for country land for settlers.[198] Company settlers also had their own expectations of being able to move out from trading into more extensive farming, eventually making themselves independent of Maori. They bitterly resented Maori refusal to allow them to occupy the outlying land and Maori expressions of authority over the 'purchased' area. Henry Churton complained in 1841, for example, that Maori were rejecting the sale now that they were becoming more aware of the value of land. He recorded that they were insisting that settlers could only occupy a small area from the town to the sea which was nearly all sandhills and even those who agreed land had been sold, still insisted that any timber had to be paid for separately. Any person wanting a log was obliged to pay a blanket for permission to cut it.[199]

Although settlers complained, Maori views prevailed at this time. While trading went ahead, Whanganui Maori only permitted settlement in what was then the town area on one side of the river. Occupation of lands beyond that, including the country sections the Company was selecting was for the most part firmly rejected. As the surveys and selections made the Company intentions for a much larger settlement more apparent, Maori became increasingly concerned and protested. Surveyors were repeatedly obstructed and settlers were prevented from taking up country sections. There was also opposition to the Company from those chiefs who had not been present when their land had been declared sold and who had refused further offers of payment. Many chiefs absolutely refused to sell on the Putiki side of the river, even though that is where the Company selected most land and were many settlers believed the best

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[197] Churton, Henry, *Letters from Wanganui*, p 18
[198] Wakefield, *Adventure*, p 304 and see for example, NZ Company map of County sections in district of Wanganui, 1842 reprinted in Chapple and Veitch.
[199] Churton, Henry, *Letters from Wanganui*, pp 3-4

sections were located. For example, Mason noted in early 1842 that Pakeha of the new settlement were very annoyed that Maori would not let them take up selections on the east of the river. He noted this was where Maori had their pa, plantations, several groves of trees and fine good fern land but where the chiefs had never agreed to sell and had not been a party to the Wakefield deed.[200] Mason wrote further in July 1842 that there were now about 150 Pakeha in the new town, most having come from Scotland. Maori were willing to allow them to settle but they wanted to retain their pa, plantations and a portion of good fern land for growing wheat for themselves. However, the Company plan had ignored this with not a single pa being reserved, and only a small part of the plantations. Mason was also convinced that Maori would never give up their dwelling places, especially Putiki Waranui.[201] There was some animosity between the settlers and the missionaries critical of the Company approach. However, after Mason drowned in 1843 he was replaced by Richard Taylor, who as well as supporting Pakeha settlement, appeared to be more acceptable to the settlers.[202]

The Company pressed on in spite of opposition and even showed little inclination to make the promised reserves for Maori when it came to making plans for the new settlement. The Wakefields later blamed government mismanagement of the reserves and claimed the Company had deliberately avoided becoming involved so it could not be accused of self interest.[203] Although the validity of the Company Whanganui deed was in doubt, the Company and settlers also successfully persuaded the government to intervene to promote their interests. Governor Hobson agreed that a block of 50,000 acres could be surveyed at Whanganui for the Company and the Maori owners would be compensated at a later date. Governor Hobson also appointed William Spain as commissioner to investigate the New Zealand Company's claims.

2.2 Crown intervention and the repurchase of the Wanganui settlement

Within a very short time the Crown became involved in 'completing' the purchase of the Whanganui settlement. A detailed investigation of British intervention in New Zealand and associated British Colonial Office policy concerning early land purchases is beyond the scope

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[200] Mason, *Letters and Journal 1839-1842*, journal entry 28 January 1842 pp 32-33
[201] Mason, *Letters and Journal 1839-1842*, letter 14 July 1842 pp 42-43
[202] Voelkerling p 50
[203] For example, Wakefield, *Adventure*, p 353

of this report. These policies have also been discussed in a number of publications.[204] It does appear that by the late 1830s the British Colonial Office had become convinced that extensive European colonisation of Aotearoa/New Zealand was inevitable and that British intervention was necessary to better control colonisation and at the same time protect Maori from the worst consequences of it.[205] It was also generally believed that Maori were willing and anxious to sell large areas of 'spare' land that was of little use to them in return for the benefits of colonisation. The major concern of officials was therefore how the willing trade in land might best be managed in the interests of orderly settlement and protections for Maori.

The policy of Crown pre-emption in purchasing land was an important means of achieving this aim. Among other advantages, it was intended to assist the Crown to control the pace and pattern of settlement. The Treaty of Waitangi contained this pre-emption principle and also guaranteed in article two, iwi possession (tino rangatiratanga) of their taonga or lands, forests and fisheries for as long as they wished to retain them.

British officials also decided that no land purchases in New Zealand before 1840 would be considered valid until confirmed by a grant from the Crown.[206] A commission was therefore established to investigate pre-1840 land transactions. In the days leading up to the signing of the Treaty officials made important undertakings regarding this proposed investigation, including that all land found to have not been 'duly acquired' would be returned to Maori.[207] The British Government also insisted that the New Zealand Company's large claims of land purchases in 1839 should be included within the investigation. However, given the influence of the Company and the size of its claims, the government did agree to make a special deal with the Company. In November 1840, the Crown agreed to grant the Company four acres for every pound sterling it had spent on colonisation. In return the Company agreed not to insist on the full 20 million acres claimed in its deeds and that the commission would need to be satisfied that land it claimed had been properly purchased from Maori chiefs before awards were granted.[208]

These early land policies, guarantees and deals were all based on official assumptions that Maori had or would willingly part with extensive areas of land in order to share in the benefits

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[204] For example, Wards Ian, *The Shadow of the Land*; Adams Peter, *Fatal Necessity*; Belich James, *Making Peoples*; Ward Alan, *An Unsettled History*
[205] Ward, *An Unsettled History*, p 12, citing Secretary of State for the Colonies 1837
[206] Ward, *An Unsettled History*, p 13, p 75
[207] Ward, *An Unsettled History*, p 77
[208] Ward, *An Unsettled History p 87*

of civilisation that colonisation was expected to bring. In addition, officials originally also believed that there were large areas of 'waste' land barely utilised by Maori and in which they had no real interests.[209] This land would therefore automatically become held by the Crown to be used for colonisation. This assumption was a significant factor in the Crown agreeing to make a deal with the New Zealand Company in November 1840. However, within a few years when the ability of Maori to forcibly challenge this view became apparent, officials were obliged to acknowledge Maori customary authority over the whole country.[210]

Officials also assumed, in much the same manner as the New Zealand Company, that the Crown would be able to acquire extensive additional areas of land from chiefs for low or 'nominal' prices. They believed the real value would not be in the immediate price paid for the land but in the benefits of 'civilised' settlement that would follow.[211] It was assumed that Maori would willingly abandon their old ways, including their reliance on seasonal harvesting of 'wild' flora and fauna, to take part in this more civilised settlement and replace them with the system of permanent settled cultivation regarded as superior by Europeans. This would presumably also be based on the introduction of the exotic, domesticated flora and fauna necessary for such a change.

Within a very short time it became apparent that many of these assumptions were false and Maori rights in land could not be nearly as quickly, easily or inexpensively extinguished as had originally been anticipated. Maori customary interests proved to be very complicated and to extend over the whole of New Zealand.[212] The expected large areas of waste land available to the Crown did not eventuate and it also became clear that Maori had not intended to alienate anywhere near the land claimed to have been purchased prior to 1840.[213] The Crown had very little money to fund new land purchases but was now under considerable pressure if it was to continue with large scale colonisation. This pressure became even more apparent as the New Zealand Company continued offloading large numbers of immigrants.[214]

The Crown responded with important policy changes intended to protect the interests of intending settlers. These still had to be balanced against Treaty guarantees that appeared to

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[209] Ward, *An Unsettled History,* p 87
[210] Ward, *An Unsettled History,* pp 108-110
[211] Ward, *An Unsettled History*, pp 75-76
[212] Ward, *An Unsettled History,* p 79
[213] Ward, *An Unsettled History,* p 79
[214] Ward, *An Unsettled History,* p 80

recognise Maori customary rights and authority for as long as Maori wished to retain them. Therefore iwi had to make some deliberate and willing relinquishment of all those rights before they were considered extinguished. English common law concepts also regarded Maori customary rights as a 'burden' on Crown title until they were specifically extinguished by purchase or legislation. One obvious method of such extinguishment was through purchasing and large sale land purchases therefore became a major Crown policy.

However, the Crown was now faced with the combined difficulty of intense settler and New Zealand Company pressure for land and the now obvious lack of large easily obtainable areas to satisfy this. In response, in undertaking land purchases, the Crown appears to have developed policies that promoted extensive settlement even when these appeared to disadvantage Maori or undermine previous assurances. For example, it was decided that when pre-1840 purchases were investigated any land found surplus to reasonable sales would not be returned to Maori as originally promised but would be retained by the Crown for public purposes. When investigating New Zealand Company claims of land purchases, officials also began to move from investigating the validity of the claimed transaction to seeking arbitration to persuade Maori to relinquish their interests and allow the 'completion' of the purchase by the payment of compensation.[215]

As the Crown began to move towards insisting that claimed land purchases were 'completed' it also adopted policies that assumed English legal concepts of land ownership and sales should prevail over customary Maori concepts. For example, the Crown assumed that Maori chiefs had the right to 'sell' land according to the English concept of 'sale' even when no similar concept appears to have existed in Maori custom at the time.[216] It was also assumed that 'land' would also include associated waterways and resources such as timber as was assumed in English legal concepts, even if this was contrary to Maori understandings of the time. It was intended that land purchases would 'free' the areas involved from all Maori customary title and interests of whatever kind and bring that land within Crown authority and English legal assumptions.

For the purposes of this report the assumption that English concepts of land ownership and sale would prevail had important implications for customary Maori authority over, in particular, inland waterways and associated mahinga kai. Under English common law

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[215] Ward, *An Unsettled History* p 89
[216] Ward, *An Unsettled History* p 88

concepts these were generally regarded as 'incidental' to land ownership and dependent on it. For example, in the case of non-tidal inland waterways such as lakes, rivers, streams, ponds and swamps, the beds and banks of such waterways were generally regarded as a form of land capable of being privately owned by adjoining landowners. The beds of small lakes, ponds and swamps located entirely within a block of land were held to belong to the owner of the surrounding land. In such cases, the landowner had the same rights to these waterways as to the rest of the land in the block and could modify drain or develop such waterways as of right.

Where the inland waterway happened to be bounded by more than one property, around the edges of a larger lake, for example, or along a watercourse such as a stream or river, the owners of adjoining properties had rights along that part of the waterway that adjoined their property to the middle line or point of the bed. This was known as the *ad medium filum aquae* rule.[217] Adjoining property owners were also regarded as having certain riparian rights in the waterway due to their ownership of the land adjoining it. These types of rights generally related to the use of the waterway such as access to it, the right to use water reasonably required and the right to fisheries within it. In the case of moving waterways the doctrines of accretion and erosion also applied, where adjoining owners had rights to accretions to their land as the result of slow and imperceptible natural causes. Conversely they might also lose adjoining land through erosion. The issue of ownership of the water itself within a waterway was much less certain. It seems that for waterways bounded by more than one owner, the water itself was not generally believed to be capable of private ownership but was a common resource like air and subject to certain use rights. [218]

This view emphasised land ownership as generally being crucial to rights and interests in associated inland waterways. It also followed from this that rights associated with such waterways were regarded as being wholly transferred to new owners when the adjoining land was sold. Rights based on associated land ownership also tended to 'split' a waterway according to adjoining ownership as well as separating it according to component parts of bed, banks and water. This worked against recognition of a waterway as a whole entity, its relationship with its catchment and surrounding ecological area and its role in sustaining flora and fauna.

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[217] Hinde, McMorland and Sim, *Land Law in New Zealand*, Butterworths, Wellington, 1997, especially pp 5, 8, 379-383

[218] Hinde McMorland and Sim pp 556-557

These common law presumptions could be lost through legislative provisions. In common law terms they could also be effectively rebutted in some circumstances. In the case of larger rivers and lakes, the Crown began to assert a prerogative authority in some circumstances based on the claimed special circumstances and interests of settlement in a new colony. This will be referred to in more detail in chapter four of this report. It was also possible under common law to successfully rebut the general presumption that riparian rights transferred with changes in adjoining land ownership in all cases. For example, a previous owner could clearly indicate an intention to keep fishery rights when selling adjoining land. General riparian presumptions might also be rebutted where there was a long-standing public use of a waterway 'from time immemorial' such as for navigation or a fishery. Special provisions for public interests could also be made by special dedication.

This was quite different to customary Maori understandings where resources such as an eel fishery or a bird snaring tree were not necessarily dependent on adjoining land interests. Although land and associated resources were often closely linked, the relationship was not so strictly based on the primacy of land. For customary laws built on seasonal resource use it was possible for a resource such as a fishery to have considerably more value than adjoining land and also for some Maori to have recognised interests in an eel fishery but not the adjoining land. Customary rights were also often centred on particular resources that were not necessarily all located within one discrete block of land. Hapu or individuals used resources at sometimes widely different places and were highly mobile following seasonal harvests. Individuals were also invariably connected to more than one hapu and lineages could give them access to resources at a number of different places. While the primacy of land ownership in common law encouraged the legal division of land into clear, discrete blocks this was not the case with customary rights. Hapu had 'centres of interest' at locations that would be respected. However, these became more undefined at edges. Lines could be drawn for cultivations, hunting areas and defensible positions but these were not necessarily indicative of all the area hapu or iwi might assert authority over or use.[219]

Officials also assumed that their belief in the inherent superiority of cultivated land and permanent settlements over seasonal use of resources would prevail. These views were very popular in Europe at the time, based on the ideas of theorists such as de Vattel, who went as far as to claim that permanent cultivation and the assumed greater skill and effort associated

[219] For example, Ward, *An Unsettled History*, pp 74-75,

with this gave a 'superior' claim to ownership of lands than that of seasonal use which was assumed to involve mere simple gathering of easily available foods and resources.[220] This presumption had important implications for Crown acceptance of the importance of waterways and associated mahinga kai for Maori. When British officials agreed with the New Zealand Company to provide assistance in completing its purchases, these assumptions underpinned the requirement that pa, cultivations and urupa should be excluded from sale. Cultivations were to be considered ground in 'actual use and occupation' since 1840 used by Maori 'for vegetable productions' while otherwise Maori were to be persuaded of the 'comparatively valueless' nature of their other lands.[221]

When they began engaging in purchases, including the 'completion' of the New Zealand Company purchases, officials quickly became aware of the difficulties of reconciling these assumptions and policies with the practical reality of complex Maori customary rights to land and associated resources. They appear to have engaged in a number of strategies to overcome this and reduce all these interests to a simple interest in land. One such strategy was to ensure that where promised purchase reserves were made they included land with important mahinga kai and waterway areas, thus avoiding difficulties with attempting to reconcile the various types of interests in such areas and how they might be wholly or partially recognised or extinguished. It also became common practice to include reference in purchase deeds to resources such as streams. It was claimed that these were also being given up to indicate that all possible rights had indeed been willingly extinguished through purchase. However, it is not at all clear if this implication was fully obvious to Maori, especially when they were being promised adequate reserves.

It seems that officials also attempted to mediate between Maori concerns and the requirements of settlement in the long discussions that often surrounded purchase transactions. Unfortunately, these discussions and explanations were not well documented and preserved so it is often very difficult to reconstruct what assurances, understandings and promises were made, particularly with regard to associated waterways and mahinga kai when a purchase deed was signed. The purchase deed was regarded by officials as the legal record of the transaction agreement and kept. However, it was the verbal assurances, explanations and understandings that were regarded as having primary importance by Maori.

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[220] For example, Emmerich de Vattel, *The Law of Nations*, 1834.
[221] Minutes of conference held at Major Richmond's to consider settling the Land Claims question, 29 January 1844, *BPP* (IUP) vol 5 pp 26-28

In the case of the claimed New Zealand Company purchase of the Whanganui district, Commissioner Spain began his investigation in April 1843. He was very critical of the Company transaction, but in keeping with the developing official policy of the time he did not reject the claimed purchase outright and require a fresh transaction. Instead, he appears to have set about arbitrating the 'partial' sale so it could be 'completed'.[222] Spain decided to award the Company 40,000 acres of land at the Whanganui settlement and to award the Maori owners a further £1,000 compensation in addition to the trade goods already received.

Spain also decided that out of the 40,000 acres, the Maori owners should have reserved to them all the 'pahs, burying places and grounds actually in cultivation' within the block. The cultivations were to include those tracts of land now used by Maori, or used by them since the establishment of the colony 'for vegetable productions'.[223] This appeared to reflect the prevalent official view that such areas were of particular value to Maori for their everyday living, while the rest of the area was of far less value to them. Spain also decided that in addition, Maori should have granted to them reserves equal to one tenth of the block of 40,000 acres awarded to the Company.[224] This was presumably a recognition of the relatively small price paid for the land and the corresponding importance of the Company promise of investment reserves that were expected to significantly increase in value along with the progress of the settlement.

Spain also insisted that some of the one tenth reserves should be those already selected by him in agreement with Maori owners as being required for their own use. He noted Maori had absolutely insisted on these 'for their own use' and any rejection of them 'would lead to constant misunderstanding between the two races'.[225] This seems to have been an attempt to manipulate the investment reserves to accommodate Maori needs that were already spilling outside official assumptions that the 'cultivations' were all that was required for their everyday living. The inadequacy of official assumptions about limited cultivations and the subsequent confusion of investment reserves and land required for traditional harvesting was to be a constant feature of later difficulties over the purchase.

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[222] For example, see minutes of conference held at Major Richmoond's to settle the Land Claims question, 29 January 1844, *BPP (IUP)* vol 5 pp 26-28
[223] *BPP* (IUP) vol 5 pp 90-91
[224] *BPP* (IUP) vol 5 p 91
[225] *BPP* (IUP) vol 5 p 89

In addition to the reserves Maori required for their own use, Spain also apparently felt obliged to 'expressly' exclude from the purchase a variety of rights in the dune lakes the New Zealand Company had apparently already renamed between the Whanganui and Whangaehu rivers. Spain also excluded the 'Lake St Mary' [Kaitoke] and 'all the native eel-cuts, and right of fishing upon the lakes St Mary, [Kaitoke] Medina [Kohata?], Dutch Lagoon [Lake Wiritoa] and Widgeon Lake [Lake Paure]'. Spain explained that this was because 'the natives would not consent to part with them, having been in the habit of fishing there from time immemorial'.[226]

It is not clear exactly what was discussed and agreed verbally between Spain and Maori over these lakes or the final understandings Maori believed had been reached over them. It does seem clear that Maori were determined to protect the valuable fishery they had at the lakes with associated drains, cuts and weirs. They appear to have intended to keep their lake fisheries and everything associated with them out of the new developments, to use and manage as they always had. They presumably had to rely on Spain achieving this for them in the new system of deeds and grants being applied to the purchase area.

It is less clear what Spain had in mind. Spain's actual wording is interesting. He clearly felt he had to recognise Maori wishes on this point but his use of the phrase 'from time immemorial' suggests he was trying to align Maori concerns more closely with English common law presumptions and expectations. It seems that Spain felt compelled to exclude the whole of Kaitoke Lake itself. In English perceptions this would be the lake bed and possibly some land around it, to ensure control over the whole lake. Possibly, Spain felt able to do this by ensuring the lake was included within a land reserve. In addition, Spain appears to have decided to reserve the fisheries rights and appurtenances (eel weirs and cuts) only in all the other lakes mentioned (but not the lake beds themselves). He appears to have tried to do this within common law understandings. As noted, it was possible under common law for land sellers with riparian rights to deliberately retain a right of fishery when they sold the adjoining land as long as this was made clear. It was also possible for a customary right 'from time immemorial' to rebut general riparian provisions when land ownership changed.

It seems that Spain was intending to provide some protections for Maori for their dune lake fisheries but it is not clear how far he intended these protections to extend. By aligning them

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[226] *BPP* (IUP) vol 5 p 89

with common law presumptions it does seem that in the process he was reducing them to considerably less than full customary rights. His wording seems to have effectively provided for the extinguishment of all Maori customary rights in the beds of the lakes (apart from Kaitoke) other than a simple right of property over cuts and weirs and a right of fishery on the lakes. It appears to have been a very complicated application of English legal assumptions and it is not at all clear how this was explained or understood by Maori, who were quite unfamiliar with English legal distinctions over the various parts of waterways. It is also not at all clear that Maori willingly agreed to have their traditional customary authority limited to this extent.

Spain's efforts seem to reflect the general policy of officials at this time of avoiding explicit explanations to Maori of the full implications of their assumptions regarding land purchases. Instead, officials tended to gloss over these issues in the interests of avoiding conflict. If Maori had been aware that land sales implied loss of associated waterways then it seems highly likely they would have also insisted on retaining rights in the Whanganui River, where it flowed through the claimed purchase area. However, Spain was silent on this. It is possible that this was because of another common law assumption that will be explained further in chapter four. This was generally that the tidal part of a river (which was the part of the Whanganui flowing through the purchase area) was considered subject to Crown authority and not available for private purchase with adjoining land. On this basis Spain could assure Maori that the river was not subject to the Company purchase and would be shared.

Maori generally appeared content to share use of waterways within the settlement area for mutual benefit, without necessarily feeling that their underlying authority was threatened. However, in the case of the dune lakes, Spain appears to have felt that some clear, even if minimal, legal protection was required or the application of private land ownership assumptions would inevitably cause conflict and might even harm the future of the new settlement. His attempt to protect just the fishery rights in all but the most important of the dune lakes appears to have been an effort to avoid such conflict. It does not mean that Maori generally recognised that waterways were automatically lost when land was sold, and nor did it necessarily reflect Maori wishes to retain the lakes under their full customary authority.

It is interesting to note that while officials struggled with the application of legal conventions to support their policies, settlers themselves recognised that distinctions could be made between Maori customary authority and the application of new English legal concepts. Europeans commonly came to assume that while resources remained under Maori control,

Maori would generally share them where they saw mutual benefit and as long as their authority was not overtly challenged. Settlers came to expect this customary generosity and were often bitterly resentful when it was withheld. For example, in his journals EJ Wakefield was sharply critical of those Maori communities, who he claimed as a result of missionary influence, were much less generous with their hospitality to visiting strangers like himself than those who followed customary traditions. He also claimed that they were more dishonest and inclined to deal treacherously with Pakeha.[227] As noted previously, settlers such as Henry Churton, complained bitterly when Maori felt obliged to show their authority by charging extra for logs and other materials. This was because they had come to expect the more common Maori practice of generosity and sharing even though the settlers themselves fully intended to exploit such resources once Maori customary interests were extinguished. Settlers also expected to be able to share resources from streams and waterways while Maori retained them, even though they knew this would end once associated land legally became owned by fellow settlers. For example, in 1844 at around the same time as Spain was making his awards, Henry Churton noted that the land on the Putiki side of the river was mostly good, covered in grass and intersected by numerous streams. Within several miles of the town there were also a number of lakes, ranging in size from 80 acres to half an acre. These furnished a constant supply of eels and abundant wildfowl and 'the Maoris declare they will not sell them'. Churton hoped that this would be the case, as otherwise they would probably fall to some gentleman who would close them off and those settlers without the luck to have a lake or creek 'would be deprived of our ducks'.[228]

As part of making his award, Spain attempted to distribute the £1000 compensation in May 1844. However, a number of chiefs refused to accept payment and 'confirm' the sale. Spain responded by declaring that the land could not be held back and would be awarded to the Europeans whether they took the payment or not.[229] Further unsuccessful attempts to complete the purchase were made. Eventually in 1846 Governor Grey held a meeting at Putiki with a number of chiefs who finally agreed to accept the £1000 Spain had awarded. Governor Grey then brought in more officials to try and reach a negotiated settlement. By this time it seems most chiefs of the area had resigned themselves to the fact of the purchase and felt

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[227] For example, Wakefield, *Adventure*, pp 353-7
[228] Churton, *Letters*, 12 April 1844, p 22
[229] *BPP* (IUP) vol 5 p 97

obliged instead to negotiate the details of the reserves and allocation of compensation payments.

The Governor instructed John Symonds, with Donald McLean as his interpreter, to 'complete the purchase' of the 40,000 acres awarded, to make the agreed payments and determine what reserves were required in terms of Spain's award.[230] However, the Government was also under considerable pressure to provide sufficient land to ensure the success of the European settlement at Wanganui. Symonds was instructed to ensure that Maori fully understood the outer boundaries of the award and that all pa and cultivations Spain had reserved, that were used 'for vegetable production' by Maori in the period from the establishment of the colony to the date of the award, were clearly identified.[231] At the same time, on the assumption that Maori had 'selected for themselves large reserves in the spots they considered most convenient and advantageous', Symonds was to try and persuade them wherever possible to abandon such cultivations 'as may not really be requisite for their own purposes' and yet 'may interfere with the pursuits and prosperity of the settlers'. He was also instructed to ensure accurate plans were made of those pa, burying places and cultivations as finally arranged, with boundaries 'carefully marked out so that, in as far as possible, all future misunderstandings upon this subject may be avoided'.[232] Even though Spain's report had appeared to acknowledge the reality that it was not practical for Maori to be limited to vegetable cultivation areas alone, these instructions appeared to ignore this. Instead, it was apparently assumed that Maori were insisting on more of the better land than they really 'required'. The instructions also required Symonds to follow Spain's determination and make such arrangements regarding the reservation for Maori of 'St Mary's Lake, the Native Eel-cuts, &c, as may prevent any future disputes, or misunderstandings arising upon these subjects'.[233]

Maori might have expected a significant level of good faith and protection of their interests from the involvement of Government officials in the arrangements over the practical implementation of Spain's award, given the Treaty guarantees the Government had made. It does seem clear that Symonds and McLean emphasised their separation from the New Zealand Company and their status as Government representatives. For example, McLean

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[230] Despatch from Governor Grey to Lord Stanley 19 April 1846, *BPP* (IUP) vol 5 p 550
[231] Despatch enclosure Grey to Symonds, 17 April 1846, *BPP* (IUP) vol 5 p 550
[232] Despatch enclosure, Grey to Symonds, 17 April 1846, *BPP* (IUP) vol 5 p 550-551
[233] Grey to Symonds, 17 April 1846, *BPP* (IUP) vol 5 p 551

wrote of the confusion created by the Company. He claimed to be surprised at how little Maori of the area knew of the 'real state' of the land question. They did not appear to know the purchase boundaries and the 'several gentlemen to whom this important matter was entrusted' appeared to have failed to make them clear. It also seemed as though the purchase in the first place was made from a young chief who in reality had no more than a nominal claim to land in the block the New Zealand Company claimed. McLean went so far as to state that 'the whole matter has now got to be gone into as if neither purchaser nor commissioner Protector or Interpreter had ever spoke a word on the subject'.[234] However, this did not appear to cause either McLean or his superiors to consider that in such a case the New Zealand Company claim did not warrant being 'completed'. McLean also expressed surprise that Commissioner Spain had apparently not understood that there were a number of counter-claimants, which would increase difficulties. Nevertheless he was determined to take every opportunity to promote the advantages Maori 'must derive' from having Europeans amongst them and in 'quietly relinquishing their lands' for a 'mutual benefit'. [235]

As well as the advantage of Government backing, McLean himself was well equipped to win Maori confidence. He was a Scottish highlander who had grown up bilingual in English and Gaelic. He had learned the Maori language while cutting and trading in timber in the Auckland area in the early 1840s. His understanding of Maori language and custom assisted him greatly when he was appointed to the Protectorate of Aborigines in the Taranaki area. There he gained experience of mediating between Maori and settlers and his fluency, understanding and respect for Maori rank and protocol gained him considerable respect among Maori.[236] McLean showed himself willing to discuss matters with Maori at length and involve them in the process of marking out reserves. He knew how to make land transactions more acceptable by emphasising those aspects he knew would appeal to Maori, such as the future benefits they might expect to obtain from settlement. In meeting and discussing matters with Maori he also knew to present issues in ways that appeared acceptable to both communities.

However, McLean was also firmly convinced that Maori were primitive and needed the improvement that British civilisation and extensive settlement would bring. He believed that colonisation was inevitable and necessary and he was determined to protect and promote

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[234] McLean journal, 2 May 1846 pp 8-9, ms 1284 , ATL
[235] McLean journal, 2 May 1846, pp 9-10, ms 1284, ATL
[236] Alan Ward, 'Donald McLean' in *Dictionary of New Zealand Biography*, vol 1, 1769-1869, 1990, pp 255-258

settler interests as much as possible. Although he began official duties in the Protectorate, after this was abolished he became more closely involved in land purchase activity and in particular, from the mid 1840s, the 'blanket' purchases designed to 'free' large areas of land from customary Maori authority ahead of the needs of settlement. This included the 'completion' of large New Zealand Company purchases. As part of this, he appears to have taken the instructions to protect settler interests while limiting Maori reserves at Whanganui to considerable lengths.

Some of the tactics used by McLean to 'complete' the Wanganui purchase appear characteristic of those he later became well known for in leading land purchase activities in a number of districts around New Zealand. Some evidence of these can be found in official records and personal journals kept at the time. Others can sometimes be pieced together from various records such as later Native Land Court evidence. However, it is often only possible to provide a very imperfect outline of what arrangements and understandings may have been made before the actual legal documents officials and settlers were to rely on were signed.

McLean was notably willing to engage in long discussions of sale agreements, in which many issues of concern were explained and discussed. Maori found this a welcome approach, but these explanations and assurances were generally not required to be officially recorded or included in written sale deeds. McLean also appears to have favoured those chiefs identified as more pliant or enthusiastic about settlement to the detriment of others, who may also have had interests in the area but were more concerned about the settlement. He also appears to have relied on glossing over possibly disadvantageous legal implications for waterways and mahinga kai as a result of land sales, while emphasising instead the future gains Maori could expect as a result of settlement.

For example, McLean recorded on 4 May 1846 that he had addressed a large gathering of 'all the representatives of the Wanganui tribes' who had gathered for a korero. He had told them that Pakeha were 'conferring an everlasting benefit upon them by living amongst them' and that money, which they were to receive a large amount of, was 'our greatest treasure'. McLean was also careful to ensure Maori were involved in the process of identifying and agreeing on reserves so they could be reassured that they were not being treated in an underhand way. He recorded that he told the meeting he did not want to see underhand work but to make it all 'clear and open as the sun'. He agreed the young men should go out with the

surveyors and point out the boundaries as he did not wish to bind them to anything till they first saw openly what they were about.[237] McLean also appears to have used his 'neutral' government status to provide more reassurance. He assured the meeting that as 'their Protector and advisor' he wanted them to take something that would increase and benefit them, as payment for their 'valueless tracts of land they so foolishly set such store on'. He also appeared to offer the opportunity that Whanganui Maori might be able to use settlement to improve their position relative to other iwi. He claimed he wanted their children to live in happiness amongst the English 'who could make them a great people'.[238]

This effort to appear more conciliatory and consult Maori about the survey process while offering the possibility of major benefits appears to have paid dividends. McLean was able to report that those attending had agreed to send their young men to walk the boundary with him. On the way to the Whangaehu side of the boundary he described a heavy walk through swamp sand and the occasional lagoons covered with wild duck, before he camped for the night at Captain Campbell's section at 'Heretoa lake' [Wiritoa?] 'the prettiest spot I have yet seen at Wanganui'.[239] McLean also appears to have been able to persuade Maori to allow surveyors on the south side of the river where they were pointing out pa and cultivations to them and they seemed satisfied to relinquish a pa in the vicinity of town 'that proves an annoyance to settlers'.[240]

In spite of his assurances of good faith, McLean appears to have indulged in some tactics that were designed to promote settler rather than protect Maori interests. For example, although he had assured Maori that settlers would come and live 'amongst' them, McLean appears to have been determined to ensure it would be on settler terms. He noted that he was determined to carefully enquire into every individual claim minutely 'with a view of totally extinguishing all of them'.[241] McLean also carefully cultivated those chiefs who appeared most persuaded by his arguments, ensuring that surveyors were careful to protect reserves for them while appearing less accommodating to those who remained opposed. For example, in 1846 he recorded that surveyors had cut a line around a reserve for 'Abraham' (Aperahama Tipae)

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[237] McLean journal, 4 May 1846, p 12, ms 1284, ATL
[238] McLean journal, 4 May 1846, p 12, ms 1284, ATL
[239] McLean journal, 5 May 1846, p 13, ms 1284, ATL
[240] McLean journal, 13 May 1846, p 21, ms 1284, ATL
[241] McLean journal, 12 May 1846, p 21, ms 1284, ATL

whom he described as being one of those who had agreed to a very moderate reserve and payment of compensation while his land was some of the finest in the district.[242]

Years later some chiefs gave evidence that it was their understanding that McLean had been 'giving back' certain lands to particular chiefs for their personal use in return for their 'loyalty and services'.[243] This understanding was supported by the land purchase officer of the time and had apparently been a common practice under McLean. This land was regarded as a special 'grant' and not simply land exempt from sale and subject to a variety of customary interests. If McLean had promised this type of grant in the Whanganui purchase it should have been additional to any reserves Spain had awarded not instead of them, as it effectively cut large numbers of those with customary interests out of the land. However, while such a procedure did not strictly follow instructions, it may have been a useful way of cultivating some chiefs and persuading them to modify their resistance to the sale.

McLean and Symonds were also apparently willing to continue the confusion between 'living' and 'investment' reserves for Maori out of the purchase. The protection of pa and cultivations was according to official theories meant to be sufficient for everyday living. However, Spain had been forced to adjust this to allow Maori to select from their investment reserves, some areas they absolutely required for living. In addition he had been forced to concede the fisheries at the dune lakes. However, the tenths reserves generally were supposed to be an additional form of investment reserve that would become more valuable as Pakeha settled and cultivated nearby lands. The implication was that such reserves would therefore have to be reasonable land for such farming and cultivation or their value as an investment would not be realised.

In attempting to follow their instructions to limit reserves as much as possible, it was very tempting for McLean and Symonds to treat mahinga kai and investment reserves as interchangeable. It was very clear that Maori still required the use of traditional resources additional to just their vegetable cultivations. It was very tempting to use agreements to retain these as a means of reducing land awarded for investment. This tradeoff may not have been particularly evident to Maori at the time as their mahinga kai remained at least as important as good farm land in the new economy they appeared to be expecting. On their expectation that Whanganui settlement would largely remain a small trading village, Maori may well have

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[242] McLean journal, 4 June 1846, p 15 ms 1285, ATL
[243] MLC Whanganui MB 3 July 1881 re Waipakura block 1881 pp 135-138

expected the larger part of produce from new crops and farming to be traded. Therefore they still required traditional mahinga kai for their own subsistence.

However, officials knew that both the Government and settlers expected much more intensive settlement than a simple trading village. As part of this they also fully expected farming would eventually replace seasonal hunting and fishing. Mahinga kai areas might remain valuable to Maori but they would have little value in the new economy. If Maori were to fully benefit from investment reserves they would need adequate areas of land considered valuable for farming as well. It could be expected that officials therefore had a duty of good faith to ensure sufficient good farm land was reserved as well as those areas practically required as mahinga kai. Instead, McLean and Symonds tended to conflate mahinga kai, traditional cultivation areas and 'investment' reserves together, favouring the selection of land that may have been valuable for mahinga kai but was least valuable for farming and therefore of least interest to settlers. At the same time, this was used to make up the area Spain had awarded as investment reserves even though it was clearly likely to produce little capital gain.

For example, McLean recorded that they had allowed the young chief Tamati Puna who had wanted a large reserve, a smaller section than he had asked for but with a compensatory right to 'cultivate on a hilly tract of country, unsurveyed, and valueless for European purposes'.[244] In the Whangaehu area McLean also insisted on a smaller reserve than local Maori had expected but gave the Maori a piece of land beyond the surveyed sections for their own use and for the common purposes of settlers such as for firewood. The reserve laid out for them was expected to 'avoid the necessity of giving them a large reserve as they expected' by extending it to a small piece of bush near the Matarawa River where the Maungaratawiri eel cut was located.[245]

McLean acted as though he was gaining agreement to the boundaries that were being laid out and often noted with approval that Symonds was being firm about what would be 'allowed'. However, it seems as though when the surveyors met with actual physical resistance, McLean may have allowed Maori to believe that the cut boundaries were just the first step in negotiation. For example, he noted that near the Whangaehu he found the surveyors had been 'greatly annoyed' in making the line they wished to cut and all their stakes had been pulled

[244] McLean journal, 28 May 1846, p 9, ms 1285, ATL
[245] McLean journal, 30 May 1846, p 12, ms 1285, ATL

up. In this case he noted that he had explained that the surveyors simply wanted to point out the line 'we wished for, and then it would be time for them to remonstrate'.[246]

McLean was also willing to gloss over the implications for continued Maori authority over mahinga kai on land that was now considered sold. For example, he noted in 1846 that in negotiating over the extreme end of the purchase block, the Maori owners seemed willing to give up the land but still had the idea that 'they may retain their timber and only dispose of the land'. McLean claimed that he had explained that 'the land as parent of the trees of the forest could not part with the children and that the wind from Tongariro is felt by Europeans and requires wood for them'. He noted that after some discussion there was agreement that the bush would be retained by the Maori owners and 'fortunately' it happened to be on a reserve allocated for them.[247]

McLeans's claims that he explained the true legal situation but then found reason to allow Maori what they believed to be the case appears to have been a commonly used tactic to gloss over real legal presumptions until such time as settlers became strong enough to enforce their views. McLean used a similar tactic in the nearby Manawatu purchase of land from Ngati Apa interests in 1849. In that case he noted that the owners had heard rumours that if they sold the land they might also lose their traditional bird snaring forests. McLean reported that he assured them that in addition to the ample reserves being made for them they could 'still exercise the privilege of bird snaring so long as their doing so did not interfere with the future operations of the settlers'. After some discussion he noted the group were very pleased with the prospect of not being prohibited from bird snaring as they had feared they might not even be allowed to travel over the country when it became European property.[248] In fact of course that was precisely the legal implication of the sale transaction and the actual purchase deed claimed 'absolute surrender' of the lands with no mention of continued rights to snare birds or travel over the land.[249] McLean's assurances had little legal standing and were anyway intended to last only as long as it was convenient for settlers.

While McLean's journals are very confident that the Whanganui people generally were willing to agree to the arrangements being made and were very moderate about giving up some of their finest land, it seems that he may have been overly optimistic. There were no

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[246] McLean journal, 28 May 1846, p 11, ms 1285, ATL
[247] McLean journal, vol 1 1844-46, 15 May 1846, p 24, ms 1284, ATL
[248] McLean papers folder 3, 10 April 1849, ATL micro 535-002
[249] Ibid

doubt many chiefs who could see benefits in having a small Pakeha settlement in their district. However, in spite of McLean's protests it seems that the boundaries and what they might mean were far from agreed. On the same day that McLean once again expressed his delight about the moderate Whanganui demands, Symonds sent him a note that he was breaking off all negotiations and leaving Whanganui by ship without delay. In explanation Symonds claimed he did not believe the Whanganui people would stick to their bargain after they were paid and he complained he was being increasingly troubled with demands for larger reserves and more money. Some Whanganui Maori were also leaving to support open resistance in the Wellington area. McLean was surprised as he had been sure the majority of Whanganui Maori had been ready to conclude 'an equitable bargain' and reluctantly part forever with their land.[250]

Nevertheless, McLean's negotiations were stalled for two years from 1846 to 1848 by open conflict that spread to the Whanganui area.[251] The decision to garrison Wanganui town as conflict spread from Wellington appears to have caused considerable concern among many Whanganui chiefs as their expectation of a small trading settlement appeared to be undermined by the creation of a military post. The fighting also revealed divisions of opinion among Whanganui chiefs. Some remained convinced that the township would ultimately be beneficial to them and were confident that they could manage relations with the Government and settlers to protect and advance their interests. Other remained less confident and appeared more suspicious of Government intentions. The military involvement in particular was viewed as a much more direct challenge to their traditional authority.[252]

In the event the Government could do little more than attempt to defend the township.[253] When peace was restored in 1848 the Governor instructed McLean to again settle the Whanganui negotiations so that a Crown grant could be issued to the New Zealand Company. The New Zealand Company sent a surveyor to Whanganui and £1000 to assist the Crown in 'completing' negotiations in the district. For the next three weeks McLean continued in much the same vein he had begun previously, attempting to persuade Maori to move off land required by settlers and to limit the reserves they were seeking. He still met with opposition from some groups but insisted that he had won significant agreement to his work and by late

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[250] McLean journal 4 June 1846 p 15-17, ms 1285, ATL
[251] Wards, *Shadow of the Land* pp 327-351
[252] For example, Voelkerling p 41
[253] Voelkerling p 44

May 1848, he was confident he could secure sufficient signatures for a deed of conveyance.[254]

On 26 May 1848, 600 Maori gathered to complete the Crown purchase of the Whanganui settlement. Over three days the deed was again explained by McLean and eventually signed. McLean, while he insisted that he was 'completing' the purchase as instructed, had effectively come to a new arrangement in many cases from that decided by Spain. The boundary of the purchase now ran roughly from the coast at Mowhanau Beach, directly inland about ten miles to Otawa, then across to Papaiti, over the Whanganui River 'a little distance' below the Pa Tunuhaere and on along the top of a range north of Upokongaro to a boundary cut by surveyors at Waikupa and the Whangaehu valley. It then ran in a straight line to the sea about six miles south of the Wanganui and just west of the Whangaehu River, through the places named Wakaokao, Pukepapa, Pukepoto and Pirihira.[255] The coastal boundary was about fourteen miles (see map of 1848 purchase attached).

The new purchase area was now estimated at around 86,200 acres (as opposed to Spain's award of 40,000 acres) with reserves for Maori of an estimated 5450 acres. This was a considerably larger purchase area than Spain's award while at the same time all reserves for Maori were considerably more limited. In total, reserves for Maori were now much less than the one tenth of the purchase area Spain had originally awarded in addition to the cultivation, pa and burial areas. At the same time even though the purchase area had been considerably enlarged, the compensation award remained at the £1000 originally determined by Spain. McLean also acknowledged that Spain had only considered those actually living at coastal Whanganui when he decided on compensation, while McLean had been obliged to acknowledge a powerful body of other claimants. Therefore the £1000 had effectively also been required to cover a much large group of interested parties than under Spain's award. [256]

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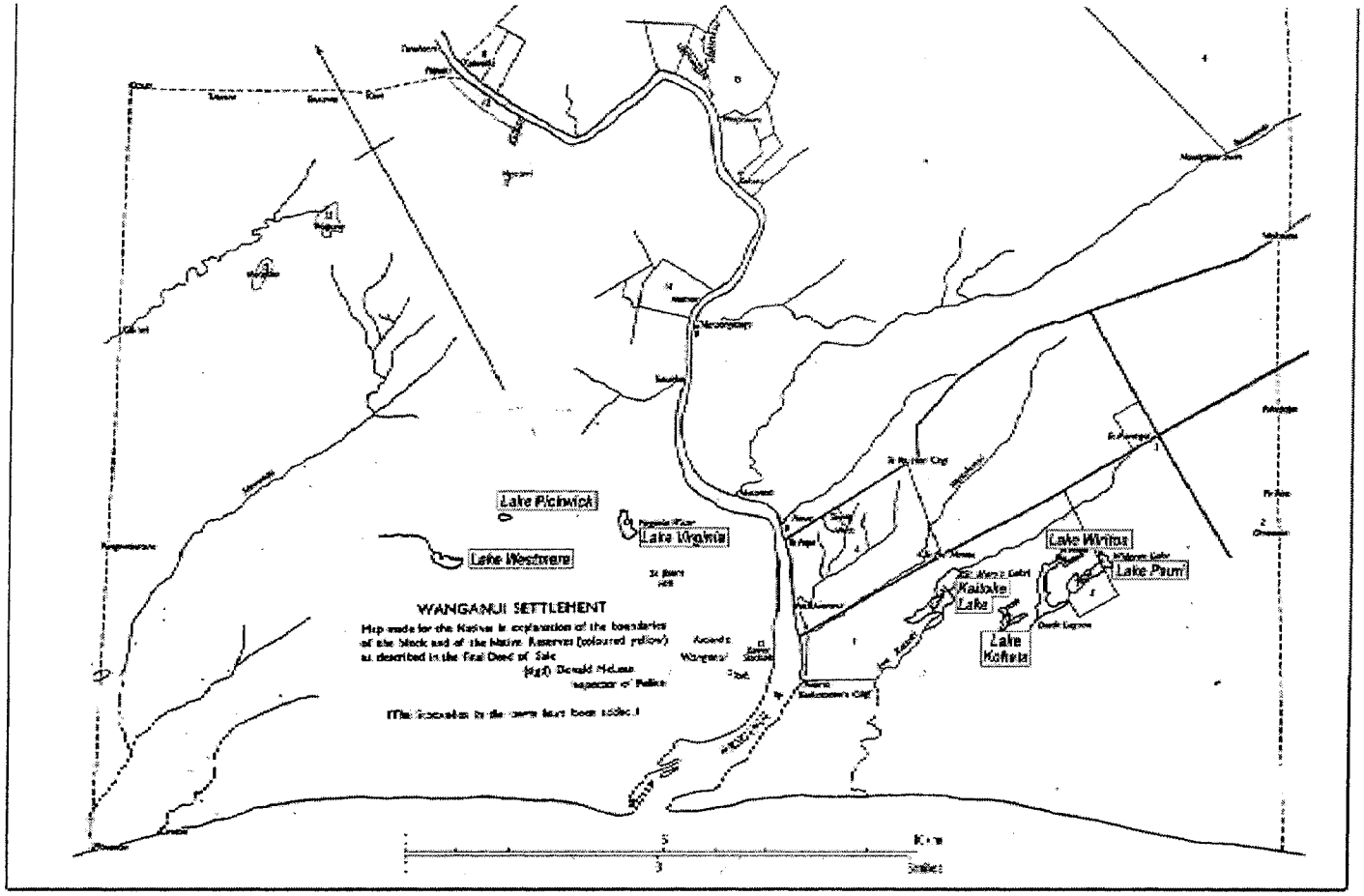
[254] McLean to Colonial Secretary, September 1848, AJHR 1861 C-1 pp 248-9
[255] *Turtons Deeds*, no 77, p 242, see also map of boundaries drawn in Wards, *The Shadow of the Land*, p 295
[256] McLean letter, 27 May 1848, McLean letterbook 1848, qms 1208 ATL

Figure 3: Map of 1848 Purchase



Source: Department of Lands and Survey 15137

McLean acknowledged that the reserves for Maori were now 'considerably less' than Spain had awarded but claimed that what had been lost in quantity had been made up for in quality. As an example he cited Putiki, which he claimed would not have been reserved under Spain's award.[257] In addition, McLean claimed that Spain had signed off an award for 44,000 acres possibly as a result of a mistake over what was the boundary line when the actual map he was signing contained over 89,000 acres.[258]

It is beyond the scope of this report to investigate McLean's claims over this in detail. On the face of it, his claim regarding Putiki seems dubious as presumably it would have largely been included in Spain's requirement to protect cultivations and other sites already in use at 1840. McLean's claim about the increased 'quality' of reserves also requires further investigation. The brief research possible for this report indicates that (as McLean admitted) many reserves were allowed because although still important to Maori, they were 'useless' to Europeans. Attempts had been made to make up for the inadequacy of the original assumption about 'cultivations' by raiding reserve areas that should have been retained as good farm land for investment. Many traditional mahinga kai areas had been reserved but this appeared to be at the expense of Maori ability to participate fully in the new economy. They may have been 'quality' to Maori but it is far from clear whether they were 'quality' investment land for the new economy as McLean was supposed to be reserving.

The reserves from the purchase were also different from the original Spain agreement. For example, in spite of Spain's agreement excluding cultivations in use, many of these had been removed from the township area so as not to 'interfere with the colonists sections'. There were now fifteen reserves listed in the 1848 purchase deed. Most of these were in some way associated with a waterway or traditional mahinga kai, cultivation or settlement area reflecting McLean's insistence that reserves for mahinga kai and investment be conflated as far as possible. Reserve number one, was 'all our Eel and Inanga cuts at Wiritoa at Paure at Kaitoke at Okui at Oakura and other streams for fishing Eels within the boundaries which have now been given up to the Europeans'.[259]

Kaitoke lake awarded by Spain was no longer mentioned as part of this reserve. However, McLean appears to have reserved it instead as part of reserve number 7, the Putiki Kaitoke

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[257] McLean, letter to Colonial Secretary September 1848, *AJHR* 1861 C-1, p 250
[258] McLean letter to Colonial Secretary September 1848, *AJHR* 1861 C-1, p 250
[259] Turtons Deeds, deed no 77, pp 238-242

reserve. This was an area of about 600 acres adjoining Putiki reserve itself (number 6). In the deed it was simply described as that area shown to Wills and pointed out by some chiefs. However many years later it was described as now being some 280 acres of land including Lake Kaitoke.[260] This apparently followed McLean's usual practice of avoiding conflict over access and rights to resources such as lakes by including them in a land reserve.

There was also no mention of the Kohata lake fishery or cuts and nor was there any general reservation of a right of fishery on the lakes. The 1848 deed now only reserved the eel and inanga cuts, that is the modifications and weirs, at the named places or 'streams' in the purchase boundaries. However, additional cuts 'at Okui, Oakura' and 'other streams' within the new purchase boundaries were now included in the 1848 deed. Possibly this acknowledged that there were other important eel cuts at streams other than just the dune lakes although what was exactly intended is not clear. Even Okui and Oakura are not clear although Okui may have meant Okoia the name later given for the general district between the Whanganui and Whangaehu Rivers.

The wording of this particular reserve seems to have been a further attempt to reduce acknowledged Maori interests in the waterways areas to a very limited property right; in particular to weirs and works on the waterways. The Maori understanding of this may have been explained later in the evidence concerning Kaitoke lake around 1901. At that time one witness explained that 'everyone is allowed to catch eels in the lakes but only those entitled to the eel pas use them. At Whiritoa and Paure lakes we would not think of working the eel pas'.[261] This suggested that everyone 'shared' the eel fishery itself but the eel cuts and weirs were owned by particular individuals or hapu. McLean may have interpreted this to mean that no particular traditional right of fishery existed in the lake so only the cuts and weirs were capable of ownership. However, this ignored his instructions to implement Spain's award and his decision to protect a general right of fishery. In fact, once the lakes and streams were recognised as transferring to private ownership along with adjoining land the legal right of 'everyone' to catch eels would be considerably limited. Without a general right of fishery once weirs or cuts were destroyed or lost the property right involved would also be lost.

Other land reserves in the deed were also closely linked with mahinga kai. For example, reserve number 2 was presumably another mahinga kai, a 'small wood called 'Omanaia' close

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[260] MLC Whanganui MB 47, 1901 pp 264-7
[261] MLC Whanganui MB 47 1901, p 275

to the eastern boundary of the purchase area. Reserve number 3 was another 'wood' called Te Marangai' also in the eastern part of the purchase on some 11 acres of land. Reserve number 4 adjoined the Matarawa stream and was presumably the area that included the eel weir McLean had used as a reason to reduce the overall size of land in the reserve. Reserve number 5 of one hundred acres adjoined Paure lake and presumably gave access to it while also possibly including some of the eel cuts around that lake. The large reserves numbers 6 and 7 were in the Putiki area and as well as including settlements, also contained cultivations, groves of karaka and other trees, and adjoined the Whanganui River. Most of the remaining reserves also adjoined either the Whanganui River or another inland waterway. For example, reserve number 8 adjoined the Purua stream, reserve numbers 10, 11, and 14, Waipakura, Kaiwhaiki and Aramoho all adjoined the Whanganui River. Reserve 12 was spread over a number of locations, most of which were close to either the Whanganui or other waterways. Reserves numbers 9 and 15 were burial grounds, while reserve 13 Ngaturi had to be abandoned if it 'disturbed' the Europeans.[262] These reserves were all protected from any future disposal to Europeans unless the Governor consented.

In his correspondence McLean was careful to emphasise that he had explained the 'binding nature' of the purchase to Maori and given them an opportunity to weep over their land 'which they now wished for ever to be given up to the Government'.[263] He also claimed he had written the Maori version of the deed in 'simple' yet 'binding' language.[264] . The deed included the phrase in Maori that in English translation stated 'we have wept and sighed over, bidden farewell to and delivered up for ever to the Europeans [the land]. According to Bennion, McLean may have inserted the remaining phrase (in English translation) 'together with the rivers, streams, trees and all and everything connected with the said land' some days later.[265]

Regardless of this, there is evidence of further doubt about Maori understanding of the legal implications of the deed. McLean had been instructed to accurately and clearly survey and map the final reserves agreed for Maori and his reports of 1848 indicated that he had and he was highly praised for this by the Colonial Secretary and the Governor.[266] However, later correspondence reveals that in fact the reserves were not clearly delineated or agreed on the

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[262] *Turtons Deeds*, vol 2 pp 242-244
[263] For example, McLean, letter to Colonial Secretary September 1848, *AJHR* 1861 C-1, p 250
[264] McLean, letter to Colonial Secretary September 1848, *AJHR* 1861 C-1, p 249
[265] Bennion, 'Whanganui River Report', 1994, p 30
[266] Letter Colonial Secretary to McLean 31 July 1848, *AJHR* 1861 C-1 pp 247-8

ground at the time of the 1848 deed. In the post-deed period, McLean still appears to have been involved in significant negotiations over reserves and surveys in the settlement area. It is beyond the scope of this report to investigate why, when the deed and the reserves were already supposed to have been fully defined. What does seem apparent is that surveying of the reserves had not been completed when the deed was signed and therefore Maori had relied very much on the verbal explanations offered by McLean.

For example, in 1849 McLean informed Governor Eyre that surveys were still progressing in the reserves where in the absence of surveyors 'I was only able to give them a verbal explanation'.[267] In 1850 he indicated that reserves within the Whanganui purchase and the inland boundary of the Whanganui purchase 'extending to the Whangaehu River' were still being settled.[268] McLean was still attempting to 'prevent a recurrence of the difficulties' with delays in settling the reserves by asking for surveys to be completed in for the Whanganui purchase in 1855.[269] It also seems that in some cases, negotiations over reserves agreed had been based on discussions over resources Maori wished to retain while the lack of a survey meant the acreage estimated in the deed was really just an estimate. For example, it seems that the Waipakura reserve, which had originally been estimated at 650 acres, actually included over 2000 acres when the surveyors cut along the agreed boundaries. Unsuccessful attempts were made by officials to renegotiate the larger size down but the larger size was apparently accepted by a later Native Land Court hearing in 1867.[270] It also seems that when John White was appointed Commissioner of Native Reserves for Whanganui in 1862 he was still required to resolve some unsettled reserve boundaries.

In fact it seems that the reserves for Maori in the Whanganui purchase were not finally 'settled' until the early 1860s and during this time the exact nature of the reserves changed yet again. It is beyond the scope of this report to investigate these continued 'arrangements' in detail, especially as the documentation appears sparse. Hopefully more detail will become available when the Stirling report is prepared covering this period, although that research had not begun when this report was written. In terms of waterways it seems that during this time Kaitoke lake was reinstated to Maori ownership as Spain originally awarded (the lake bed remains in Maori ownership today). Some kind of fishery right was also retained in the dune

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[267] Letter McLean to Governor Eyre, 16 July 1849, McLean letterbook 1848-9, ms 1210, ATL
[268] Letter, McLean to Colonial Secretary 4 November 1850, *AJHR* 1861 C-1 pp 255-6
[269] Letter, McLean to Porter, 17 December 1855, *AJHR* 1861 C-1 p 270
[270] MLC Whanganui MB 1, January 1867, pp 128-138

lakes, Paure and Wiritoa. However, the remaining lakes, swamps and other waterways, such as Westmere, Virginia and Kohata appear to have been considered part of the adjoining purchased lands and were legally transferred to enclosing or adjoining settler lands although it is not clear that Maori understood the legal implication of this.

Preliminary research has not uncovered evidence relating directly to the later negotiations and the changes to the reserves in the years 1848 to 1865. For example, the large reserve number 5 adjoining Lake Pauri, which would have provided some protections for the cuts and fisheries on the seaward side of that lake appears to have disappeared during this time. A draft report prepared by Basset/Kay provides useful information on the later history of the reserves from the Whanganui purchase.[271] However, this report was not required to cover the pre 1865 period in detail when many of these arrangements appear to have been made. A more detailed research project concentrating on this 1848-1863 period for arrangements for these reserves may be required.

The legal implications of the reserves when finally settled were that as far as settlers and officials were concerned only the actual reserves recognised as excluded within the purchase area remained subject to traditional Maori authority. What these actually were remained uncertain for some time but they were clearly small in relation to the whole purchase area. Legally they provided marginal opportunities for Maori who wanted to protect traditional mahinga kai areas within the boundaries and at the same time use additional reserves to participate in the new economy.

2.3 A small trading village? 1848-1865

Although the purchase and reserves may have had serious long term implications for traditional Maori authority over inland waterways and associated mahinga kai within the purchase area, it appears that for some years the full implications were not necessarily apparent to Maori. In fact, the practical reality of early settlement of the district, the uncertainty over the reserves and continued Maori use of many areas that had technically been legally lost in the years to the late 1850s may well have encouraged Maori that their understandings and expectations of a small trading village were still being largely fulfilled.

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[271] Basset, Heather and Richard Kay, 'Maori Reserves from the 1848 Crown Purchase of the Whanganui Block c 1865-2002', draft report 2002.

The relatively large 1848 purchase area allowed some room for settler expansion and in the meantime, Maori were able to continue using resources and waterways in many areas that remained unselected. Although the reserves remained unsettled for some considerable time, McLean also appears to have allowed chiefs to use or sell resources from areas they believed were to be allocated for them. For example, in 1850 McLean noted he had allowed 'George King' to sell timber off his reserve at Putiki. He argued it was as well 'to let the Natives exercise certain rights' such as disposing of timber on their reserves as it provided them with needed cash, kept them busy and benefited Europeans by enabling them to get firewood conveniently.[272]

Settlers also had to accept that Maori were still a powerful force in the settlement and they could not readily or immediately impose their views on them. Instead, it appears that an informal system of leasing and use rights quickly sprang up that for some time allowed parallel use of many waterways and associated resources by both communities. Although these early leases had no legal standing they often allowed a considerable sharing of resources. For example, the Kaitoke reserve including the lake appears to have been quite quickly leased to a settler on the understanding that Maori retained access to the lake. A similar agreement was reached with the Marangai reserve located in the middle of Cameron's farm.[273] These leases often allowed for some protection of the bush areas on the land and access and continued use of the eel fisheries. While settlers also occupied land adjoining Wiritoa lake, Leslie notes that local farmers remembered Maori continuing to camp seasonally at the lake near the outlet for eel fishing for many years.[274]

At the same time, while the number of Pakeha settlers remained relatively small, in the hundreds rather than thousands, the Whanganui settlement appeared to meet Maori expectations of a small trading village. For some years Maori were very successful in trading with the new settlement, possibly confirming expectations of the overall benefits of having an independent trade outlet located within the district. For example, in the early years of settlement upriver Maori appear to have been competitive with settlers in providing superior quality wheat for milling, possibly aided by the iron rich coastal soils being considered less well suited to wheat growing.[275] The ability of Maori to communally organise labour and

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[272] McLean journal vol 3, 7 August 1850, p 64, ATL ms 1286
[273] Bassett Kay, 'Maori Reserves from the 1848 Crown Purchase of the Whanganui Block, c 1865-2002' draft report, 2002, chapter 3.2.2
[274] Leslie, pp 11-12. p 33
[275] Voelkerling, p 194

apply skilled processing to crops such as flax appears to have provided an advantage in areas such as flax dressing and cleaning wheat for milling. In addition, Maori had a considerable competitive advantage in being able to subsist off traditional foods such as eels, while retaining a very large proportion of their commercially valuable crops for market. This of course relied on Maori still having access to such traditional food sources as well as having sufficient additional land for cropping.

Early farming was also small scale and did not involve intensive modification of the environment. The coastal flats in the purchase area could be farmed without having to remove large areas of forest, as most of the coastal area was predominantly fern and toetoe. Even the drainage of surface water was initially small scale with some swamps being drained but the dune lakes themselves largely remaining. The 1855 earthquake also appears to have drained some swamps and smaller dune lakes, naturally assisting farming.[276] In the early years of settlement the relatively fertile and disease free soils also yielded very good harvests of crops and fruit without requiring significant development of the land.[277]

Farming was also not as important in the early years of settlement as it was to become later. As noted earlier, during the first decade of settlement resource based industries continued to be economically important and both Maori and Pakeha participated in these. They included whaling and flax dressing for export. As farming was being developed, the supply of produce from Maori remained important. The Pakaitore site continued to be used as a landing place and market for upriver Maori to trade produce in town and by the late 1850s, Maori were still providing significant amounts of produce to the settlement. For example the *Wanganui Chronicle* noted on 20 August 1857 that Maori were bringing large amounts of produce to the town at good prices. The past week was considered above average for the time of year with about seven tons of potatoes, forty bushels of wheat, over two tons of flour and thirty five bushels of maize being brought in.[278]

Although Maori were keen to compete in the new economy it did not mean an automatic abandonment of traditional ways and resources as Pakeha tended to assume. Instead it seems Maori preferred to amalgamate what they considered to be the best of both worlds. For example, Young describes the lifestyle of the chief and prophet Te Kere and his people living

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[276] Voelkerling p 71
[277] Voelkerling p 132
[278] cited in Voelkerling, p 73

near Putiki in the late 1850s and early 1860s. The river flats still had useful wood areas as well as cleared cultivation areas for crops. There was access to the river for traditional fisheries such as flounder, eels and smelt and they fished the river mouth for cod and gurnard. They also continued to snare birds. At the same time, they established introduced crops and fruit including a variety of vegetables and apples, pears, quinces and plums while also retaining traditional groves of karaka for medicinal and other purposes. Mud was still used for dying whariki (floor mats) and flax for a variety of purposes. Te Kere also had some cattle and horses while still relying on his canoe for transport.[279]

Also, and often in the interests of avoiding direct conflict while Maori were still powerful in the district, officials continued to gloss over long term implications of settler and official views of the application of their legal assumptions about land and resource ownership for Maori. For example, in 1849 McLean was again at Wanganui attempting to mediate disputes over reserves and resources. One issue that came up was who was considered to have ownership of the logs floating down the river bearing the marks of Maori but taken by a gunboat crew. McLean reported that local Maori 'had been given to understand' that all logs in the river excepting those immediately fronting their reserves were now considered European property, therefore they could not claim them. McLean claimed that Maori found this 'quite satisfactory'. However, he further noted that he had told them that although 'their right was extinct' inasmuch as some of the logs embedded in the river and obstructing the channel were injurious to navigation, there was no 'apparent' objection to their removing them 'so long as no objection was made by the Europeans to their so doing'.[280] In fact McLean seems to have been trying to have it both ways. He claimed to have explained the technical legal view to Maori but he was actually allowing them to take logs in the meantime (which was what they were most interested in). His agreement (as long as Europeans did not object) was simply moving the issue to a later time when he no doubt expected settlers to be able to more easily enforce their view, although it is not clear this was apparent to Maori at the time.

In the same letter, McLean reported on settlers allowing sheep to roam without a shepherd and the subsequent attack on the sheep by Maori-owned dogs. He explained he had persuaded Maori to destroy the offending dogs but Major Wyatt had declined to order compensation to

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[279] Young, *Woven by Water*, p 131
[280] McLean letter to Governor Eyre, 16 July 1849,. McLean letterbook 1848-9, ms 1210, ATL

the settler, preferring to report the matter to the Colonial Secretary instead. McLean advised that 'with due regard to European interests' such leniency in enforcing a 'strictly legal' view should be extended while Maori became more conversant with English legislation.[281] In the early years Pakeha settlers had to be circumspect with Maori even though they often found this irritating. For example, in 1849 the settler Cameron apparently complained to McLean that he had been forced to pay grass money when his cattle escaped and crossed the Whangaehu River. He also complained of Maori dogs used for pig hunting worrying his sheep.[282]

However, by the late 1850s and early 1860s conflicts in views between settlers and Maori of about resource use in the purchase area were becoming more apparent. There is also evidence of growing concern among some Maori of the district that settlers and officials did not share their expectations of a small trading village with very limited influence on traditional systems of authority. These concerns included that settlers were proving to be much more expansionist than initially expected and that they were determined to impose new perceptions with serious implications for Maori authority. The settler determination to expand into the whole coastal area is evident even in this period. In 1848 in reporting on his successful 'completion' of the Whanganui purchase McLean also claimed that he had received many offers from Maori willing to sell 'large tracts of land' both north and south of the boundaries of the Whanganui purchase block.[283] Shortly afterwards he was instructed to begin purchasing the country between Porirua and Whangaehu.[284]

Within a few years officials also sanctioned purchase attempts in blocks near to the Whanganui purchase block. For example, in 1859 McLean paid an advance of £500 for the Waitotara block north of the Okehu stream and extending to the Waitotara River, estimated to contain about 30,000 acres. This was done in haste partly to undermine opposition to the sale from supporters of the King movement. After lengthy negotiations over purchase reserves, this sale was declared competed in 1863.[285] This continuing pressure to acquire even more land, along with many informal leases, appears to have resulted in most of the coastal area from Waitotara to the Whangaehu coming under settler influence.[286] This was quite a

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[281] McLean letter to Governor Eyre, 16 July 1849,. McLean letterbook 1848-9, ms 1210, ATL
[282] McLean papers ms 32 folder 197 leeters 1847-57, cited in Voelkerling, p 89
[283] McLean letter to Colonial Secretary September 1848, *AJHR* 1861 C-1, p 250
[284] Colonial Secretary to McLean 12 December 1848, *AJHR* 1861 C-1 p 251
[285] Correspondence *AJHR* 1863 E-15 pp 1-7
[286] For example, see White's hand drawn map showing what was regarded as the 'boundary' of European influence 1863, opp p 86, JC-Wg 4, ANZ.

different, more expansionist approach, contrasting with initial Maori expectations of a small trading village. At the same time, Maori concerns may have increased when the provincial government insisted on sending explorers even into the interior. For instance, the provincial geologist JC Crawford explored the interior Whanganui district in 1861 to investigate reports of minerals and other resources possibly useful for settlement, including a possible coal field on the Tangarakau River.[287]

There were also increasing tensions within the purchase area. As settler farmers established their farms and became more successful they depended less on Maori for produce. Settlers also became less tolerant of competing forms of land and waterway use. More extensive drainage began to interfere with traditional fisheries. Many of the low-lying coastal cuts relied on periodic flooding to work well but settler farmers sought to minimise this flooding with increasingly extensive drainage. As settlers moved up the valleys the extensive networks of cuts and weirs on many streams also came to be regarded as possible impediments to farming uses. As settlers became more confident they also tended to become increasingly intolerant of the continuation of traditional Maori rights within the purchased areas. The official response to this increasing conflict appears to have been concerted attempts to remove identified 'interferences' to settlement rather than protecting customary rights protected by both Treaty guarantees and the Spain award.

More research is required but it appears that the Wellington Provincial Government began taking over much of the responsibility for purchasing Maori land in Wellington province including the Whanganui district around this time. It has been very difficult to obtain contemporary documentation of policies and actions of the provincial government at this time. However, it does seem that the provincial government appears to have been determined to press for the extinguishment of Maori customary reserves and protections where these were a matter of settler concern, generally through purchasing or the payment of compensation. It also appears that the fishery rights and eel cuts reserved from the purchase were subject to this policy. In effect, as settlers grew in confidence they appear to have increasingly insisted that Maori could only live amongst them on their own terms.

A return of reserves in Wanganui in Wellington province published in 1862 lists the Mataongaonga burial ground and the 'right to eel fishing at Wiritou, Paure, Katoke, Okiri and

[287] report of JC Crawford, Wellington Province *Votes and Proceedings* 1861-2, pp 16-17

Oakura' as 'sold'. This presumably was meant to cover the fisheries in reserve number one of the 1848 deed although interestingly it refers to a 'right of fishery' as Spain originally awarded rather than just the eel cuts reserved by McLean. Preliminary research has uncovered no documentation relating to this attempted 1862 purchase and it does not appear in Turtons Deeds as being accompanied by an official deed. It is possible that there were continuing disputes about what had been reserved in the way of a fishery and McLean may have felt compelled to agree in later discussions that a right of fishery did exist. The 1862 purchase may have been an attempt to simply purchase all interests to remove this 'nuisance' to settlers. Presumably, if the right was not specifically mentioned in the 1848 deed then new official deeds were not required. Unfortunately a large amount of correspondence between the government and resident magistrates and of the Wellington Provincial Government has not survived for this period. Preliminary research has not produced much in the way of clear evidence about this event.

It does appear that the government did not feel that the claimed 1862 purchase by the provincial government had entirely settled matters. This may have partly been because the 1848 deed had also reserved eel cuts and these may have been considered additional to the right of fishery claimed purchased in 1862. It is not clear what Maori would have understood by such a distinction or how an eel fishery right may have been given up while eel cuts were retained. Perhaps also the government may have decided that the provincial government's 1862 purchase claim was not sufficiently adequate, especially if the fisheries issue remained a possible source of real conflict between Maori and settlers. The Native Minister appears to have become involved, suggesting it was a sensitive issue.

The Resident Magistrate records indicate that the Native Minister contacted the Resident Magistrate John White about the matter in June 1862, possibly around or shortly after the time the original purchase attempt was made. For some reason White took until 28 April 1863 to respond to this. Perhaps the unsettled state of affairs in the district by this time contributed to the delay. When he did reply in April 1863, he was only concerned with the eel and inanga weirs in the Okui district streams. This was possibly the Okiri of the 1848 deed but certainly did not include eel or inanga weirs in any of the other waterways mentioned in 1862. Possibly they were considered purchased by 1862 or they were not causing settlers difficulties. It was the streams behind them that were now the issue. White indicated that he had visited the Matarawa stream and its tributaries in March 1863 and discussed the matter with some chiefs. The day before he arrived someone 'supposed to be a European' had set fire to and burned

one of the principal weirs 'which at the time nearly put an end to further negotiation'. This further indicates tensions in the district. White went on to report an extensive network of 56 weirs all with proper names on the Matarawa stream and its tributaries. He reported that the owners had agreed to sell them for £200.[288] He does not indicate why the sale was agreed to or what understandings regarding the sale were. Possibly the owners had realised the weirs would no longer be tolerated by settlers and their best hope was for at least some compensation for them. Possibly also they felt that it was better to lose the weirs in such a disturbed time than cause further tensions between the communities. It is also possible that the chiefs received assurances not mentioned by White.

A little while later in May 1863, apparently in reply to an official query White confirmed that the £200 being asked for was only for those particular weirs in the streams and valley mentioned in his report. It was not meant to be for all the fisheries mentioned in the Whanganui purchase deed.[289] This raises some issues of what exactly had been 'sold' in 1862 and what was understood as 'sold' in 1863. The Wellington Provincial Government appears to have balked at the price and eventually the weirs mentioned appear to have been sold for £35. A deed of 1 October 1863 recorded that £35 had been paid for all 'rights, titles and interests' in the eel weirs and 'manga fisheries' situated in the streams of the Okui district. The actual streams involved are clearly described. They are the 'Matarawa, Kaukatia. Puwharawhara, Matakarohe, Mangamouku, Mangamutu, Mataongaonga streams and their tributaries as set forth and shown on the map attached'.[290] The attached deed map shows the 'Okui Eel Fisheries' with the named streams in the area just inland of the dune lakes.[291] It shows the land around the streams as heavily cut up by settler sections. However, the district described does not include the dune lakes themselves.

White was clear the purchase did not involve any overall general fishery rights in the purchase deed. The 1863 deed by mention of 'manga fishery' appears to be an attempt to extinguish all rights of stream fisheries in the Okui district as well as in the named weirs. Officials seem to have regarded this deed as the final extinguishment of whatever right of fishery Maori may have retained in the whole purchase area even though the 1848 deed appeared more general than this reserving rights in all 'other streams' in the purchase area. The transactions appear to

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[288] John White, letter 28 April 1863 JC-Wg 4, pp 58-59, ANZ
[289] White, letter 6 May 1863 JC-Wg 4, p 65, ANZ
[290] Turtons deeds, no 79, p 247 and attached map.
[291] Turtons deeds, no 79 p 247, attached deed map

raise a number of issues requiring more research than was possible for this report. The 1862 transaction involving the dune lakes fisheries appears to be largely undocumented and uncertain as to what was extinguished. It appears to be an attempt to extinguish any general right of fishery that may have remained after the 1848 deed. It includes a reference to the 'Okiri' which may have been an attempt to include the Okui district of the 1863 deed and also the Okui of the 1848 deed. However, it may have been considered inadequate or limited to a fishery right and not also include eel cuts and weirs. This raises the issue of how adequate the 1862 purchase was for any of the district.

The 1863 deed appears to have been an attempt to further purchase interests in an area where there were considerable tensions. However, it is again not clear what was understood by this. Maori appear to have agreed to give up at least some rights in a specific set of weirs and cuts in named streams. Officials appear to have regarded this as a final extinguishment of all possible legally recognised Maori fishery interests in the whole purchase district. The attempted official extinguishment of any legally recognised interests was also an attempt to remove any perceived legal impediments to settlement with regard to fisheries. It did not mean that Maori could not continue fishing the areas, just that their fishing was now no longer specially protected by either admitted customary authority or legal protection. It now relied on settler tolerance and could continue only so long as it did not interfere with settler interests. However, it is not at all clear whether Maori had understood and willingly agreed to these implications in either the 1862 or 1863 transactions. The involvement of the Wellington Provincial Government in the purchases also seems to have further confused matters and raises issues of how far the Crown ought to have required the provincial authority to take Maori interests into account when allowing it such responsibilities.

The Wellington Provincial Government appears to have continued to push its policy of purchasing reserves within the Whanganui settlement area even as war was unfolding. For example, in 1864 White wrote to Featherston about the proposed purchase of land at the Upokongoro Native reserve 'which has been partially investigated by me' and offered his own services instead as being more likely to avoid conflict.[292]

As the move towards war caused tensions in the district, John White found himself in an increasingly difficult position. He had been appointed as Resident Magistrate for the central

[292] White to Featherston 7 July 1864, JC-Wg 5, p 106, ANZ

Whanganui area, a kind of government agent for the district largely outside the purchase area. He was supposed to convince the chiefs of the advantages of government policies while also assisting with land purchases. As views about Pakeha settlement and land purchasing hardened he found himself in an awkward position. In 1863 he noted privately to Mantell that he felt obliged to follow a 'double faced policy' if bloodshed was to be avoided. In his view Maori could not be led, driven or coaxed unless under definite Maori authority; 'any purely European power is looked on by them as the shadow of a reality of future oppression'.[293]

Nevertheless, White was appalled that in the Waitotara area, some Maori were insisting on selling rights to resources such as timber for settler use instead of allowing them to be freely 'shared'. This insistence was presumably instigated at least partly as an expression of authority in the Waitotara area when the government pressed ahead with a purchase in spite of opposition from owners who supported Kingitanga policies. White came from a missionary background and a long experience of customary Maori 'sharing' of resources. In 1864 he noted in horror that in the recently sold Waitotara block some Maori who rejected the sale not only wanted the road stopped but also payment for the 'grass and sticks' (presumably timber and thatch) required for building the roadmaker's house. White reported that he had refused absolutely to pay for such 'stuff'. Eventually he managed to convince 'friendly' Maori to continue building the house without requiring payment for the materials.[294]

By the early 1860s, the tensions in the district had grown to the point where there were serious divisions among Whanganui Maori over how to respond to the concerns that Europeans might be starting to pose a real threat to Maori authority. Some clearly felt that it was better to maintain a European settlement and manage relations with settlers so the impact of European authority and extension could be best controlled. Others felt more inclined to achieve this aim by supporting the Kingitanga policies of resistance to further land sales. These differences of opinion about how best to address these concerns were reflected in the variety of positions taken by the Whanganui people when war began spilling out from Taranaki.

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[293] White to Mantell, 4 March 1863, JC-Wg 4 , pp 37-38, ANZ
[294] White to Hogg (Provincial Engineer) 5 August 1864 JC-Wg 5, p 137, ANZ

Conclusion

It appears that there was considerable Maori support for the idea of a small Pakeha settlement at coastal Whanganui, as the New Zealand Company appeared to be proposing. However, it also seems that Maori and the Company had quite differing expectations of what such a settlement might involve. Maori expecations may well have been based on their previous experience with Pakeha. This involved relatively small trading settlements among them where some form of land occupancy was agreed but the focus was generally on trading in resources. Continued Maori support for the new Wanganui settlement appears to have been based largely on this expectation, especially while trade did appear to dominate economic activity.

On the other hand, the New Zealand Company was promoting a new type of settlement based on land ownership and speculation and settler expansion into a significant hinterland. The settlement was designed to eventually become self- supporting with reliance on Maori trade being only temporary. The expected continuing role of Maori was at best ambivalent. They were clearly expected to leave where they were interfering with settlers. If any future role was contemplated in the future settlement it seems to have been a minimal or largely absentee one, perhaps benefitting at a distance from reserves leased out to settlers. Maori were certainly expected to leave areas where they 'interfered' with settlement.

In pursuit of its objectives the Company claimed to have purchased a large amount of land in the district and promoted settlement in pursuit of this although it appears that the full implications of the 'sale' and Company intentions may not have been apparent to Maori at the time. It also appears that even by the standards of the time, the Company sale process itself from the deed signing in 1839 to its 'completion' in 1840 was open to significant question. This may not have seemed to be a matter of great concern to Maori while the settlement appeared to be providing the trade opportunities they were seeking and they had the power to contain settlement within boundaries they chose. However, the Company determination to push ahead with surveys outside this area in order to provide land for farm settlement and for overflow settlers from its Wellington settlement did begin to cause some concern. Government intervention appeared to offer an acceptable means of settling matters for mutual benefit. The British government had become convinced that colonisation was inevitable and therefore needed some management, while it had also signed a Treaty with iwi offering guarantees and protections for their interests.

The government did intervene in the Wanganui settlement, investigating the claimed purchase and then attempting to 'complete' it with a new 1848 deed that involved significant land at coastal Wanganui. In doing so, the government appears to have developed policies that primarily accepted and promoted the kind of settlement the new Pakeha settlers had been expecting. It was also assumed that English legal concepts of land ownership and sale would apply. This had significant implications for legal recognition of customary Maori authority over waterways and associated resources in the purchase area. However, it seems that these implications would not have been immediately obvious to Maori. This was especially so when officials and settlers appeared to prefer glossing over the full implications of their views in order to avoid possible conflict while at the same time the practical reality of the new settlement appeared to reflect Maori anticipation of a trade-based economy. It appears therefore, that for some years Maori and settler views and expectations regarding the Wanganui settlement could largely co-exist.

For example, in terms of waterways, it appears that the issue of ownership or authority over the tidal reach of the Whanganui River does not appear to have been openly discussed in Spain's or McLean's investigations and determinations. The river and harbour area appear to have been practically 'shared' while both communities appeared to have assumed their views of authority prevailed. Where there was some possibility of the new purchase causing more outright conflict, as in the implications of private land ownership for the dune fisheries that clearly remained very important to Maori, officials did attempt to provide more explicit legal protections. Maori clearly believed this protection did not alter their traditional authority over the lakes and fisheries although it is not clear that this was entirely the case. Officials attempted protections that endeavoured to realign customary interests to common law understandings and it is not clear that in the process Maori wishes and traditional authority were fully protected, although this may not have been clear to Maori at the time.

The provision of reserves for Maori in the purchase area also tended to obscure the full implications of the legal sale of the Whanganui purchase block. Officials could use the reserves to reassure Maori that they were retaining important areas under traditional authority and therefore the impact of the purchase was not so great. In fact, many of the reserves were linked to waterways and associated valued mahinga kai. The provisions of additional investment reserves also appeared to offer increased opportunities for Maori to participate in the economic progress of the Wanganui settlement. However, the government allowed officials to reduce and conflate these different types of reserve in the interests of promoting

settlement. It also allowed considerable uncertainty over the reserves even as the 1848 purchase deed was signed and for some years later. This meant that the legal implications of the purchase, especially for waterways were often only revealed in a piecemeal and often confusing fashion as settlement became more intensive and as Maori were becoming marginalised from the purchase area.

However, for some time the long-term legal implications for Maori may have still remained largely obscure. The fledgling settlement continued to rely on Maori trade, Maori could continue using many resources in the purchase area while some land remained unsettled and officials and settlers continued to feel constrained from insisting on their views while Maori remained an important force in the district. In addition, the purchase area, even after 1848, was still a realtively small part of the whole Whanganui district. The rest of the interior still remained unambiguously under Maori control. Maori may well have felt that some uncertainties or losses in the purchase area were made up for by the advantages of having their own trading settlement.

However, by the late 1850s and early 1860s there was growing tension in the district. It had become increasingly evident by this time that settlers did not intend to be confined to Maori expectations of a small trading village and in this they were supported by government policies. Settlers and officials continued to press to buy more extensive land areas along the whole coastal Whanganui district. By this time the government had also given the settler dominated Wellington provincial government land purchasing responsibilities, including for the Whanganui district and it was aggressively purchasing areas including even reserves deemed to 'interfere' with settlers. As part of this it appears to have attempted to purchase the rights of waterways fisheries Spain had felt 'compelled' to protect and McLean had been instructed to reserve in 1848. The provincial government appears to have claimed to extinguish these in the years 1862 to 1863 although the actual circumstances of these purchases is not clear. It is also by no means certain that through these transactions Maori intended to willingly and deliberately agree to give up any general right of fishery in the purchase area.

Importantly, the provincial government was also beginning to assert rights to explore the Whanganui interior, surveying resources and potential settlement areas and turning attention to the interior as a possible focus of land purchasing. The relentless settler and government pressure for land had created disquiet throughout many Maori communities by this time and Whanganui was no exception. Settler views on the implications of land sales for continued

Maori authority were also becoming more apparent to many Maori and communities were attempting to find means of addressing this. As in other districts, there was a variety of opinion among Whanganui Maori communities not so much on the need to preserve traditional authority but on how best to do so. Opinion ranged from support for combined physical resistance to any further land sales, through a desire to act only defensively and locally, to a determination to cooperate with settler forms of government to ensure settler influence was effectively managed while at the same time new economic opportunities were not lost. This range of opinion was reflected in the different positions taken by various Maori communities in the Whanganui district as the colony moved towards war.

Chapter 3 The impact of extensive land purchasing on traditional authority

Introduction

In the period before the New Zealand wars, the Whanganui purchase had introduced some important legal ramifications for continued traditional Maori authority over inland waterways and associated mahinga kai in the purchase area. However, although significant, the 1848 Wanganui purchase area was still a relatively small part of the whole Whanganui district where Maori still exercised traditional authority. In addition, the legal ramifications may not always have been clear to Maori. This was especially possible when settlers and officials avoided fully explaining their assumptions to avoid possible conflict while Maori remained powerful. It is also possible that Maori themselves may have overlooked some possible concerns in the interests of encouraging the new settlement and the mutual benefits it appeared to be providing.

However, by the early 1860s the continued expansionist pressure from settlers and government was beginning to cause some serious concerns among significant sections of Whanganui Maori that traditional authority was in danger of being seriously undermined. The various positions taken during the wars appear to reflect differing opinions over how best to address this concern, ranging from outright resistance to attempts to continue engaging with, and therefore managing, European influence. In the continuing uncertainty in the years from the 1870s, the majority of Whanganui Maori leadership appear to have abandoned outright resistance and instead sought ways to better accommodate increasing settler and government influence while still attempting to retain significant chiefly authority, including over waterways and associated mahinga kai.

The government also made renewed efforts from the 1870s to build constructive relations with Whanganui Maori communities and diplomatic efforts such as through the system of resident magistrates continued. However, by this time, the government also appears to have become determined to more aggressively promote extensive settlement and the extension of government authority over the North Island, including into the interior Whanganui district. The extensive purchasing and promotion of the alienation of Maori land continued to be a

major means of achieving this, supported by a more thorough policy of encouraging settlement through immigration, land development and massive public works programmes. This had significant implications for continued Whanganui Maori authority over waterways and associated mahinga kai well outside the boundaries of the 1848 purchase area.

The post-war system of land purchasing was also to be assisted by a new institution intended to more peacefully transform Maori customary authority into a title based on land that could then be more easily alienated from Maori ownership. The Native Land Court process was soon to become inextricably involved in the undermining and loss of Maori authority over land and associated waterways and mahinga kai in much of the Whanganui district. This loss of legally recognised authority through land alienation was very difficult to avoid and even where Maori sought alternatives such as through vested lands, they found these also offered very limited recognition of customary authority.

3.1 The Native Land Court process and customary interests in resources

The period of warfare and later resistance to the imposition of land confiscations in the 1860s and then intermittently to the early 1880s had a major impact on the Whanganui district even though the settlement itself largely avoided direct conflict. Significant sections of Whanganui Maori supported the King movement with some support for other movements such as Pai Marire and later Titokowaru's war and the resistance at Parihaka. There was also strong support among some sections for the protection of the Wanganui coastal settlement and for building and maintaining an alliance with the increasingly influential settler government. These various views reflected differences of opinion over how best to achieve a more general aim of managing change while still maintaining a significant level of traditional authority.

By the early 1860s, the previous system of Crown purchasing had largely been discredited. The government now sought to provide a new means of establishing some form of legally recognised title to Maori that would make it easier for Maori to participate in the new land based economy and at the same time allow settlers a more straightforward means of acquiring Maori land. This new system inevitably required some changes to enable the complex system of Maori customary right in land and resources to be accommodated in the new economy.

As noted in chapter one, Whanganui Maori had exercised traditional authority over the whole of the Whanganui district. However, they were also keen to incorporate beneficial aspects of European trade and settlement into this system. The traditional Maori economy had relied on

both seasonal use and management of resources and more settled cultivations. One was not necessarily of more importance than the other. As a result, rights to resources such as waterways and fisheries were not always considered to be reliant on nearby land ownership. A number of investigations have shown that under customary right holding, although land and adjoining resources were often closely linked, this was not always necessary.[295] It was possible for different people to have acknowledged rights in a resource such as a fishery or bird snaring area than those who had acknowledged rights in the adjoining land. These rights may have been obtained as compensation for damage, to repair relationships or as a gift to mark a particular occasion such as a marriage. The descendants of the recipient could then continue to exercise those rights through continuing use even if they had no recognised interests in the nearby land.[296]

At times, a particular mahinga kai area or waterway could also have considerably more economic value than surrounding land. For example, wetlands or a particularly productive bird snaring area might be regarded as a rich resource while the associated land might be considered too exposed or infertile for other use. The use and control of the associated resource might then be considered to have more importance than residence on the land.

The extent and nature of customary rights in a resource such as a fishery might also vary considerably. They might range from the exercise of a controlling overall management right to a simple right to part of a harvest through kin relationships. Rights might also relate to a particular type or time of harvesting, a particular species or part of a resource. The more abundant and rich a resource and the more modified it was for harvesting purposes, the more carefully defined a range of rights might be. Witnesses to the Native Land Court in the Whanganui district revealed evidence of 'a complex web' of rights and associations, including rights that could be passed through men and women, personal and whanau usage rights, hapu proprietary rights and management rights and symbolic and spiritual iwi over-rights.[297]

The economic importance of seasonal resource use also meant that customary rights were not generally easily delimited within lineal boundaries in discrete areas of land. Hapu or family rights were often concentrated in one area but they might extend out to a coastal area for a particular seasonal fishery and inland into an interior region for a particular bird snaring or rat

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[295] For example, Doig 'Customary Maori Freshwater Fishing Rights' PhD thesis 1996; Ballara, 'The Origins of Ngati Kahungungu' PhD thesis 1991
[296] For example, Doig, pp 236, 240, 263
[297] Doig, p 399

trapping area or for particular medicinal plants. For example, the Kahawai fishery at the Whanganui River mouth and the tunariki fishery at the Ohura River mouth are examples of important fisheries where the fishing rights were considered separate from the surrounding land. Rights tended to radiate out from a focal area, taking in particular resource rights at certain points but more blurred between them and possibly overlapping with other groups towards the outer limits. They were not necessarily enclosed by clear and continuous linear boundaries or by discrete, separate blocks of land.

There is evidence to indicate that customary fisheries rights were not simply analogous to the Pakeha concept of riparian fishing rights extending from rights in land to the waters beside that land to a formal midpoint. Instead, Doig notes that Native Land Court evidence from the Whanganui district indicates that river or fishing rights were not considered as being necessarily subordinate to land, but much more even. Communities would fish in parts of waterways that gave easy access and formal dividing lines down the midpoint of a riverbed were rare. Instead a fishery might be on one side only or extend across a whole waterway. It was also possible for two different hapu to share fisheries in the same part of a waterway, with their respective rights being known and respected.[298]

Maori did seem to want to find some means whereby they could modify these complex systems of rights in some selected areas in order to make land available for new economic uses. However, they also wanted to be sure that this was done carefully and under the control of traditional forms of chiefly and hapu authority. A number of prominent chiefs had made it clear to the Government, in forums such as the Kohimarama Conference of 1860, that they wanted to have some legally recognised means whereby selected land might be used in the new economy by sale or lease. They also wanted to be able to reform some of their landholdings to set aside land for use as family farms.[299] They needed a legally recognised process for this so their decisions would be recognised and enforceable but they wanted to retain a significant degree of control over this process and avoid the uncertainty and disruption of the previous system of blanket purchasing and uncertain provision of reserves.

The Government responded to this by promising a system of investigating and determining claims to land before it was offered for sale or lease. The Government also initially promised that this process would have significant chiefly input and would then allow owners to deal

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[298] Doig, p 386
[299] Ward, *An Unsettled History*, pp 126-7

with anyone and not just the Crown. For example, in 1862 Resident Magistrate John White reported that he had explained new Government proposals to chiefs of the Whanganui area. He reported that he had explained that under the proposed system Maori would be able to lease or sell land to anyone after their claim to the land had been investigated by, and proved before Native assessors. These would be guided by Maori custom respecting land and would be under the supervision of the European Resident Magistrate. The Governor would then issue Crown grants in favour of those to whom the Court gave the land. White reported that the chiefs had accepted this explanation of Maori mana (ownership of land) 'with much satisfaction'. [300]

In fact the Native Land Court process that began operating from 1865 proved to be quite a different creature from that anticipated by the chiefs. The role and impact of the Native Land Court process generally has been covered in detail in a number of reports and publications.[301] The role of the Court in the Whanganui region has been highlighted in overview reports and is also likely to be researched in more detail in a number of block investigations that are still to be completed.[302] This chapter therefore presents a very brief general overview and concentrates on those aspects of the process that appeared to have most significance for traditional Maori authority over inland waterways and associated mahinga kai in the Whanganui district.

One major feature of the Native Land Court process that impacted on this traditional authority was the way in which it was required to transform and reduce complex customary interests in a variety of resources into a simplified legal title to discrete blocks of land. When the Court became generally operative from 1865 it was required to investigate the 'ownership' of Maori customary land according to Maori 'custom' and then transform that customary title into title derived from the Crown. The chiefs had initially believed that they would have a considerable influence on this process. However, it seems clear that the Government had decided that the process would in fact be a means of reducing all Maori customary interests into one based on the European concept of the primacy of land ownership. The new legislation required the

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[300] John White report 1862, JC –Wg 4 p 6

[301] For example, Ward, Alan, *An Unsettled History*, especially chapters 8 & 9; Williams David, *Te Kooti Tango Whenua; The Native Land Court 1864-1909*, Huia, Wellington, 1999,

[302] Anderson Robyn, 'Report of Whanganui Iwi and the Crown, 1865-1880', 1999, especially chapter three; blocks still to be investigated including Land Court activity include the large Waimarino block.

Court to create a new title to Maori land that 'assimilated as nearly as possible to the ownership of land according to British law'.[303]

It soon became evident that chiefs and hapu would not have the level of control over the creation of this form of title as they may have expected from the 1862 proposals even if the determinations were expected to be based on Maori custom. The Native Land Act 1865 and subsequent legislation and amendments provided for a greatly reduced role for chiefs in the Land Court process than the 1862 proposals had appeared to indicate. Maori input was reduced to an advisory role at the direction of judges with assessors being Government appointed and having relatively low status and authority. In contrast the European judges were considerably elevated in status from the 'guidance' role initially proposed to actually deciding cases and Court procedure.

The European Land Court judges assisted by numerous legislative amendments gained the overall authority to develop the system of rules, norms and procedures under which proof of customary entitlement was to be determined. This enabled the Court to set the parameters under which customary interests might be identified or accepted. Native Land Court judges tended to codify this 'customary' system of rights in resources by favouring, simplifying or creating interpretations that aligned most closely to their own beliefs and prejudices and their role of creating easily transferable titles in land to assist in the opening of Maori land for settlement. For example, studies have noted that the judges tended to favour evidence that reflected settler beliefs that the strongest moral claim to land depended on continued residence and cultivation. Even though witnesses provided a wealth of evidence to the Court on the at times separate importance of associated resources such as fisheries and other mahinga kai, judges tended to reduce this to proof of occupation and ownership of associated land.[304] The system has been described as crudely pounding a complex web of rights and associations to fit a simplified Pakeha model of Maori tenure.[305]

Native Land Court judges tended to regard seasonal occupation and harvesting such as bird snaring, berry gathering and fishing as inferior kinds of claim to possession of land especially if not supported by claims of permanent physical occupation of nearby land. When Court judges did accept evidence of interest in resources this was generally regarded as assistance in

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[303] for example, the preamble to the Native Lands Act 1862
[304] For example Doig,
[305] Doig p 399

determining land entitlements rather than as possibly establishing independent rights in a particular resource.

The Court process required that discrete blocks of land were presented for investigation and in focusing on rights to these, Court judges had to necessarily reduce the evidence of witnesses revealing customary overlapping and complex interests to 'best' and exclusive rights in particular areas delineated by continuous boundaries. As a result, Court judgments often seemed to contradict the evidence given. Doig has noted that judges often seemed to struggle 'to reconcile Pakeha views on the primacy of physical occupation and land occupation as signs of ownership with contrary evidence given to them by Maori'.[306]

A number of inquiries into the Native Land Court system acknowledged that the Court process inevitably excluded or devalued customary interests in resources other than land. The Hawkes Bay Native Lands Alienation Commission report of 1873, for example, recognised that if the Court was to be useful in promoting Pakeha settlement then it had to make a final and decisive decision on land that conferred a 'perfectly exclusive title on the grantees'. The Commission found that any acknowledgement of the possibility of any other customary rights that might remain unextinguished and vested in persons other than the grantees of title would create unacceptable uncertainty for settlers.[307]

The report acknowledged that fairly often, when land that had been investigated and title determined by the Court was sold, there were Maori who may not have had large rights in the land but who nevertheless had 'certain minor advantages' they had long exercised by acknowledged custom on the land. These were of the order of running pigs on the land, taking materials for building houses or exercising rights to fish. The report considered these to be 'in general of no great importance' though sometimes they were 'of more considerable value'. The report found that such advantages were generally 'lost' when the land was sold but might be compensated with a share of the purchase money although it acknowledged that this did not necessarily happen. The report noted considerable concern about the loss of this type of right among Hawkes Bay Maori. However, it rejected any type of ownership claim that might weaken or invalidate a subsequent European title where the holders of such 'advantages' had never been acknowledged to have had any significant claims to associated land ownership.[308]

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[306] Doig, p 230
[307] Report of Hawke's Bay Native Lands Alienation Commission, *AJHR* 1873 G-7 p 43
[308] Report of Hawke's Bay Native Lands Alienation Commission, *AJHR* 1873 G-7 pp 43-44

More recently it has been argued that freehold orders of the Court may in fact have produced no more than a partial extinguishment of customary title by concentrating only on land. For example, Paul McHugh has put forward a case that the 'traditional incidents' to rights in land still survive as non-territorial aboriginal title. If a Crown grant did not itself extinguish aboriginal title in resources other than land, these may continue to exist unless extinguished by legislation or voluntary relinquishment.[309]

However, for the period in which the majority of Whanganui lands passed through the Native Land Court, this view was rejected and it was assumed that Native Land Court investigations and orders completely assimilated all forms of customary rights into a system of land ownership based on English legal understandings. As a result once land passed through the Court traditional interests other than in land were no longer legally recognised. All associated resources such as waterways and bush areas depended entirely on the ownership of land they were associated with. As the Hawke's Bay Commission put it, separate rights in resources and mahinga kai were simply regarded as lost 'advantages'.

It has not been possible to investigate Native Land Court cases in detail for the Whanganui district in the time allowed for this report. However, even preliminary research reveals numerous instances where witnesses describe interests in fisheries, bird snaring trees and other non land resources. These are invariably treated by judges as evidence of rights and occupation of lands rather than as separate interests. In the early Court decisions where a maximum of ten owners were required in the title to a block, cases were often argued very generally and discussions of resources such as fisheries rarely feature in judgments. An exception is the Pourewa block hearing of 1869, when evidence of family fishing rights was almost the only evidence given for rights of ownership of the block of land.[310]

Even where it seems that resources such as fisheries or bush were traditionally considered more valuable than the nearby land, judges still insisted that such rights were subordinate to, or proof of, land ownership. For example, in the Mangaporau block investigation in 1877, Judge Heale admitted that the land 'seems never to have been occupied except occasionally for snaring birds eels &c' and went on to grant the land to Ngati Hau who gave evidence of fishing rights.[311] Doig notes that in many partition hearings of river blocks in the 1890s,

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[309] P G McHugh, 'Aboriginal Servitudes and the Land Transfer Act 1952' *VUWLR*, vol 16 1986 pp 319- 325
[310] MLC Whanganui MB 1C p 292, cited in Doig p 348.
[311] MLC Whanganui MB 1F, p 272 , cited in Doig p 348

fisheries evidence formed an important part of the information that judges worked from. Yet in the judgments on these cases fisheries were only occasionally mentioned 'as a sign of occupation or 'act of ownership' and the ramifications of fishing rights were not discussed'.[312] While many hapu did have fishing rights associated with their place of residence, some evidence to the Land Court consciously rejected such associations.[313]

Similarly, in evidence on the Rangataua blocks, witnesses described the bulk of the land especially near the slopes of Ruapehu as rocky and barren with stunted vegetation. However it was considered an important hunting and fishing ground. The lake Rotokawau at the northern end was an important fishery where there was a seasonal camp, and birds and pigs were also hunted.[314] Nevertheless, the Court still had to make determinations based on land ownership. The Court sought further advice when it came to determining relative interests and Whanganui advisors had considerable difficulty in translating customary rights to hunt and fish into something the Court could turn into relative interests in actual parcels of land. For example Topia Turoa found it difficult to say how far an exclusive right to a given spot might be strictly interpreted in such country as Rangataua.[315] Aropeta Haeretuterangi also noted that in such a block the claims of those with cultivations might be equal in value to those who only hunted over the land, while fruits and berries would be open to all without difference of right in them.[316]

It also seems clear, that as with other districts, Maori rapidly realised that evidence of such uses and to such 'incidental' resources would only be accepted in so far as it proved interests in land. Witnesses therefore appear to have felt obliged to tailor their evidence in this way. For example, in the Tokamaru case in 1876, Reneti Tapa stated that his hapu had rights in the land block. This was proved by evidence that they had cultivated and exercised 'other rights of ownership' in catching rats, eels etc.[317] Witnesses in the Rangiwaea block in 1893 also described it as a 'working place' for catching mutton birds, weka, rats and kiwis that proved their ownership to the land.[318] In the Mangapapa block witnesses also spoke of eel fisheries in

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[312] Doig, p 349
[313] Doig, p 386
[314] MLC Whanganui MB 3 pp 61-70, 207-300
[315] MLC Whanganui MB 3 pp 359-360
[316] MLC Whanganui MB 3 pp 360-361
[317] MLC Whanganui MB 1F Tokamaru p 21
[318] MLC Whanganui MB 16 p 404

adjoining and enclosed waterways including Rotokohu lagoon, kaka snaring places and timber places for making canoes as part of their claims to ownership of the block.[319]

One major impact of the Native Land Court process was therefore the reduction of more complex customary rights in resources to those based on rights in land. This had implications for traditional systems of authority and rights when Maori land passed through the Court system even when it remained in Maori ownership. For example, the process effectively excluded from legal recognition those who may have had acknowledged customary rights to resources separate from those in adjoining land. The Court insistence on transforming customary interests into 'best' and exclusive interests also effectively disenfranchised those who may have had overlapping interests in the land (and associated resources) but who failed to prove they had the 'best' interests to the satisfaction of judges.

The Land Court process as it developed also made it very difficult for chiefs and hapu to choose to just selectively bring some areas under this new simplified system of land title and retain others under customary authority subject to more complex rights and interests in resources. The Land Court system provided that any individual Maori, even someone later proved to have no interest in an area and against the wishes of a majority of those found to be owners, could force a block of land before the Court for investigation and the new form of title.[320] This severely undermined the ability of chiefs to make rational decisions about which land might be selected for use in the new economy. The Court process also required that all land brought before the Court had to have customary title extinguished and a new title issued, even if the owners might want to retain some under traditional forms of authority.[321]

3.2 The Native Land Court process and the alienation of Whanganui lands

The Native Land Court process not only reduced customary interests in resources to a form of title based on the primacy of land ownership. It also created a title that greatly faciltiated (in conjunction with other Crown policies) the alienation of Maori land. This also had a major impact on customary interests and authority over waterways and associated mahinga kai because of the settler government insistence that such resources were linked to and transferred with, transfers in land ownership.

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[319] MLC Whanganui MB 4 Mangapapa block, pp 34-110
[320] Williams p 85
[321] Williams p 178

A number of studies have shown how the new form of title created by the Land Court created a new, absolute, transferable right of ownership (and alienation) in land outside traditional hapu control.[322] This tended to further undermine hapu and chiefly authority over land areas once they had been through the Court, rather than providing for a system of rational management and control the chiefs had sought.

The Native Land Act 1865 originally enabled only ten owners to be listed on a title. These were originally assumed to be trustees but were treated by the Court as absolute owners effectively excluding large numbers of rightholders.[323] Later 1873 legislation attempted to overcome this but rendered communal ownership into many individual transferable interests. This system of individual shares in title had the effect of providing significant difficulties for Maori wishing to retain and use their land even in the new economy they were supposedly designed for. The system created the situation where individuals might hold a significant number of shares in land but in reflecting some degree of customary entitlement these were often widely scattered over a number of different blocks of land. Individuals found it very difficult to translate their scattered shares into usable blocks of land, even family farms.[324] When they did try to redistribute shares more rationally they found the process very difficult unless they were willing to buy and sell shares with all the associated expense and difficulties. This system was made even more unmanageable by Native Land Court rules on successions of shares equally to all descendants. This rapidly resulted in very large numbers of relatively small shares in blocks of land making them even more difficult to use.[325]

The Land Court system also created a very heavy system of costs and fees for even those reluctantly forced into it. While whole blocks may have had some value, the individual interests on their own provided little in the way of financial security while heavy costs had to be met. Attempts at rationalisation of holdings through measures such as partitions also incurred heavy expenses. As a result the Court process often produced debts that resulted in further pressures to alienate land.[326]

While pressures to alienate land were severe, the Native land legislation and amendments ensured that the individual shares in land created by the Court were very easy to sell. 'Free' of

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[322] For example, Ward, *An Unsettled History*, p 133
[323] For example, Ward, *An Unsettled History*, p 134
[324] For example, Ward, *An Unsettled History*, p 138
[325] For example, Ward, *An Unsettled History*, p 140
[326] For example, Anderson, R, 'Report of Whanganui Iwi and the Crown 1865-1880', pp 74-76

hapu or chiefly control or protection, each individual shareholder became the potential target of pressures and sharp dealing with few legal protections. The system made it very easy for a determined purchaser to break into a block of land by first targeting secretly those holding shares who might be most vulnerable to pressures to sell. These pressures might be the result of debt, the desire to rationalise holdings or the holder having their main residence elsewhere.

Once some shares were acquired, rumours of sales were often sufficient to pressure more owners to sell. Sellers might have concerns that when the Court did sit they might be awarded the least useful parts of the land. This was especially a matter of concern when Government officials put considerable effort into ensuring that those who had sold were recognised as the rightful interest holders by the Court. Others with possibly weaker interests might also feel pressured to sell to increase their chances of having rights recognised, or in the event of failure, of at least acquiring some cash. Others were concerned that if they waited too long, the price paid might go down and they would be left with little return and possibly the worst areas of land. This secret, manipulative and often long drawn out process was very effective at undermining communal consensus and efforts to retain any land, let alone manage what land might be alienated or retained.

The purchaser could continue this long drawn out process until the whole block was acquired. Alternatively, after acquiring sufficient or all likely shares the purchaser could apply to the Court to have land partitioned out according to the shares claimed to have been purchased. This was a highly uncertain process where a Court determination might result in the loss of resources such as a lake or bush area in the area of partitioned land even though remaining non-sellers might wish to retain them. The purchaser could also use the Court awards of owners to further target those with interests to pursue sales.[327]

In brief, the Land Court system of title, while it did little to assist with the rational and managed use of hapu lands in the new economy, did greatly simplify the process of alienating land. The means by which the Land Court process facilitated the alienation of Maori land in the Whanganui inquiry district has been touched on above and in overview reports.[328] More detailed research is still required. For the purposes of this report, it is important to note that the Native Land Court process appears to have been a major means of facilitating the

[327] For example, Anderson, R, 'Report of Whanganui Iwi and the Crown 1865-1880', re purchases in Whanganui district in the 1870s especially chapter 4
[328] For example, Anderson, R, 'Report of Whanganui Iwi and the Crown 1865-1880', draft, 1999

alienation of large areas of land in the Whanganui district from Maori ownership. This extended well outside the original 1848 purchase block and eventually right into the interior of the region and involving the vast majority of Maori lands in the district. In turn this had major implications for continued Maori authority over the many waterways and mahinga kai associated with this alienated land, as loss of land ownership was linked to loss of control over associated resources. This strong link may not have always been evident to Maori who for some time still appeared to believe that traditional harvesting, of fisheries in waterways for example, could continue even when adjoining land had been alienated, especially if this was to the Crown and well ahead of actual settlement. However, the early ambivalence about the consequences of land alienation for Maori often noted in the early decades of settlement, was replaced from the 1880s with an increasingly firm imposition of settler views from the 1880s. This extensive land alienation significantly extended settler influence in the Whanganui district well outside the idea of a small trading village Maori appear to have originally envisaged.

3.3 Extensive land purchasing in the Whanganui district 1870s-1920s

With the critical assistance of the Native Land Court process, the government appears to have embarked on a major land purchase initiative in the Whanganui district after the wars. It has already been noted that the Wellington Provincial Government appeared to be pushing purchases right up until the wars even if these were not totally completed at this time. The wars appear to have halted land purchase activities for a while, but from the 1870s even as the government was attempting to rebuild relationships with various Whanganui communities it also embarked on an even more extensive programme of land purchasing. Maori communities of the Whanganui district remained deeply divided over how best to respond to continued pressure to alienate land and how to deal with the Land Court system, which appeared to be a major factor in this. Some wished to sell land to participate in the new economy but many preferred to lease only. Leasing had the apparent advantage that the land would eventually revert to Maori control and in the meantime rental income might provide sufficient capital to pay for improvements and further develop the land once the land reverted. It also enabled the owners to place some limits on how they might treat waterways and other resources associated with the land. Those communities supporting the Kingitanga wanted no involvement with the Land Court at all. However, this policy proved very difficult to follow as communities found it almost impossible to keep their land out of the process and once it was involved, if they did not take part they stood to lose all interests in it anyway. During the

1870s Whanganui Maori leadership made a number of attempts to develop a consistent policy towards continued sales throughout the district and opinions did not necessarily follow the actions taken during the wars.

In the meantime, the government embarked on an aggressive programme of public works and promotion of Pakeha settlement throughout the North Island in an effort to ensure the pacification and 'swamping' of outright Maori resistance and traditional Maori authority.[329] The Whanganui district was also subject to this policy.[330] This policy required the opening up of large areas of land for this development. For example, in 1871 McLean instructed land purchase officer James Booth on government policy to acquire as much land as possible between Whanganui and Taupo for 'colonization and settlement' after it had been through Land Court.[331]

There was a great deal of settler pressure to continue extending Pakeha settlement out from the coastal settlement which had begun to thrive from the 1870s and into the undeveloped interior areas settlers believed needed to be 'opened up' to expand Wanganui and make use of the hinterland resources.[332] There was pressure to develop areas for family farms and also to 'open up' the large undeveloped inland area known as the Murimotu plains, which today includes Raetihi, Ohakune and Karioi. The large interior grasslands were believed to be well suited to extensive sheep grazing even if they were not capable of being intensively developed for farming.[333] The settlers demanded that the government acquire and develop large areas of land that could then be opened for settlement.

However, under the new Land Court system, government purchasing was theoretically in competition with private purchasers. The government appears to have decided to avoid what were seen as the detrimental effects of competition, such as possibly higher prices for land and piecemeal acquisition that might interfere with opening and developing large areas of land for settlement. In an effort to prevent such possibilities, government land purchase officers began paying advances on blocks of land, before they had even come before the Land Court or block boundaries were settled.[334] These advances were often made in secret to just

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[329] For example, Belich, *Making Peoples*, pp 248-9
[330] For example, Anderson, 'Report of Whanganui Iwi and the Crown 1865-1880' chapter 4
[331] McLean to Booth 7 September 1871 *AJHR* 1873 G-8 p 27
[332] Voelkerling, p 151
[333] Voelkerling, p 90
[334] For example, Ward, 'Whanganui Ki Maniapoto' 1992, p 26

some individuals believed to be rightholders and began the lengthy system of acquiring individual interests outlined above.

This system undermined the efforts of chiefs and hapu to manage land and associated resource use in a rational and controlled manner and it failed to meet Maori requests and original government proposals that land title would be decided in advance without the accompanying pressures of to alienation. The system was also not particularly conducive to rational land acquisition by the Crown as it could be many years before acquisition progress in terms of actual land rather than just shares acquired was known. However, it was a very effective means of beginning land alienations even in the face of considerable opposition from Maori and this appears to have been considered the major priority of purchasing at this time. The scattered and often uncertain nature of Crown acquisitions also provided more incentive for acquiring whole blocks rather then rely on more uncertain partition awards. This again tended to undermine Maori efforts to retain even parts of some blocks.

From the 1870s Crown land purchase officers began employing this system of purchasing in the rest of the Whanganui district outside the 1848 purchase boundaries. Purchasing activity was initially concentrated in the northern Tuhua lands.[335] The system of making advances and then trying to 'mop up' individual shares meant many of these first purchases were not completed by 1880 but they marked the first inroads into the Whanganui interior lands outside the Company purchase area. These were quickly followed by the payment of advances or 'opening of negotiations' for lease or purchase in numerous other blocks including by 1875 Tokomaru, Pikopiko, Kai-iwi, Kirikau Retaruke, Kauautahi, Te Kopanga, Hauhungatahi, Maungaporau and Ngarakauwhakaaraara in the Whanganui and Upper Whanganui districts.[336]

The Kirikau (17,900 acres) and Retaruke (21,600 acres) blocks were some of the numerous examples of purchasing prior to any Native Land Court determination of title. In 1875 Booth reported that surveys and agreements had been made for the blocks but they did not come before the Native Land Court until the following year. When title was determined for Retaruke, the Crown applied for a subdivision of its interests and ended up with the whole block apart from two reserves Ngamoturiki (500 acres) and Mangapuwhero (185 acres). When the title to Kirikau was determined, the Court was told that interests in it had already

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[335] Walzl, 'Whanganui Land 1900-1970' draft report, 2002, p 9
[336] Booth to Under Secretary, 18 July 1875, *AJHR* 1875 C4-A p 1

been sold. Booth had made sufficient advances and secured the right of purchase.[337] This prior dealing was legal under section 107 of the Native Land Act 1873 where the Court could give effect to 'inchoate agreements' between Maori and land purchase officers.[338]

Land purchasing began to spread inexorably and Maori non-sellers began to protest although initially this was not well organised and limited to activities such as halting surveys. These attempts to slow land purchasing failed, however, and in the years 1874 to 1879, the Crown claimed to have purchased 143,000 further acres in the Wanganui district.[339] Land purchase officer Booth further reported that he was in negotiation for 26 blocks that had passed the Court and another 61 that had not – some 800,000 acres.[340] By the 1880s Maori opposition was becoming more organised. As part of this the chief Te Keepa attempted to establish a legally binding land trust to exclude a defined area of the district from purchasing. This trust gained considerable although not complete Whanganui Maori support but could still not resist the secret manipulation and pressures on individuals and communities and eventually failed.

However, the system of advances and then acquisition of shares took some time to become apparent, and for some years the government also followed a policy under McLean, who was now also Defence Minister, of avoiding provoking open conflict with Maori as much as possible. Richard Woon was appointed Resident Magistrate for the Whanganui district outside the European settlement. He had special responsibilities for establishing and building relations with various chiefs and communities in an effort to encourage them into the system of government administration and detach them from the 'dangerous political combinations' to which they were addicted and from which they had shown a desire to be 'emancipated'.[341]

Woon took his duties seriously. He successfully sought government assistance in rebuilding flour mills, and he encouraged the adoption of crops such as tobacco and mulberry that might encourage young Maori to cultivate land and divert them from war. In this process, Woon declared that he had assured Maori that 'I have their interests at heart'.[342] Woon did support individualisation of Maori land title and he was dismissive of Maori attempts to form their own committees as an alternative to the Resident Magistrate and Land Court system. He also

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[337] Booth to Under Secretary 22 July 1875, NLP 75/316, MA-MLP 1 / 4; ANZ; Ward et al, CCJWP report p 24
[338] Ward et al, CCJWP report, p 25
[339] Ward et al, CCJWP report, p 20
[340] Booth to Under Secretary 5 July 1879, NLP 79/193 MA-MLP 1/4
[341] Letter 21 December 1870 Assistant Native Secretary to R Woon appointing him Resident Magistrate, MA-Wg 1/1, ANZ
[342] letter Woon to Under Secretary, 14 June 1871, MA-Wg 2/1 p 276, ANZ

assisted with government initiatives including land purchasing. However, he was careful to avoid situations where his judicial and diplomatic status with Maori communities might appear compromised. For example, he was reluctant to be seen to be representing the government over the issue of Crown rebuttal of Maori claims to the Whanganui River foreshore.[343] He also took his role of advocating for Maori to the government seriously. For example, he persistently sought to have a legally recognised area of land set aside as a marketplace and canoe landing area in the vicinity of Pakaitore, so that Maori could continue to trade with the town without interference.[344]

However, by the end of the decade government policies had changed as settlers and officials became more confident in their own authority and less willing to take Maori concerns into account. As part of this process Woon was replaced as Resident Magistrate by the land purchase officer James Booth and the functions and focus of government policy in the district became more openly and aggressively directed at land purchase.[345] The increasingly inflexible and intolerant attitude of government ministers can be seen in the responses to Woon in his later years of office. For example, his request for a government inquiry into the complaints of Kemp and his people, as an 'old friend of his and his people' about the destructive impact of the Native Land Court system especially the Native Land Act 1873 appears to have failed to elicit a government response.[346] His constant requests for a legally recognised camping and canoe landing area on the river foreshore in the Wanganui township also met with a much harsher government response by the 1880s. For many years before this, the government had appeared willing to provide for a site but had always allowed other more pressing concerns to interfere. However, by April 1880, the government attitude had hardened. The Under Secretary Lewis now passed on instructions from Native Minister Bryce that Woon's proposal for legally setting aside land for such a landing and market place for Maori could not be approved 'as it would be objectionable to establish the Natives in the middle of the Town'.[347]

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[343] Woon correspondence re claims to foreshore, August -December 1871 MA-Wg 2/1 outwards letterbooks 1871-73, ANZ

[344] For example Woon letters, 4 April 1873 p 357-8, MA-Wg 2/1, correspondence 18 April 1873 MA-Wg 1/5; letter 10 July 1874 MA-Wg 2/2, inwards letters (replies re correspondence) 5 July 1877 MA-Wg 1/8; 19 April 1880 TW Lewis to Woon, MA-Wg 1/11, ANZ

[345] Letter 15 December 1880, instructions re James Booth taking over as RM from 1 January 1881, MA-Wg 1/1, ANZ.

[346] Letter Woon to Lewis, 20 September 1880, MA-Wg 2/2, ANZ

[347] Letter Lewis to Woon 19 April 1880, NO 80/636 in MA-Wg 1/11, ANZ

By the 1880s the government and settlers appeared more confident of their security and less willing to tolerate Maori resistance to their views. There was a noticeable hardening of attitudes, both in support of more extensive purchasing of Maori land and also in imposing official and settler views of the legal implications of sales with regard to authority over waterways and other resources on land sold. For example, in the early 1880s Maori of the Nukumaru area complained that reserves they believed they had negotiated in earlier purchases were now not being recognised. They also objected to the apparent loss of an ancient road they still used for access to sea fishing and for transport of fish. They had assumed it would remain but as settlers took up sections in the purchase area it now seemed threatened. Booth was sent to investigate the situation in his capacity as resident magistrate.[348]

Booth reported that although Turton's Deeds had apparently recorded the reserve claimed, it was false as no such reserve had been made. Booth's comments reflect the usual official practice of relying on the written deed rather than investigating if the deed had properly recorded the original agreement. He also found that there was indeed an old Maori route to the sea for fishing as claimed. However, this road had not been legally protected in any deed or grant and now ran through a settler's section. Booth reported that the settler agreed there was a road through his land, which Maori had always used. However, the settler 'declines to give the 'right' unless he is forced to do so by Govt'. Instead, Booth reported that the settler intended to put up fences and prevent Maori from continuing to use the route. Booth noted there was a 'made road' (presumably built by a local road board) from Nukumaru that ran 'nearly' the whole distance to the sea but Maori had objected to it because, unlike their original road, it was not suitable for the drays they used to transport their fish catches. Booth noted that 'It seems to be only right that the Natives should have access to the sea for fishing purposes' and suggested that maybe a surveyor or engineer might be required to assist in providing a suitable road.[349]

However, by now the government appeared to have become more inflexible and less concerned with finding ways to meet Maori concerns. Booth was instructed regarding the road that the 'Natives are not to trespass on Dempster's land but to use the made line'. The Under Secretary further explained that the Native Minister considered 'the Natives have no just cause of complaint and that it cannot be a matter of much moment to them which of the

[348] Letter Booth to Lweis 14 January 1882, reporting on visit, MA-Wg 1/12, ANZ
[349] Letter Booth to Lewis, 14 January 1882 MA-Wg 1/12, ANZ

two roads they use seeing how little value Maoris attach to time'.[350] In effect, the government was refusing to look beyond the legal deed regardless of whether it adequately reflected the original purchase agreement. Concern to integrate Maori into European systems in ways that might take account of Maori concerns had turned to contempt. The response also reflects the growing government and settler attitude that traditional resources and their harvest merited little consideration. This was in spite of the fact that after the disruption of war in particular, Maori communities were even more reliant on such resources. For example, an early visitor to the Whanganui River area after the wars, J E Illingworth, is recorded as noting that traditional foods still featured heavily among Maori communities in the district. He noted eel pa at every river rapid and had kaka served to him even while Maori were also growing many introduced crops.[351] Booth as a land purchase officer at least understood that if increasing amounts of land were lost then access to traditional fishing was even more important. However, Native Minister Bryce clearly regarded this as of little importance.

While land purchase officers were already active in the district, it appears that the major public works development of a North Island Main Trunk Railway also further focussed interest on acquiring land in the interior to provide for the expected impetus in development provided by the railway. A series of legislative provisions such as the Native Land Alienation Restriction Act 1884 provided for purchase funds and a government purchase monopoly over almost half the land in the Whanganui district to assist with this.[352] The establishment of this monopoly enabled the government to effectively exert a concerted, aggressive land purchase policy over the whole district covered by the Act further undermining Whanganui Maori attempts to develop a cohesive strategy in response to land alienation pressure.

Historians have noted that Whanganui Maori made a number of attempts to better manage the Native land Court process and the widespread alienation of land. These efforts were expressed in a variety of ways, including by petition, tribal discussion with Crown Ministers, attempts to set up alternatives to the Land Court and efforts to keep lands out of the Native Land Court system.[353] However, the nature of the Land Court process, its strong links with land purchasing and the active support of this through government policies undermined these efforts. The passage through the Land Court of the huge Waimarino block of 454,000 acres

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[350] Letters Lewis to Woon, 20 January 1882, 21 January 1882 , MA-Wg 1/12, ANZ
[351] Cited in Voelkerling, p 75
[352] Walzl. p 9
[353] For example, see Anderson, 'Report of Whanganui Iwi and the Crown 1865-1880' chapter 5

and the subsequent purchase of individual shares in the block marked the end of concerted resistance for a period and a new bout of extensive land purchasing began through the 1890s. The government encouraged settlers to move into purchased areas and from the 1880s this settlement began extending into the interior Whanganui district. For example, from the 1880s the Whangaehu valley was opened up to settlement with the main township being Mangamahu.[354] Many farms were initially a mix of freehold and Maori land as Maori sought to lease rather than sell outright where possible.[355] However, much leasehold was then converted to freehold land out of Maori ownership in subsequent years.

The Native Land Court process and extensive purchasing had a major impact on legally recognised Maori authority over much of the Whanganui district within a relatively short time. By the end of the 1890s over one million and a quarter acres was claimed purchased within the Whanganui district.[356] By 1900 it appears that of the roughly 1.7 million acres in the Whanganui district at 1840, almost 1.2 million acres or the vast majority had been alienated from Maori ownership.[357]

A new system of Maori land administration was introduced in 1900 under the Maori Land Administration Act 1900, which shifted the focus of alienation from purchasing to leasing. It also included some more protections for alienating Maori land including the requirement for a papakainga certificate, showing owners had sufficient other lands before an alienation could be confirmed. However, land purchasing never entirely stopped. The Maori Lands Administration Act 1900 continued to provide for some purchasing and allowed Crown and private purchases that had already begun to be 'completed' (sections 34 and 35). This meant that theoretically for Crown purchases especially, if even one share had been purchased in a block, the purchase could be continued to completion. This even applied to the purchase reserves made for the original 1848 purchase block, for example, the Kaiwhaiki block.[358]

In the Whanganui district it seems that Crown purchasing did decline for a period, with purchasing to 'complete' sales gradually declining to a low point by 1904. Even then, some 165,000 acres were purchased by the government between 1900-1904.[359] In the meantime,

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[354] Voelkerling, p 162-3
[355] Voelkerling p 164
[356] Anderson, pp 37-87
[357] Walzl, pp 216-7
[358] Bassett Heather and Kay Richard, 'Maori Reserves from the 1848 Crown Purchase of the Whanganui Block c 1865-2002' draft report, 2002, p 118
[359] Walzl p 149

leases of Maori land had become more prominent. From this time many informal leases such as of purchase reserves in the 1848 Whanganui block were replaced by more formal leases. In the period 1900 to 1905, some 13,000 acres of Maori land in the district were formally leased followed by a further 25,000 acres in the years 1906 to 1909. Major changes to the Maori land administration system were made as early as 1905 including a revival of Crown purchasing in districts such as Whanganui. The Maori Land Settlement Act 1905 also removed many of the protections for leasing land. A new system established with the Native Land Act 1909 effectively created a free market in sales of Maori land, lifting any remaining restrictions on alienation (section 207) and making blocks generally available for private purchase. Sales had to be approved by meetings of assembled owners if there were more than ten or by simple application if there were less. Some requirements had to be met before a sale was declared valid. For example, Maori Land Boards had to be sure a sale was not contrary to good faith and equity to the interests of owners, and it could not make owners landless. However, there was now no specific protection for papakainga or mahinga kai areas or for Maori to be able to set aside these areas for protection. This system which lasted well after the 1920s, vastly undermined leaseholds and increased pressure to turn leases into sales.[360]

Purchasing of Maori land only began to decline generally in the Whanganui district in the 1920s.[361] The remaining Maori land by this time was considered too marginal for purchasing and there is some evidence that Maori farmers were beginning to purchase or lease non Maori land if they wanted the opportunity to create a profitable farm.[362] From this time public works takings became more significant in overall alienations of Maori land. Ironically these often involved areas for purposes such as scenic reserves where land had originally been reserved from development or considered too poor to acquire for farming for example the Whakaihuwaka scenic reserve.[363] The impact of public works takings of Maori land in the Whanganui district will be covered in more detail in a separately commissioned report.

Although the actual process of land purchase is the subject of other reports, for the purposes of this chapter it appears that by the 1920s, the vast majority of land in the Whanganui district had been alienated from legally recognised Maori ownership. This was a complete turnaround from 1848 when Maori had agreed to the sale of some land to encourage a small trading

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[360] Walzl p 162
[361] Walzl p304
[362] Walzl p 307
[363] Walzl p 207

village, while retaining significant authority over the district. The loss of so much land had a major impact on Maori authority over the district, especially as the settler view of the full legal implications of land sales was more rigidly imposed. The loss of recognised customary authority over land was also closely linked with loss of traditional authority over the many waterways and mahinga kai associated with the sold land, as when the land was alieneated legal recognition of Maori authority over the waterways and other resources associated with that land was also lost.

The many issues involved with this widespread loss of land are a matter for in-depth investigation in land alienation reports. For the purposes of this chapter, the main issues appear to be whether Whanganui Maori engaged in this process of land alienation by voluntary and willing agreement and whether this extended to the knowing and willing abandonment of authority over waterways and mahinga kai associated with the land sold. It might be supposed, for example, that Maori communities willingly abandoned traditional authority over waterways as part of the price to be paid for the possibly greater economic advantages of leasing and sale. It might also be supposed that even if the link between the loss of land and associated resources was not so clear in the 1870s it had certainly become so by the 1890s, when land was still being sold.

It does seem that many Whanganui Maori communities were determined to particpate in the new farming economy. For example, in the late 1890s Maori at Jerusalem were described as grazing over 3000 sheep, 300 cattle and numerous pigs.[364] Pakeha travelling into the Waimarino district around this time also commented on the high standard of Maori sheep farming they encountered. One visitor noted that just south of Raetihi there was a fine Maori settlement and a magnificent country road on which Maori were felling bush. They also had good healthy stock with sheep, cattle and pigs.[365] As this comment indicates, particpation in farming required the felling of some bush, and presumably the drainage of some swamps and alteration of waterways. The capital required to establish farming also often required the sale of land. However, it is not clear, as will be discussed in more detail in the next section, that Maori communities believed that farming and traditional harvesting of resources had to be mutually exclusive. Most communities appeared to prefer some combination of the two.

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[364] Voelkerling p 187
[365] Voelkerling citing *Yeoman,* 12 August 1887

The problem Whanganui Maori often appeared to encounter was that the combined system of Native Land Court activity and the secret purchasing of individual interests in land promoted aggressively by the government prevented them from rationally managing their land. They may have been willing to sell or lease some so the remainder could be rationally and economically developed for both farming and the retention of some traditionally valuable resources. Instead, communities rapidly met with significant difficulties in selecting and developing land for either farming or use for traditional purposes. The heavy costs, rivalry and secrecy promoted by the Land Court and purchase process undermined attempts to select and reserve certain lands from sale. Even when non-sellers believed they had managed to resist such pressures, the system of secret purchasing of individual interests before the Land Court determined awards might still undermine their best efforts. The secret purchases of individual interests were not necessaraily located on actual areas of land until the Court made awards often some considerable time later. The Court might then decide to award the Crown an area of land equivalent in value to the interests it claimed to have purchased. This meant that resources associated with that land such as waterways with fisheries or valuable bird snaring trees would also be alienated even if non-sellers had never willing agreed to relinquish them.

An example of this appears to have occurred with regard to the Rotokohu wetlands located in the Mangapapa block adjacent to the Waitotara River. The wetland was located along the Pokeka stream some two kilometres above its confluence with the Waitotara River. In the Native Land Court hearing on this block, Lake Rotokohu was described as an important traditional fishery, as previously noted. The lands, including the lake, appear to have been acquired by the Crown as an area awarded by the Land Court to meet claimed government purchases of individual shares in the block, under the Native Land Court Acts of 1894, 1896 and 1899.[366] Once the area was awarded to the Crown, over subsequent years nearby lands and wetlands were designated scenic reserves and eventually the lake itself was designated as part of a nearby scenic reserve.[367] The scenic reserve status allows the Government to control use and management of the wetlands and lakes and the indigenous plants and trees, fisheries and birds of the area. The lake remains part of the Rotokohu scenic reserve under Department of Conservation management today.

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[366] DoC – Wanganui old L7S file 13/36 Rotokohu scenic reserve.
[367] DoC – Wanganui old L&S file 13/46, designations under Scenery preservation Act 1903, NZG no 58, 22 June 1905 p 1504 and NZG no 173 1986/4620 and 1986/4033.

Even those Maori owners who managed to retain land through this process still faced considerable difficulties with their lands. Even preliminary research suggests that Whanganui Maori may have been far from willing participants in the extent and methods by which large areas of their land were alienated. For example, the interests in land the Court awarded to them were often practically unusable, being scattered over many separate blocks. If they did end up with a usable area of land they faced further difficulties when their freehold title was not considered adequate in gaining access to credit to develop the land.[368] They also found they were still subject to pressures from land purchase agents to secretly buy up remaining land and have it partitioned off. This continued pressure undermined efforts to use land economically. The early farming success often proved temporary. Maori were increasingly marginalised from participating as landowners in the farm economy. Instead they were more likely to end up providing much of the seasonal labour for farm related development in industries such as bushfelling and shearing.

Historians such as Ward and Anderson have also noted that legislative provisions passed with regard to Maori land over this time also often failed to provide adequate protections for Maori owners.[369] This appears to have been reflected in the Whanganui district as well. For example, the Native Land Act 1909 also appears to have ended even the special status and protections for the reserves excluded from the 1848 purchase. As a result, a number of these reserves or significant areas of them passed out of even leasing arrangements and were sold. An example is the Kaitoke reserve, which appears to have eventually included the important fishery at Kaitoke lake. This reserve seems to have been informally leased from an early period on the understanding that the Maori owners could still use the lake for eel fishing. The lease was formalised in 1909 to a settler named Donald for 50 years. The lease was for the land area only and not the lake itself, while the owners retained access to the lake as part of the lease. In 1961 when the lease expired, all the land around the lake was sold to the Donald family. The owners managed to retain legal ownership of the lake bed meaning they could still use the fishery with continued agreement over access to it. There was some opposition to this sale at the meeting of owners but the Native Land Court apparently found the price was adequate and the land itself of 'no real benefit' to the owners. The lake bed remains in Maori freehold title today.[370]

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[368] Walzl , p 111
[369] For example, Ward, *An Unsettled History*, p 137
[370] Basset/Kay chapter 4.5.1

Marangai was also a reserve from the 1848 purchase because it contained a 'wood' Maori wanted protected. It does not appear to have been finally surveyed until 1899 when it was found to contain just over 14 acres.[371] From an early period the wood area appears to have been enclosed within Cameron's farm, as an informal then more formal lease. In 1914 the land containing the wood was sold to the Camerons.[372] There was apparently an undertaking at the time that the bush would not be felled.[373] However, the bush was now outside Maori control. More recently the bush area was apparently covenanted as a Queen Elizabeth II Trust area.[374] Bassett/Kay research suggests that less than one third of the 1848 reserve lands remain in Maori freehold title today.[375]

It could be argued that as time went by, Maori communities could be expected to have gained a much clearer idea of the legal implications of a sale for associated resources. However, this overlooks the often practical reality that legal sales could often take place well before the land and resources involved where actually used for settlement purposes and the full implications became apparent. In those cases Maori might continue using resources associated with the land for many years without necessarily realising that the land itself had been sold or that the sale had implications for resources as well. This meant that Maori might not protest or reject a claimed sale until well after a transfer of ownership had been legally recognised and then often when it was too late.

The continued pressure to purchase Maori land and the lack of legal protections suggests that in many cases Maori owners, rather than being willing, deliberate sellers, were often caught up in a process of unrelenting pressure, where they had little real control over land sales. If so, then the loss of authority over many of the waterways and resources associated with this land was also often far from deliberate and willing.

3.4 Alternatives to land purchases – vesting and leasing

It has already been noted that Whanganui Maori leadership made numerous attempts to better manage or avoid the impact of the Native Land Court and land purchase process. While land purchasing was extending through the district, sections of Whanganui Maori leadership

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[371] Bassett/Kay, Chapter 5.4
[372] Ibid
[373] Leslie, p 54
[374] Leslie p 54
[375] BassettKay p 172

continued to try and find new ways of ameliorating the destructive impact of purchasing and exercising more effective control of the alienation process. For example, Whanganui chiefs played a major role in the establishment of the Kotahitanga movement in the 1890s and also sent representatives to the settler parliament. They participated in the 1891 (Rees) Commission of Inquiry into the Native Land Court and many supported the attempted boycott of the Land Court in the mid-1890s. They were also part of the general Maori pressure on the Liberal Government in the late 1890s that eventually resulted in the compromise policies of James Carroll. These shifted the focus from Crown purchasing of Maori land to encouraging Maori to lease their lands. They also appeared to provide Maori committees with greater control and management of their land, possibly even supplanting the Land Court.

The Maori Land Administration Act 1900 finally appeared to provide an opportunity for more leasing of Maori land by creating a system of vesting land in largely Maori controlled councils. These would then lease the land in economic blocks for the owners. The vesting attempted to overcome many of the difficulties owners faced with economically using the individualised form of land title the Land Court had created. The details of this new system have been covered in more detail in a number of research reports.[376] For the purposes of this report, the important feature of the new system was that it appeared to offer an alternative to Whanganui Maori to escape the relentless process of land purchasing and manage their land (and associated waterways and resources) more along the lines they preferred.

The provisions of the new 1900 Act must have appeared promising for Maori owners. The councils created by the Act initially had a majority Maori membership, suggesting significant Maori control of the system. The new legislation also appeared to offer a means by which Maori could select land required for their own use, including traditional uses, before other land was set aside for more 'productive' purposes, including leasing. Section 29 (1) of the new Act provided that lands could be first set aside for such purposes as papakainga areas for occupation and support, and also for burial places, 'eel-pas or eel weirs, fishing grounds, or as reserves for the protection of native birds, or the conservation of timber and fuel for the future use of the Maori owners'. The balance could be vested in the councils for their administration and leasing. This provision for a controlled and rational reservation of such land was a major improvement from the system of secret purchasing that tended to undermine attempts to

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[376] For example, Katene, Selwyn, 'The Administration of Maori Land in the Aotea District 1900 to 1927' MA thesis, 1990; Loveridge, D M, *Maori Land Councils and Maori Land Boards; a historical overview 1900-1952*, 1996; Walzl T, 'Whanganui Land 1900-1970', draft report 2002

manage land for various purposes. In acknowledging that Maori might still be interested in setting aside land for traditional purposes such as eel fishing, the Act also seemed to recognise that Maori did not generally see traditional resource use and new farming developments as mutually exclusive. The Act also provided for committees to investigate land ownership matters, although by this time most Whanganui land had been through the Native Land Court.

Whanganui Maori appear to have taken up the opportunities offered by the new system of vesting and leasing land with some enthusiasm. The Whanganui lands voluntarily vested under the Aotea Council were the largest amount of land originally vested in any Council.[377] Between 1902 and 1904 some 106,353 acres of Whanganui lands were vested in trust in the Aotea Maori Land Council in trust. This was 45% of all land vested nationally in Maori Land Councils at the time.[378] Whanganui Maori also appear to have placed a considerable amount of faith in the Councils to deal with all aspects of administering their vested lands. They appear to have been persuaded by the many assurances they received that the new system would enable them to more rationally manage and develop their lands, while they also seemed reassured by their strong representation on the Council.[379]

Even so, the earlier process of purchasing interests and cutting out shares in land meant that not all lands in the Whanganui district were suitable for vesting. The lands that tended to be vested were those located mostly in the upriver area of the district lying south of the large Waimarino block and east of the Whanganui River. These blocks had mostly been through the Land Court and title had been determined but they had not yet been subject to extensive alienation and they remained as large blocks. They included such blocks as Waharangi, Morikau, Ranana and Ohutu. Other blocks that were already more highly fragmented were not generally suitable.

More detailed investigations of the whole system of vested lands can be found in other reports for the district.[380] In brief, it seems that the early optimism of Whanganui Maori about the operation of the new Land Councils and system of vested lands appears to have been short lived. It seems that the legislation was essentially a compromise between Maori demands and settler pressure to have large areas of Maori land 'opened up' for settlement. The government appears to have assumed that if it could find a way of overcoming the 'backlog' of the Maori

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[377] Walzl, p 24
[378] Walzl, p 53
[379] Walzl, p 54
[380] For example, Walzl T, 'Whanganui Land 1900-1970', draft report 2002

Land Court, reduce Crown purchasing in favour of leasing and offer a greater role in land management for Maori committees, then in return Maori would make considerable use of the new mechanisms provided to vest land. This in turn would 'open up' what were believed to be large areas of 'unutilised' lands for leasing for Pakeha settlement. When this did not rapidly eventuate, the government showed itself willing to resort to increasingly more coercive measures to make Maori land available.

Even from the beginning it seems there were considerable difficulties over vested lands. There were serious conflicts between Pakeha appointed members of the councils who were strongly attached to development for settlement and commercial imperatives and the Maori owners who had vested their lands in trust. It seems that the vested lands were often those by definition that were more marginal, less accessible and least attractive for settlement or they would have been subject to more intensive land purchasing earlier. Yet from their establishment, the councils were under a very strong imperative to be self-funding. This was in spite of the heavy costs required to bring much of the vested land into a state ready for leasing. The difficulties of leasing and generally relatively poor rentals also failed to ease the debt burdens loaded on many blocks. For example, in the Morikau no 2 block, the board spent around £4000 on survey and roading costs alone and some £8-10,000 was spent in total on getting the block ready for lease.[381] In 1928 owners in the Morikau block were still complaining that no profits had ever been paid out on the block. Even forest lands such as the Raetihi blocks appeared to provide relatively little income to owners.[382] By 1907 only about half the land vested in Maori Land Boards had been leased and these lands were earning a relatively low rental, with even less being distributed to owners.

The council appointees were also very mindful from the outset that they were required to make land available for Pakeha settlement. This initially resulted in some conflict between the Maori owners and representatives and the Pakeha appointees on councils over a number of management issues. For example, Walzl has identified some conflicts over how much councils were obliged to consult owners over leasing agreements. In Waharangi no 3, for instance, the Council apparently made arrangements to lease a mill site to a Pakeha lessee. The owners then complained that too much land had been leased for the mill site and that they wanted separate payments for water rights for the use of the Kaukore stream for the mill.[383]

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[381] Walzl, p 99
[382] Walzl, pp 114-6
[383] Walzl , p 35, 56

Another issue that arose with the councils was over the use and payment for timber on land vested and how the benefits might be divided between the owners and settlers.[384] There was also considerable conflict over the terms of leases for vested lands, in particular whether the leases were to be considered effectively perpetual or not. Maori owners resented the official assumption that the land would be effectively leased indefinitely on their behalf without a reasonably certain means of having it revert to Maori control. However, the high debt levels on much of the land meant that leases were virtually perpetually renewable. Officials also believed that renewable leases were essential to attract Pakeha settlement. Walzl notes the lengthy dispute over lease terms for the Ohutu block, for example.[385] There were also differences of opinion over whether first opportunity for leasing vested lands should be given to Maori owners or whether the more likely commercial return from settlers should be preferred.

Walzl suggests that the early participation of owners and their representatives on the councils and their insistence on advocating Maori concerns may have been a factor in the major changes to the Land Council system in 1905.[386] This major change made with apparently little formal consultation with Maori leadership was contained in the Maori Land Settlement Act 1905. This Act created new Land Boards where elected Maori members were effectively eliminated. The government appointed all members of the new board and the Maori membership was now a minority. The new legislation meant that boards could now more effectively manage the lands according to their own imperatives without 'interference' from the beneficial owners. Legislative amendments also began to provide for compulsory vesting of land into the system. In districts such as Whanganui where compulsory vesting was not immediately introduced, the trade off was that Crown purchasing could begin again. Other compulsory measures did begin to apply to Whanganui. For example, lands could be compulsorily vested where noxious weeds were a problem or for Maori settlement where lands were not 'properly utilised'. Some additional Whanganui lands were vested under these compulsory provisions such as parts of the Morikau and Ranana blocks.[387]

As the system of vested land became more alienated from Maori control and participation, effective control of even those areas set aside specifically for such purposes as mahinga kai

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[384] Walzl , p 56
[385] Walzl, pp 43-47
[386] Walzl , p 59
[387] Walzl, p 61

was undermined. The Land Boards were established under a government drive to force 'proper' utilisation of Maori lands and increasingly even papakainga areas became subject to this philosophy with pressure to cut up these previously communal areas into small owner farms. This is not to say that Maori did not want to engage in farming or timber milling. There is clear evidence that they did. However, the system as it was administered tended to undermine attempts to set aside land for both farming and traditional usages, while squeezing out the latter in the name of requiring 'proper' utilisation of lands.

The system of vesting also came under pressure to further alienate lands. A major reason for the establishment of the Stout Ngata Commission in 1907 was to assist with the better utilisation of Maori lands. However, the commission also made an effort to consult Maori over this and came away with the clear view that Maori wanted to both participate in new farming and other developments and retain some areas for traditional usages. Maori enthusiasm to set some land aside for farming inevitably required some modification or even loss of traditional mahinga kai, but it seems clear that there was a strong desire to manage this process so the most valuable mahinga kai could be retained and others modified as little as possible. In other words, rather than transforming the whole landscape for farming, Maori wanted a mix of land and resource use. In addition, while Maori were agreeable for some lands to be leased to Pakeha, there was a general rejection of continued Crown purchasing.

For instance, when the owners of the Morikau block met in 1910 to make farming arrangements, they also insisted on developing regulations for the proposed farming that would protect some of the non-land resources on the block. For example, they insisted that 200 acres of bush be reserved for necessary requirements and that the lake waters on Morikau no 1 remain undrained and trees on the border remain unfelled.[388] The owners of Ngarakauwhakarara submitted similar regulations for their block.

Although the Stout Ngata Commission had a definite bias towards encouraging Maori to use all their lands 'productively', it did recognise Maori concerns for some areas to be retained for traditional use. It also tended to follow Maori concerns that land be leased rather than sold. For example, the Stout Ngata report recommended for Morikau no 1 block: that 500 acres be set aside for papakainga around existing kainga; 200 acres of bush be reserved for timber and firewood needs; 3000 acres be set aside for a communal farm managed by a competent

[388] file note, 28 May 1910, MA1, 13/14 vol 1 Morikau farm, ANZ, also cited in Walzl, p 247

manager; and 3500 acres be cut up and leased with preference given to those Maori with existing improvements. The commission made similar recommendations for the Ranana block.[389] However, the Stout Ngata Commission recommendations were also quickly overtaken by hardening government policies. For example, the Maori Land Settlement Act 1907 required that lands identified by Stout Ngata as not required by owners for their actual occupation should be vested in the Maori Land Boards and then half leased and half sold.

The failure of the vested lands to provide a reasonable income also meant that many owners were required to fall back on the lands they had reserved from leasing as their only means of support. Those lands set aside for mahinga kai came under increasing pressure to be used 'productively' for farming, while a number of factors also led to their further deterioration. Poverty and difficulties with communal title often meant they were neglected and became overrun with weeds. This caused other farmers and the Aotea Board to press for their clearance or removal. The Aotea Land Board appears to have encroached on lands formerly set aside for traditional purposes in order to have them used more productively. For instance, some owners in the Morikau blocks in 1910 attempted to stop board surveys apparently because they were concerned they would lose their 'mahingas' to board control.[390] In 1924 a former papakainga area was eventually cut out of the Morikau block by the board and revested in the owners as it was regarded more as a liability than an asset to the rest of the farm.[391]

3.5 The impact of extensive land alienation

By the 1920s it was clear that not only had large areas of Maori land in the Whanganui district been alienated by sale, Maori had effectively lost control of much of their vested lands. This too had major implications for traditional authority over the waterways and mahinga kai associated with those lands. The loss of legally recognised authority over resources such as waterways and timber when associated land was sold not only prevented Maori from managing such resources in traditional ways. It also meant that Maori communities were from an early period shut out of economic opportunities in using those resources and they had few legally recognised means of preventing damage or destruction to those resources, now on alienated land, once they were required for settlement purposes. This might not be apparent

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[389] Walzl, p 72
[390] letter 8 May 1910 G McGregor to Native Minister, MA1, 13/14 pt 1, ANZ, also cited in Walzl p 246
[391] Walzl, p 295

immediately and Maori might continue to use resources on what had become Crown land for some time. However, once these areas were required for development purposes, Maori communities rapidly found they had few avenues available to gain legal recognition of their concerns.

The period from the 1870s to 1900 saw a massive transformation in the Whanganui district along with much of the interior North Island from a largely indigenous landscape to a largely exotic one, developed to promote a massive programme of settlement and farming. The historian James Belich has described the process generally, as an 'assault on nature, natives, emptiness and distance'.[392] In the Whanganui district much of this assault took place on recently alienated Maori land. It might be expected that in the face of the huge public works and land development programmes involved with this, the government may have felt some obligation to meet Treaty requirements to protect at least some resources of traditional importance to Maori. However, it appears that the government preferred to use the 'fact' of apparently voluntary land sales and later vestings by Maori to ignore such concerns.

While the original Wanganui settlement was on largely coastal lands requiring relatively few significant modifications to the environment, the interior Whanganui district, as with much of the rest of the interior North Island, appears to have undergone massive environmental change as a result of these developments. At the same time, Maori communities found the fact they had sold or vested lands on which much of this massive change took place meant they had little say in the extent or impact of these developments.

As settlers moved into the rugged hill country of the Whanganui district they were obliged to undertake much greater development and environmental transformation than required for the coastal flats. Much of the Whanganui hill country, as previously noted, was covered in heavy forest. It had to be roaded and railed and developed for farming. In the hill country this generally required extensive bush felling before pastures could be sown. Bush felling or burning was often undertaken during winter and early spring with many Maori being involved in bush gangs contracted to fell trees or build roads. The fallen timber was then generally burned in the summer months and grass seed scattered in the ashes for pasture growth the following spring.

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[392] Belich, *Making Peoples*, p 351

Some of the cleared forest was milled as timber and in some areas, such as around Raetihi/Ohakune and Taumarunui, timber milling was profitable for some years.[393] At one time 17 sawmills were operating within a two mile radius of Ohakune and 30 within eight miles. It is not clear how much Maori benefited from the exploitation of this resource and this is likely to be investigated further in land block reports. However, even where Maori retained land with timber in the district, the vested lands example, noted above, indicates that the rentals realised to owners for timber lands were not significant. The clearance itself was significant. For example, some 370,000,000 feet of timber were railed from Ohakune alone in the years from 1909 to 1929. The peak years were from 1920 to 1924 when fifty mills were operating within an eight mile radius of Raetihi and Ohakune.[394] This was followed by a gradual decline in milling from 1925 made worse by economic depression in the 1930s. By 1945 six mills were still operating in Waimarino County and by 1965 this had further declined to one.[395] Once the timber was removed, attempts were made to develop the land for farming or horticulture. For example, commercial vegetable growing became an important economic activity in the Ohakune/Raetihi region from the 1920s. [396]

In other parts of the district the indigenous podocarp forests were simply destroyed because they were an obstruction to farming. This was often done by burning with little attempt to conserve the timber.[397] The first priority of the government and settlers was to clear land for farming and even milling was regarded as a largely interim industry to assist with settlement before farming was established. The main species milled in the Whanganui district were rimu, matai, rata, tawa and red and silver beech.[398] The forests were felled wherever they were accessible and forest clearance often followed the extension of railway lines in the district. For example, trains first reached Taumarunui in 1903 and Raurimu by 1906.[399] The railway helped to make the timber accessible for milling and also provided a link to markets for timber. The extension of rail was often quickly followed by extensive forest clearance in these areas even where there was little possibility of farming afterwards, resulting in the wholesale clearance of many areas with little effort to conserve timber resources. It is difficult to quantify the destruction of indigenous forests over the district but resource studies indicate

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[393] Voelkerling p 202
[394] Ministry of Works, *Wanganui Region*, p 140
[395] Ministry of Works, *Wanganui Region*, p 140
[396] *Borough of Ohakune, Golden Jubilee*, booklet, 1961
[397] Ministry of Works, *Wanganui Region*, p 140
[398] Ministry of Works, *Wanganui Region*, pp 140-1
[399] C James Bibby et al, *Taumarunui Ecological District*, p 23

that when milling went into decline from the mid-1920s millable indigenous forests at least remained only in the most inaccessible parts of the district.[400] From the 1930s the acknowledged loss of indigenous forests encouraged official attention to the development of exotic forests such as Karioi, where plantings began from 1927.[401]

It is also difficult to quantify the impact of forest clearance and other development industries on waterways and associated mahinga kai. Official records are much more concerned with the success of progress rather than any losses caused by it. However, the massive scale of the destruction seems highly likely to have contributed to a severe decline in resources such as plant materials, native bird species and fisheries.

The impacts were not limited to the direct destruction of resources. The transformation of the environment itself also created ongoing impacts. For example, many hill country farmers in the Whanganui district almost immediately encountered difficulties in trying to maintain pastures in steep hill country. The initial high soil fertility following burning quickly declined and overstocking contributed to serious erosion problems accelerated once the natural bush cover was removed. This continued erosion contributed further to heavy initial silting of waterways when the original forest was cleared. Pasture seed also often contained weeds, including thistle, and these spread rapidly on marginal lands. Establishing grass pasture in steep areas with low natural fertility was also often very difficult encouraging reversion of the hill country to fern and scrub. Farmers then tended to use burning as a control measure for regrowth, contributing further to erosion and silting of waterways.

The early development of farming at least provided many Maori communities with seasonal work, which also enabled continued participation in traditional forms of seasonal harvesting. However, as farms became more developed there was less demand for seasonal labour.[402] The expansion of farming also tended to prevent communities from using waterways and traditional resources that were now located on private farms or leased land. Remaining accessible waterways also suffered from the effects of silting. The loss of access to waterways and other resources and the decline in their capacity to sustain resources may have contributed to increasing poverty and marginalisation among Maori of the district and to population decline. This was made worse by disasters such as the influenza epidemic of 1918-19.

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[400] Ministry of Works, *Wanganui Region*, p 140
[401] Ministry of Works, *Wanganui Region*, p 140
[402] Voelkerling, p 193

The *Whanganui River Report* alludes to concerns of Whanganui communities about the adverse impacts of farm and urban development on fisheries in the Whanganui River.[403] Claimants at that time referred among other factors to sewage discharge, bush clearance, farm run-off, sedimentation and river diversion and reduced flows as causes of the decline of their fisheries. Much the same concerns have been noted by claimants regarding waterways in the rest of the Whanganui district. No information was found for this report quantifying damage or destruction to traditional resources such as fisheries and waterways from widespread forest clearance, accelerated erosion and other impacts of development industries in the Whanganui district. However, the likely impacts of such developments are generally acknowledged.

For example, Young and McNeill note that forest clearance and farming are likely to have increased natural erosion and silting as pastoral hill soils adjusted to lack of forest cover until reaching a generally shallower depth stable under pasture cover. This caused 'profound' changes downstream where river and stream beds became filled with silt and sand where there had previously been gravel. This vastly altered the ecology of hill country waterways especially in soft rock reducing the diversity and abundance of aquatic flora and fauna, especially fish.[404] A recent study of native fish in the Manawatu-Wanganui region has also noted that many indigenous fish are migratory in nature and therefore susceptible to a number of environmental factors at various stages of their life cycles. While it does not make quantitative asessments of indigenous fisheries it does note that known factors influencing these fish include physical barriers to migration such as dams and poorly designed culverts and outlets, pollutants, sensitivity to high sediment levels and habitat quality including riparian cover.[405] Anecdotal evidence from early settlers also records changes to rivers such as the Mangawhero and Whangaehu as a result of exotic farm plantings where, for example, previously wide river beds and sandy beaches were replaced by deeper more constraining banks as willows trapped sediment and built larger banks.[406] Claimants may also be able to provide more detailed examples themselves. As noted in the following chapter, the destructive impact of such industries on fisheries was also firmly noted by acclimatisation societies and other groups other than Maori communities when exotic fisheries such as trout appeared threatened.

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[403] Waitangi Tribunal, *Whanganui River Report*, 1999, chapter 3.2.5
[404] Young and McNeill, *Measures of a Changing Landscape*, 1999, pp 15-16
[405] Phillips, Ian, *Native Fish in the Manawatu-Wanganui Region*, Horizons.mw state of the environemnt report, 2002, pp 1-7
[406] For example, Campion M H, *The Road to Mangamahu*, 1988, p 143

It should be noted that Maori communities generally were not entirely opposed to much of this development and in many cases welcomed it. It has already been noted that many communities took up farming enthusiastically and the evidence indicates that many were also keen to exploit other resources such as forests for purposes such as milling. There was also considerable support for the extension of rail through the district in the expectation of economic benefit. Much of the timber milling and road making work was also undertaken by Maori workers, although how willing this involvement was and how much it was due to economic necessity is not clear. It seems unlikely that Maori communities themselves would have chosen to do no damage at all to the natural environment or associated resources rather than take opportunities to benefit economically. The evidence is sketchy, but the vested lands and other examples noted in this report such as with acclimatisation do suggest, however, that Maori communities preferred and would have acted to achieve a much less through transformation of the natural environment. The evidence suggests they preferred a greater blend of traditional resources and new developments such as farming. The important point, however, is that the assumed loss of authority over these resources through land alienations deprived Maori of any effective means of managing or influencing this process. The effect of the process was that Maori communities were generally unable to deliberately set aside certain of their resources for traditional use and others for development. Once land had been alienated they also found themselves without any effective influence over how resources such as forests might be exploited or even entirely destroyed.

By the 1930s many of the steeper, interior areas of the Whanganui district had proved much more difficult to farm 'productively' than originally envisaged and they quickly reverted to scrub and bush. There were some stalls in the decline such as when fertilisers became widely available from the 1920s encouraging efforts to promote soldier settlement in the interior after the First World War. The addition of cobalt was also found to combat bush sickness after World War II. However, the high cost of maintaining farms in marginal country and steadily falling prices for meat and wool from the 1920s exacerbated by the 1930s depression contributed to an underlying decline and significant areas of the Whanganui interior were abandoned by farmers from the 1930s.[407] As these reverted to regenerating bush Maori were able to continue with traditional harvesting and management on abandoned and Crown lands, even if the resources in question were considerably diminished. This may have allowed traditional knowledge to be retained and passed on and relationships with resources

[407] Ministry of Works, *Wanganui Region*, p 88

maintained. This in turn helped to contribute to iwi and hapu identity and mana. The continued use was also often a necessary contribution to the subsistence lifestyle of many rural Maori. However, continued Maori use and management of such areas was always subject to requirements for other uses. For example, much of the interior reverted lands were later gazetted as national park, river reserves, scenic reserves and protection forestry, where they become the subject of other reports.

For the purposes of this chapter, it is important to note that the loss of authority over the resources and waterways attached to these areas was closely linked to the loss of legally recognised ownership of adjoining lands. The implications of this might only become apparent well after the original transaction and it was not just linked to the interior. Similar issues could arise even in the coastal area of the original Wanganui purchase. For example, the Kokohuia wetlands in the original Wanganui township area have already been referred to in chapter 1 and are subject to a specific claim to the Tribunal. As noted in chapter 1, these wetlands were an important source of traditional resources such as eel and plants before the Wanganui settlement began. They were located on a sandbasin close to the Whanganui River between present day Castlecliff and Gonville. They had streams flowing through them to the river, and parts of these streams would have been tidal contributing to high water levels in the area. The proximity of the Whanganui River also meant the area was subject to flooding from the river during rainstorms or high tides.[408] The resulting wetland sustained an important fishery for the local Maori community. The wetland was part of the original company purchase and part of the site of the original township.

The legal status of the wetland after the 1848 agreement is not clear. It does seem that McLean tried to remove reserves Maori wanted from the township area as much as possible. However, being a large swamp, it also seems the area was not particularly attractive to settlement and therefore, regardless of its legal status, it seems Maori continued traditional uses of it as a mahinga kai for some time. The land containing most of the wetland appears to have at some stage become legally considered to be a mixture of Wanganui Harbour Board endowment and local council land, although it is possible Maori retained ownership of some adjacent lands. The area was known for many years as Balgownie Swamp and for some time it appears to have been largely neglected by settlers as unsuitable.

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[408] Davis, A, 'Ecological Assessment and Restoration Opportunities for the Kokohuia Wetland (Balgownie Wetland)' 2000, p 5

However, as the township gradually expanded the swamp became more attractive for development. This was further encouraged by the opportunity to use cheap labour during the 1930s depression to help fill and drain the swamp.[409] When filling and drainage was being contemplated, local authorities obtained a legal opinion that, as swamps were considered to be surface water (rather than flowing water in a regular defined channel), adjoining landowners were not considered to have usual associated riparian rights. The owners of land with swamps were held to have unqualified rights to drain them for agricultural purposes without regard to neighbouring owners. The legal opinion referred to other cases where it had been found that Maori had no particular rights to compensation for the loss of a fishery such as eels caused by swamp drainage (even if they might be entitled to some compensation for loss of eel weirs on the swamp). In general the principle was that owners were entitled to drain swamps on their land and no adjoining owners could claim for loss of such waters (or loss of fisheries in them).[410]

The lack of legally recognised Maori authority over the wetland meant that the local authorities felt able, in the interests of promoting 'productive' development and settlement to destroy the wetland and its fishery at will. The Wanganui City Council became actively involved in this and over a number of years parts of the wetland were gradually reclaimed and leased and developed for a number of purposes, including industrial sites, housing and grazing. In the mid-1930s the Wanganui Development League was particularly in favour of having the swamp filled using unemployed labour and then having the area cut into farmlets.[411] The council continued to help fill the swamp by opening a rubbish dump over a large part of it. This activity and associated modifications from the 1950s had a significant impact on the fishery and the remaining remnant wetland area. The area appears to have been largely destroyed as a usable mahinga kai. An industrial development is located near one boundary and the now closed landfill is also nearby. A number of drains and streams with contaminants from the landfill and stormwater drains from industrial and residential areas and road runoff also cross the wetland.[412]

Recently the Wanganui District Council closed the landfill and prepared a plan to rehabilitate the surface area and the remaining remnant wetland. This was to be done in a way that

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[409] report City Engineer to Managing Secretary Wanganui Harbour Board, 8 August 1932, file 69:237 aaf Wanganui District Council Archive
[410] Legal opinion for the Wanganui Harbour Harboard re drainage of swamp at Castlecliff, 1 December 1931.
[411] correspondence 1937, file 72:129 aaf; Wanganui District Council Archive.
[412] Davis p 18

minimised adverse effects on neighbouring industry, the nearby school and the landfill closure plan.[413] In 2000 the council began discussions with local Maori and the nearby Te Kura O Kokohuia (Kokohuia School) to discuss options for the restoration of the remnant wetland on the edge of the former landfill site.[414] The council has also sought general community support for the project.[415] A council-commissioned ecological assessment and restoration report was prepared for the remnant wetland in late 2000.[416] Restoration work began in March 2002 on the basis of recommendations in the report and with a blessing by local iwi. Recent physical works have approximately doubled the size of the original remnant wetland. The council and Te Kura O Kokohuia students also began a wetland planting programme and it is intended to continue on with this through the various stages of the restoration plan. The council also intends to restore the name Kokohuia to the restored wetland.[417] Although the local Maori community supports the restoration of the remnant wetland and has assisted with this, Kokohuia still remains under ultimate council control and is subject to council management decisions. It also appears that the restoration project can do no more than rehabilitate the wetland ecology rather than restore the mahinga kai as a food source. Claimants may want to make more detailed submissions on this.

Conclusion

By 1860 only a relatively small part of coastal Whanganui had been alienated from Maori ownership and the legal implications of this for continued Maori authority over inland waterways and associated mahinga kai in the area may not have been entirely clear to Maori. The remaining large interior Whanganui district was still clearly under Maori control. However, by this time continued settler and government expansionism was causing significant concern among many Maori communities, including within the Whanganui district. The wars reflected this concern in the face of government and settler determination to impose more extensive settlement and authority throughout the North Island. As with many other districts, there were divisions among Whanganui communities regarding the wars and how best to manage this expansionism. After the wars and from the 1870s, the government and Whanganui Maori leaders attempted to build new relationships. However, by this time the

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[413] Davis p 1
[414] Information supplied by Wanganui District Council, 18 March 2003
[415] Davis, p 1
[416] Davis, A, 'Ecological Assessment and Restoration Opportunities for the Kokohuia Wetland (Balgownie Wetland)' 2000
[417] Information supplied by Wanganui District Council, 17-18 March 2003

government was also determined to promote more extensive settlement and insist on the imposition of English views of land and resource ownership.

Form the 1870s, the government embarked on a massive programme of public works and immigration designed to open up and settle the North Island while at the same time overcoming remaining Maori resistance to settler government authority. This development programme also relied on the acquisition or 'opening up' of large areas of Maori land in the North island, including the Whanganui district for settlement purposes. The public works and similar development programmes offered new economic opportunities that appealed to Maori communities and it seems clear many wanted to make some land and resources available to participate in this, although they wanted to manage the process and their participation in it.

The establishment of a new Native Land Court at first appeared to offer a means of facilitating this. However, the government appears to have allowed the Court to develop in ways that suited settler interests to reduce customary interests to a form of land title that could easily be alienated. The government also adopted land purchase polices that in conjunction with the Court process undermined Maori efforts to rationally manage and retain their lands.

The Native Land Court system as it developed had a number of important consequences for Maori customary authority over inland waterways and associated mahinga kai. In the first instance the Native Land Court process sought to transform Maori customary interests into a legally recognised title in land that aligned as closely as possible to English concepts of land ownership. In doing so it excluded a variety of customary rights based on resources other than land. The Land Court process also focused on reducing customary complex and overlapping interests in land to those determined to be 'best' and exclusive interests to discrete blocks of land, further excluding numbers of traditional rightholders. This process in itself considerably transformed and reduced customary rightholding even before land was alienated.

As well as reducing and transforming customary rights, the Native Land Court created a new type of right in land that was individual, transferable and no longer subject to chiefly or hapu authority. The new individualised shares in land were difficult to use in new economic enterprises but very easy to alienate. This was exacerbated under the various pressures introduced with the Court process, including the promotion of often bitter rivalries, heavy costs, and pressure from purchase agents. At the same time, the protection and authority of

iwi and hapu control was undermined and replaced with few new legal protections. In the Whanganui district most of the purchasing was undertaken directly by the Crown, raising issues of good faith and government responsibility for the process.

The combination of government purchasing policies and this form of title vastly facilitated the alienation of very large areas of land in the Whanganui district from legally recognised Maori authority by the 1920s. This included even lands originally supposed to have been reserved and specially protected in 1848 and with them associated waterways and mahinga kai areas. From a relatively small purchase area in 1860, the situation had entirely reversed by 1920 with only a relatively small area of land in the whole district remaining in Maori ownership. In some cases this did not take practical effect for many years and Maori continued to use mahinga kai and waterways even when the legal status of the land changed. However, this use and management was no longer legally recognised.

During this time, the close legal linking of land with associated resources such as adjoining waterways and forests, already indicated but often not practically imposed in the Wanganui purchase, was also increasingly more rigidly applied especially from the 1880s. This made no practical allowance or legal recognition for interests Maori might want to retain even after their customary lands passed through the Court or were even sold. These included continued guardianship rights over mahinga kai separate from land ownership and continuing rights to manage and use such mahinga kai and their resources such as fisheries. Maori not only found it difficult to resist land alienation, they also found much less tolerance of their perceptions as to the importance of waterways and resources and of their continued authority over them. In some cases, particularly in difficult to farm interior areas, Maori were able to continue traditional management and harvesting of waterways and resources in spite of the loss of legally recognised authority. However, this was always reliant on such resources not being required by settlers for other development purposes.

Issues remain of whether Maori fully appreciated this at the time many large purchases were made, and even if they did whether they could realistically resist the purchase process. There were certainly numerous attempts by Maori leadership to either halt land selling or make the process less destructive to Maori interests and authority. However, the system of Native Land Court creation of title and the secret purchasing of individual interests proved extremely difficult to resist.

At the same time it is not at all clear that those individuals being targeted actually understood and deliberately agreed to the 'sales' that were taking place. Purchasing was a creeping process often taking many years before a sale was 'complete' or a partition of land representing claimed purchased interests was made. It was often impossible for individuals parting with their particular shares to know how these would fit into a larger picture some years later. The shares commonly did not represent a particular known area of a block until well after they were sold and either the whole block was lost or partitions were made. Individuals might also be able to continue using a mahinga kai such as a lake for many years after an advance was paid confusing the issue further. Even when sales took place fairly rapidly, it is still not clear that each shareholder fully understood or could resist the process. At the same time non-sellers also found the system offered them little protection. For example, they might still lose access to a mahinga kai on land they had refused to sell because it was partitioned off to represent claims to seller interests. From even preliminary research this process appears to be far from a willing and deliberate alienation of such a large area of land and resources.

At the turn of the twentieth century, Whanganui Maori attempted to take advantage of an apparent opportunity to avoid continuing purchase of their lands along with a chance to have a more effective say in the rational management of their remaining lands. This provided an opportunity for Maori to have more say about those lands they wanted retained for mahinga kai purposes and those they wished to use in the farming economy. The opportunity to vest some lands in Maori controlled boards from 1900 was taken up with some enthusiasm. Maori attempts to participate in management of these lands also appears to indicate a continuing wish to combine traditional customary uses of resources with new economic opportunities, rather than simply abandoning old systems for entirely new forms of farming. However, government policy and legislative changes significantly restricted Maori participation in the management of their vested lands and with this protection of important mahinga kai.

The process of sales and vesting resulted in the significant loss of legally recognised traditional Whanganui authority over much of the land and resources of the district by the 1920s. The result of this appears to be that the exercise of traditional Maori authority over many waterways and mahinga kai in the district was significantly limited as land ownership was lost. Maori communities were also effectively shut out of economic exploitation of many of their resources as a result of early large purchases and of any significant influence over how developments might impact on those resources. It seems unlikely that all Whanganui

Maori communities would have rejected all changes to waterways and associated mahinga kai in the district. However, there is evidence that given the opportunity to manage their lands more rationally, many communities would have preferred less of a total transformation and more of a blending of valued resources with new economic developments. The government promotion of the process of land alienation described in this chapter and linked legal presumptions concerning associated resources appears to have effectively denied them this opportunity.

Chapter 4 The assertion and delegation of Crown authority - foreshores and waterways

Introduction

It has been noted in previous chapters that the alienation of land from Maori ownership was a major means of undermining Maori authority over waterways and associated mahinga kai in the Whanganui district. However it was not the only means. Regardless of actual private land ownership issues, the Crown also asserted significant management rights over the foreshore, inland waterways and associated resources in the Whanganui district. This and following chapters outline this process in more detail. This chapter considers in particular the Crown assertion of authority and rights to manage foreshore and some waterway areas in the district in the interests of settlement, regardless of the existence of privately owned land in some of these areas.

The Crown asserted and exercised this authority directly in some instances, through Crown agencies such as the Forest Service and Ministry of Works. Importantly in this district, the Crown also asserted the right to delegate assumed powers of control and management to various local authority agencies. However, in doing this the Crown appears to have failed (for much of the time covered by this report) to require those local agencies to have regard for Treaty guarantees or to ensure effective means of Maori participation in the new local forms of management.

As with changes in land ownership, the significance of this Crown assertion of authority and delegation of significant powers and responsibilities to local authorities may not have been immediately apparent to Maori. However, as settlement increased and intensified, particularly from the 1870s, the new forms of authority began to have a significant impact in limiting and undermining traditional Whanganui Maori authority and management systems over coastal areas, inland waterways and associated mahinga kai. In addition, to the undermining of customary Maori authority over these areas, the largely unrestrained use of these powers in the pursuit of settlement interests also began to have a severe impact on the mahinga kai themselves and the resources they sustained, such as indigenous fish, plants and birds.

4.1 Crown authority - foreshores, and larger inland waterways

When the Crown assumed sovereignty in New Zealand through the Treaty of Waitangi, the orthodox legal view was that this brought with it the application of English common and statute law, at least to the extent applicable in the New Zealand circumstances.[418] One major New Zealand circumstance was the existence of the indigenous Maori people with their own body of law and custom and the protections in the Treaty concerning these until Maori willingly and deliberately relinquished them. It has already been noted in previous chapters that a major government policy was to claim such relinquishment of Maori customary authority over inland waterways and associated mahinga kai through extensive land purchasing. This was on the basis that land ownership also gave significant ownership rights to 'incidents' associated with such land such as inland waterways and bush areas.

Settlers and officials also assumed and then began to insist that common law doctrines concerning Crown prerogative over areas such as foreshores would apply as settlement extended. These doctrines and their implications have been covered in more detail in other reports.[419] In brief, this Crown authority was not considered to have been acquired through purchase but was a presumption of authority based on Crown right. Under this the Crown was presumed to have authority over foreshores and the arms of the sea including inlets, the tidal parts of rivers, and in some cases, coastal lagoons. Beyond the foreshore, the Crown also claimed authority over the territorial seabed.

The legal presumptions concerning foreshores were based largely on assumptions of the primacy of land ownership. It was considered that foreshores were a particular type of land, separate from other lands and under Crown authority rather than subject to private ownership. Legally foreshores were held to be that part of the coastal area subject to tidal movement, located between high and low tides, and uncovered by receding tides. This view of the foreshore appeared practical for land ownership purposes but tended to downplay other considerations more important for a resource-based economy such as the legal foreshore being only part of an interlinked ecology of the whole coastal area. Resources such as shellfisheries and coastal plants might spread into and over a legal foreshore area and in practical use terms it was not always very easy to identify where the legal foreshore began.

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[418] Hinde, McMorland and Sim, *Land Law in New Zealand*, Wellington, 1997, p 5
[419] For example, Boast Richard, *The Foreshore*, Waitangi Tribunal Rangahaua Whanui series, 1996

Inland lakes and waterways (apart from their tidal reaches) were not considered to have a foreshore as they were not subject to tides but instead had a margin or edge. Foreshores and the coastal seas, while under Crown authority, were held to be generally open to the public for reasonable use such as transport and navigation. Private land ownership to the sea coast was generally assumed to be limited to the high tide mark, as the Crown had authority over the foreshore. Coastal landowners might have rights to accretion of land at the high tide mark through the gradual and imperceptible action of moving tidal waters. However, the foreshore cut them off from the sea and they were not regarded as having similar rights as landowners adjacent to inland waterways to the bed of the waterway. The bed of the sea to the territorial limit and the beds of the tidal reach of inland waterways were considered to be Crown controlled.

This may be why the 1848 Whanganui deed, while conceding some Maori interests in smaller waterways such as the dune lakes, failed to mention the Whanganui River itself. As noted in chapter 2, the upstream boundary for the 1848 purchase was Raorikia, which was also the end of the tidal zone of the river. Presumably officials did not consider the tidal part of the river to be capable of private ownership and therefore it was not considered subject to any Company purchase deed. However, there was not always a clear consensus even among settlers as to the tidal reach of the river and nor is it clear whether or how this distinction was explained to Maori.

It was also considered possible for a private landowner adjacent to a coastal area to be legally cut off from their high tide boundary. This could happen in a number of ways. Most commonly it happened where the Crown having acquired coastal land through purchase from Maori then reserved a strip of land along the foreshore before on-selling the land to settlers. The Crown might also create a legal road line along the edge of a foreshore even if the road was not properly formed. In those cases the Crown effectively became the owner adjacent to the foreshore and therefore gained any rights such as to accretions. These coastal strips were created along foreshores in many parts of New Zealand and became part of what is popularly known as the 'Queen's Chain'. However, the Queen's Chain was not created automatically and nor has it ever extended around the whole New Zealand coastline.

The Crown assertion of authority over the foreshore had important implications for continued Whanganui iwi control and management of developments affecting the foreshore and particularly mahinga kai such as shell fisheries associated with it. It is not at all clear whether settler presumptions concerning the foreshore and the implications of them were clearly

explained to Maori when settlement first took place. In fact, Richard Boast has shown that for some time the Crown did generally acknowledge that Maori customary interests might extend to the foreshore area. The Native Land Court also began to recognise customary interests in foreshores.[420] It also seems that in the early stages of settlement, while farming was still fairly small scale and not very intensive, Maori were happy to allow the shared use of coastal areas for new economic use and mutual benefit. However, this did not necessarily imply willing Maori abandonment of their traditional systems of authority over the coastal area and associated resources such as fisheries.

It seems that in the early years of the Wanganui settlement, the issue was generally not directly addressed. Officials and settlers tended to explain concepts concerning the foreshore and tidal areas more in terms of mutual benefits, advantages and 'sharing' of such areas, than in terms of Crown 'right' or assumed authority. For example, the Missionary Taylor noted in 1847 that the chief Mamaku had expressed concern that Pakeha appeared to be taking control of the harbours at Wellington, Waikanae, Porirua, Otaki, Ohau, Manawatu and Wanganui. Taylor noted that he explained that at Wanganui, 'one side of the river at least' belonged to Maori and that 'they thus possessed the entrance as much as the Europeans'.[421] In this Taylor seemed to be voicing his understanding of the common law presumption of riparian ownership of the riverbed to its middle by the Pakeha township on one side and the Maori settlement of Putiki on the other. This gave them 'shared' possession to the mouth and therefore the harbour entrance. His explanation of his common law understandings may have made the issue seem more acceptable to Maori. However, his understanding was not necessarily the full legal view. As noted, government officials soon began to insist that in fact the Crown could successfully rebut normal riparian ownership for the tidal reach of rivers. This meant that Taylor's advice was in error. His simplistic explanations failed to fully acquaint Maori with the real implications of common law assumptions. By the 1870s, the Crown was more actively asserting authority over the whole tidal reach of the Whanganui River, well past the Maori 'side'.

When the Crown assumption of authority over tidal and foreshore areas became more apparent, through legislation such as the various Harbours acts, for example, Maori did generally begin to mount a series of legal challenges such as the *Ninety Mile Beach* case 1957.

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[420] Boast, pp 49-63
[421] Taylor, journal vol 5, 1847-48 April 1847, pp 38-40, qms 1989, ATL

This found that Maori customary rights could not simply be done away with through legislation passed for another purpose such as Harbours Acts. Instead, any removal of such rights had to be expressly enacted. It was later assumed that any customary interests in foreshore areas must have been extinguished on Native Land Court investigation. However, this did not apply in areas such as Wanganui where land was claimed to have been purchased before the Court had been established and therefore such customary title had never been investigated.[422] The claim that Maori customary rights in the foreshore and tidal areas have never been deliberately or voluntarily abandoned remains a significant issue today.

The New Zealand Government, in company with a number of other New World colonies, also began to assert authority over larger or 'navigable' inland waterways based on the right to assume such authority in the 'special circumstances' of a new colony. This presumption was not an old common law doctrine, as with foreshores and tidal areas, but a relatively new assertion based on the settlement needs or 'national interest' of a new colony. This presumption actually sought to rebut general common law doctrines of private riparian ownership rights to the beds of larger or 'navigable' inland waterways.[423] As the need arose the government backed this up with special legislation such as the Coal Mines Act Amendment Act 1903. However, in many cases especially before 1900, the definition of what might be 'navigable' was never very clear. The Crown appears to have simply assumed authority over waterways as they were found useful for settlement and dealt with challenges to this from owners including Maori if and when they arose. The term 'navigable' was only defined with regard to rivers by the Coal Mines Act 1979. Until then it was simply up to officials to develop and administer practical rules according to what best appeared to suit the circumstances.[424]

In the Whanganui district, the main example of this Crown presumption of authority over a bed of a navigable waterway was its assumption of authority over the bed of the Whanganui River. This long running presumption and subsequent legislative attempts to confirm Crown ownership and Maori resistance to this is covered in detail in the Waitangi Tribunal *Whanganui River Report.*[425] However, although the best known example, it appears the government was also willing to assert authority over other Whanganui waterways as the need

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[422] Boast R, *The Foreshore*, p 33; Ward, *Overview* pp 89-97
[423] White Ben, *Inland Waterways: Lakes*, Waitangi Tribunal Rangahaua Whanui series, 1998 p 26
[424] Marr, chapter 13, p 346-7 in 'Crown Laws, Policies and Practices in Relation to Flora and Fauna, 1840-1912,' Waitangi Tribunal publication 2001.
[425] Waitangi Tribunal, *The Whanganui River Report*, 1999,

arose. For example, in 1897 the Government also decided to clear the Tangarakau river for navigation to assist with the settlement of the Lands and Survey subdivisions of large blocks of land in the Whangamomona valley and Tangarakau area. It was expected that the river would provide easier access to the blocks than attempting to cut road tracks. The river clearing was also based on Crown assumption of authority over a navigable river. However, the Tangarakau proved much more difficult to make navigable than originally anticipated. River clearance work proved too expensive and difficult to maintain and in the early twentieth century the clearing project was abandoned. Instead the Lands Department built a track along the Tangarakau River for settler access.[426] The Crown also passed legislative measures intended to confirm its authority over 'navigable' waterways. Section 8 of the Harbours Act 1950 also provided for the Crown to assert authority over the waters of 'navigable' lakes and this was apparently contemplated when ownership of Lake Wiritoa was being discussed in the 1970s.[427]

The Crown also asserted authority directly over not just the beds of waterways but the waters and materials in them in the interests of settlement. At times this was done directly through Crown agencies. For example, the Ministry of Works were responsible for removing considerable quantities of gravel and shingle from the beds of a number of waterways in the Whanganui district, generally for road building, flood protection and other settlement purposes. In the 1950s the government also assumed that the inland waterways of the district were available for hydro-electric development. The former Electricity Department and now Genesis Power Limited has been delegated powers to manage the Tongariro power scheme using the headwaters of the Whanganui River and involving the upper reaches of the Whangaehu and Moawhango rivers. This scheme has already been referred to in some detail in the *Whanganui River Report* [428] Therefore it is not proposed to cover it again in this report. However, it is important to note that the lowered volume of the river caused severe environmental impacts on associated mahinga kai including indigenous fisheries. This has been ameliorated to a degree by the requirement for minimum flows on the Whanganui and Whakapapa Rivers.[429]

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[426] Voelkerling p 183
[427] 8/5/472 Wiritoa lake reserve –DoC – Wanganui conservancy
[428] Waitangi Tribunal, *Whanganui River Report*, chapter 8
[429] Horizons.mw *Regional Plan for Beds of Rivers and Lakes*, p 21

In the 1950s the Ministry of Works also began investigating and carrying out preliminary works for developing a dam on the river downstream of Taumarunui. Two sites at Atene and Kaiwhaiki were tried but soft sands and the earthquake risk from unstable recompacted earth required for the dams led to the abandonment of the project.[430] However, even though the project was abandoned, claimants have expressed concern at research hui that the preliminary works for this project caused significant silting and modification in the waterway.

4.2 Crown delegation of authority – municipal and provincial agencies 1840s-1876

As well as asserting direct control over some waterways the Crown began to more commonly delegate its assumed powers of management and control over coastal areas and inland waterways to new forms of local authority management that it created. These local authorities through their new powers and responsibilities began to have a major impact on coastal and waterway areas in the Whanganui district. These new powers also tended to limit and undermine customary Whanganui forms of authority and management of these areas. In addition, for a variety of reasons, Whanganui Maori often found themselves and their concerns largely excluded from these new forms of authority.

This was partly due to the way in which the government created and developed these new forms of authority. They tended to be based on general, private, freehold land ownership and ratepayer qualifications. This was where settlers predominated and therefore the authorities tended to be dominated by settlers and their interests. In contrast, the government appeared to generally fail to take account of the obstacles it had created for effective Maori participation in the new forms of authority. The new form of individual land title created for Maori land under the Land Court system facilitated land alienation, but it did not assist Maori to take part in local authority management. Instead, ratepayer and freehold property qualifications tended to exclude Maori. The Crown also failed to require the new local authorities to have special regard to Maori concerns or Treaty guarantees even when it delegated powers that significantly impacted on Maori.

The Crown delegation of powers to local authorities began on a relatively small scale with provisions to assist with facilities for settler townships and their harbours. For example, the Municipal Corporations Ordinance 1842 included provisions for elected town authorities to build and control sewers, roads, waterworks, and drains within townships and their

[430] Ministry of Works, *Wanganui Region*, p 35

neighbourhoods.[431] These provisions enabled the use of natural waterways such as rivers and streams within townships as convenient drains and sources of water supply. The Harbour Regulations Ordinance 1842 also provided for the regulation of harbours and shipping in settlement areas including rights to remove obstructions.[432]

Later ordinances such as the Public Roads and Works Ordinance 1845 followed the principle of transferring costs for local works to local communities. These generally provided for a majority of owners or occupiers of freehold land to request the establishment of an elected board of works or roads board with powers to levy rates for roads and other public works. The town boards were then typically authorised to build, maintain and repair amenities such as roads, streets, wells, causeways, bridges, waterworks, conduits, sewers, markets, landing places and other places of public utility.

For a short period between 1846 and 1853 New Zealand was divided into two provinces, New Ulster and New Munster. The Wanganui settlement was included within New Munster. Similar ordinances were also passed under this system, such as the Country Roads Ordinance 1849 and the New Munster Town Roads and Streets Ordinance 1849, which also included quays within local works. The government appears to have taken over the control of the Wanganui wharf and port developments after the demise of the New Zealand Company in 1850 but quickly delegated this to local boards of works.

The Constitution Act 1852 established a new system of settler elected municipal and provincial government as well as the elected General Assembly. At this time Maori were still excluded from representative Government. The Wellington Provincial Government included most of the Whanganui district from this time until the provinces were abolished in 1876. Crown agencies such as the Marine Department still maintained some direct overall responsibility for areas such as coastal management during this time. However, the Crown also increasingly delegated powers over coastal and inland waterways areas to provincial governments and municipal authorities. For example, the Constitution Act 1852 provided for local works to be continued under provincial governments including drainage, sewerage and water supplies and docks, wharves, landing places, beacons and lighthouses. The provincial governments were also able to enact their own works ordinances and penalties for obstruction of such works, for example for damaging any ditch or drain, allowing animals to interfere or

[431] Municipal Corporations Ordinance 1842 no V1 s 5.
[432] Harbour Regulations Ordinance 1842

for making drains without permission.[433] A number of Town Improvement Acts also replaced older ordinances.

The Crown also asserted the right to grant land, including foreshore land, to the control of provincial governments for public purposes. For example, the Public Reserves Act 1854 enabled grants of land that had been reclaimed from the sea and any land below high water mark in any harbour, arm or creek of the sea, any navigable river or any land on the sea coast or any offshore island.[434] The Public Boards Act 1856 also provided for the establishment of boards of works for any district. The Wellington Superintendent proclaimed a local Board of Wardens for the management of local public works for Wanganui in 1862.[435]

The Crown also delegated increasing powers to municipal authorities as well as provincial governments. The Municipal Corporations Act 1867 contained more comprehensive provisions for municipal authorities including powers to construct and maintain waterworks and to take water for domestic supply from any stream or reservoir. The Act deemed the waters involved to be the property of the Crown and then delegated certain rights to use the water to local corporations.[436] The Municipal Corporations Waterworks Act 1872 later vested the water rights in corporations themselves. The Wanganui Borough Council notified the construction of waterworks in Wanganui in early 1875 under clause 82 of the Municipal Corporation Waterworks Act 1872.[437] Where boroughs were bounded by coasts or navigable rivers, the authorities were also intended to have powers to construct and maintain docks, basins, locks, wharves, quays, piers and landing places and establish buoys and lighthouses.[438]

In the Whanganui district, works and related legislation were initially restricted to the Wanganui township area and then the 1848 purchase boundaries and were focused on providing necessary services for the settler community and the farming economy. For example, in 1854 the Wanganui settlement was divided into two municipal districts either side of the River. By the 1860s these were further divided into town areas such as Kaitoke and Makirikiri on the east of the river. The Wanganui Town Board established under the Public Boards Act 1856 undertook responsibility for town works from 1862 to 1872 before being

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[433] For instance, the Protection of Roads Ordinance, no 5, 1854-55
[434] Public Reserves Act 1854
[435] *Wellington Provincial Gazette*, vol X no 20, notice 21 August 1862.
[436] Municipal Corporations Act 1867, part 20
[437] *Wellington Provincial Gazette*, 15 Jan 1875 vol XXII no 1 p 1
[438] Municipal Corporations Ordinance 1842, section 5

replaced by the Wanganui Borough Council established under the reforms of the Municipal Corporations Act 1867.

Early provisions were also made for local authority control and management of the Wanganui wharf and tidal river areas, reflecting the importance of sea transport and the river mouth as a sheltered harbour. As with other areas, the Crown assumed authority over the tidal reach of the Whanganui River and then increasingly delegated powers to local authority agencies run by, and accountable to, ratepayers and their interests. The Wanganui Town Board was originally delegated powers over the Wanganui foreshore and wharf area, followed by the Wanganui Borough Council from the 1860s. The new system of local government and local authorities provided settlers with powerful means of having their interests heard and promoted. For example, in the 1850s river steamers were widely regarded as an important new economic development for Wanganui that should be encouraged as much as possible. The steamer Wonga Wonga first entered the Whanganui River in September 1857. In April 1858 it hit a snag in the river and Wanganui representatives on the Wellington Provincial Council were able to use their position to seek funds to clear snags and place buoys for shipping in the river mouth area.

The Government assumed further powers to control port and wharf areas generally with legislation such as a series of Marine Acts from 1862. These defined not only the limits of various ports but also the different responsibilities of local and central government regarding ports and related activities. For example, the government, through the Marine Department, took control of lighthouses while provincial superintendents defined the limits of ports, made port bylaws, levied charges and authorised harbour works. Marine legislation also allowed for regulations to be made for the use of ports and to authorise the removal of materials such as sand and shingle from the foreshore within the port area. Such regulations also introduced penalties for taking materials regarded as being under Crown or provincial government control.

Although these developments technically assumed Crown authority and extended local authority powers, the full significance of this may not have been immediately apparent to Maori. Initially the various town improvement measures were generally limited to townships, harbours and their immediate surrounds. As noted earlier, there was considerable support among Whanganui Maori for the new settlement and works that appeared to provide mutual benefit. The wharf development and early roads and bridges seemed to fit in with this by promoting trading opportunities. For example, in 1853 the provincial government established

a ferry service over the Whanganui River and by 1857 moves were being made to build bridges over both the Whanganui and Whangaehu rivers. Work began on the bridges in the late 1850s but met with significant setbacks. The Whangaehu bridge built in 1857 was destroyed soon afterwards by floods. Once rebuilt it was partially destroyed again by a lahar in 1861.[439] These difficulties delayed progress with the main Whanganui River bridge. However, the coastal road and bridges became strategically important during the wars and in the late 1860s work began again with government assistance. The Whanganui bridge was officially opened in 1871 with tolls to help finance it charged until 1893.[440]

Maori also appeared willing to share the use of inland waterways in the early years of settlement without necessarily feeling their authority was threatened. For example, waterways were used for fresh water supplies and drainage for the new settlement as well as for powering small flour, timber and flax mills. At this time it appears that these uses could largely co-exist alongside traditional fisheries and other resources and early settlers themselves also relied on traditional resources such as water fowl and fish as they developed their farms. At the same time, settlers and officials, as noted earlier, tended to be somewhat circumspect when explaining to Maori the actual implications of their views on Crown authority. Even where there were conflicts such as over the Maori right of fishery in the Okoia district, where the Provincial Government appears to have attempted to buy up any Maori rights once settlement spread into the district in the 1860s (as noted in chapter 2) the issue of what rights were actually extinguished appears to have been far from clear.

It also appears that many of the early assumptions of authority were not necessarily clearly explained or insisted on for some years allowing a significant amount of co-existence of various understandings, without Maori necessarily feeling their authority was being directly challenged. For example, when the Native Land Court began operations in the mid-1860s, Putiki Maori were encouraged to make ownership claims to their riverside reserve to the new Court. They were apparently advised, as Taylor had previously assured them, that under the new legal system they could claim as far as the middle of the riverbed. This was presumably based on common law doctrines regarding riparian rights to the beds of inland waterways. It did not necessarily indicate where Maori believed their traditional authority ended, just the legal form they were allowed to make a claim under. In this case, it was only when Maori

[439] Voelkerling, p 81
[440] Voelkerling pp 82-3

made their claims in the early 1870s that the Crown definitely asserted its claim to the tidal reach and therefore the foreshore of the Whanganui River. The Native Land Court accepted this assertion by deciding that such claims were only made as far as the tidal limit of the river foreshore.[441]

When it seemed apparent that Maori claims to the middle of the riverbed might succeed, evidence also came to light that many of the works previously undertaken in the wharf and tidal area had not had clear legal authority but had simply been undertaken as the need arose. In 1871 the Wanganui town surveyor H C Field, concerned that the Maori claims to the riverbed might succeed, raised the matter that more than £2000 had already been spent on works to protect the banks of the river. He believed the boards that had previously undertaken works to preserve the roads along the river had not obtained any legal right to construct the works or protect them once built. He noted that a recent public meeting had approved making an application for a grant of land required for some reclamation work and warned that even more extensive works would be needed to improve the river navigation. However, Field was concerned that all this might be undermined if the Maori claims were conceded and he believed that from what he knew of the original purchase and plans this might well happen. His proposed solution was for the Superintendent of Wellington Province to immediately apply for a grant of all the foreshore land on both sides of the river and the riverbed throughout the Wanganui block. This was presumably based on the legislative right the Crown had assumed through various public reserves legislation to grant foreshore land to provincial authorities. He noted that if the government granted such land to the province then any Maori claim would 'at once be rejected as 'conflicting with granted land'.[442]

Although as admitted, earlier local works had largely been ad hoc and by perceived community need, Field's letter reflects the fact that by the 1870s increasing development required clearer and more direct expressions of assumed authority. By this time Field also reflected the general settler view that Maori interests could be dismissed or overridden by legislation provisions especially where they appeared to impede settlement progress. These views also reflected the increasing separation between Maori and settler communities from the 1870s. The wars had clearly revealed how closely local works were linked to settler

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[441] For example, letter by Woon reporting on claims to foreshore and bed of river, 14 December 1871 and note of judge's assurance that plans were altered to remove foreshore and extend only as far as high water mark 16 December 1871, pp 297-8, MA-Wg 2/1, ANZ

[442] WP 3, 1871/272 letter H C Field to Supt Wellington Province, 12 July 1871, ANZ

interests. Settlers were determined to become independent of earlier trade with Maori. From the 1870s the government had also adopted policies that promoted farm settlement and settler interests. The massive public works and immigration programmes from this time were not only intended to transform the environment for farming but also to overcome remaining Maori resistance. The strengthening and extension of the local government and local authority system was an important part of this. It was designed to promote settler interests while at the same time the government failed to take measures to more effectively involve Maori in local administration or require local agencies to take account of Maori concerns. This occurred even as local authority influence was extending rapidly through the whole Whanganui district and as a result the delegated powers were beginning to impact significantly on Maori authority over coastal areas, inland waterways and associated mahinga kai.

The extended local authority system continued to be based on freehold and ratepayer qualifications. Although local authorities were partially funded through Government grants and subsidies, a large portion of their funding came from their ratepayers. They were elected by ratepayers from ratepayers and therefore felt primarily accountable to ratepayers and their interests. Where settler interests conflicted with Maori concerns, such as requiring swamp drainage over the preservation of a fishery, this system meant local authorities felt little responsibility to take account of largely non-ratepaying Maori interests.

When local authority powers were first being extended, Maori often remained excluded from them or could only participate in relatively small numbers, as most Maori land remained communally owned. Maori land was also generally exempt from rating. For some time after the wars even while it was strengthening local authority powers, the government did try to mediate between settler dominated local authorities and Maori through central government agencies especially the Native Department. For example, during the 1860s and 1870s the upriver or central Whanganui resident magistrates such as White and Woon also had considerable diplomatic responsibilities. Donald McLean as Minister of Native Affairs, Defence and Public Works in the 1870s also managed to coordinate government policies to extend colonisation while avoiding outright confrontation with Maori as much as possible.[443] McLean did begin to involve Maori in local administration but Ward notes this was largely through the Native Department – as assessors, Native police or on Native school committees. Maori had almost nothing to do with the growing machinery of local settler administration

[443] Ward, *A Show of Justice*, p 231

such as roads and harbour boards and provincial councils or later, county and borough councils.[444]

As settlers and officials became more confident that Maori resistance could be contained and managed from the late 1870s, the Native administration and its diplomatic role was severely reduced. Attitudes also hardened against compromising with Maori over their concerns or making special efforts to ensure Maori were integrated into new management systems including local government. Opportunities to overcome Maori separation and exclusion were rejected in favour of blaming Maori for not fitting in.

For example, the issue of non-payment of rates for Maori land was allowed to become a long standing issue that had the effect of alienating Maori communities and creating long lasting tensions between them and local authorities. Initially customary Maori land at least had been exempt from rating in recognition of the injustices this would cause. As more Maori land became rateable, Maori greatly resented the extra cost burdens they were faced with, especially as many Maori communities still did not operate in the cash economy. Free labour or materials were sometimes accepted in lieu of works contributions but local authorities became increasingly intolerant of Maori failure to pay rates in cash. Local authorities often failed to appreciate the difficulties faced by Maori with the system of individual Maori land title created through the Land Court system. As Maori land increasingly passed through the Court it was transformed into a new form of title that created many owners for often small areas of land. This was further exacerbated through succession rules where very quickly many thousands of owners might own small areas of land. With so many owners it was very difficult to either use the land productively so rates could be afforded or organise the equitable payment of rates. These difficulties were largely unappreciated by local authorities, however, who tended to view Maori as rates avoiders who wanted to 'freeload' off ratepayers. For example, the Provincial Government toll gates at Kaitoke and St John's Hill, established in 1870 and retained until the 1880s, were described in 1881 as having at least forced contributions from those who did not otherwise pay rates; the 'maoris, the pleasure seekers who did not contribute in any other way'.[445]

In turn, local authorities tended to use Maori non-payment of rates as a reason to refuse works that Maori might require or to promote works without regard to Maori interests on the

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[444] Ward, *A Show of Justice*, p 269
[445] Voelkerling p 118

reasoning that they did not have to take account of the interests of non-ratepayers. At the same time, government policies such as legislation that encouraged local authorities to take Maori land for public purposes further increased tensions with Maori communities.[446] Maori have made efforts to take a more effective role in local authority affairs over the years. However, developments in this early period, whereby the government began a process of delegating increasing powers to local authorities without ensuring adequate protections for Maori, have had far reaching consequences still being felt today.

In the Whanganui district many of these early trends in extending local authority powers and responsibilities in the early 1870s are apparent. As previously noted a borough council replaced the old Wanganui Town Board. As settlement began to spread into the wider district, agencies designed to service outlying country areas also became more important. For example, country roads boards began to be established after the wars. These early roads boards were financed partly by provincial government grants but local rates were most important. For example, the Wanganui and Rangitikei General Road Board was established in 1870 and was particularly responsible for the road between the Whanganui Ferry and the Whangaehu bridge. The Wanganui and Waitotara Highway District Board and Whangaehu Highway District Board were also established in the early 1870s before being disestablished in the mid-1880s when their functions were taken over by the newly established County Councils.[447]

During the early 1870s, the government also provided for more effective and explicit settler control of the Wanganui wharf area. The Wanganui Borough Council had taken over responsibilities for the wharf from the previous town board from 1867. After a number of unsuccessful Provincial Government efforts, the General Assembly finally passed the Wanganui Bridge and Wharf Act 1872. This attempted to address the financial problems associated with building and maintaining the Wanganui bridge by authorising the Borough of Wanganui to raise £20,000 and giving it control and management of the bridge and wharf, including powers to charge tolls for using the bridge. The Governor was empowered to issue a Crown grant for the wharf in the name of Wanganui Borough and could consent to the borough building works on the foreshore. Section 26 of this Act also defined the boundaries of the wharf, including all the foreshore of the tidal Wanganui River between Victoria Avenue

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[446] For example, see Marr, *Public Works Takings of Maori Land*, 1997 pp 98-100
[447] information from agency documentation, Wanganui District Council Archive.

and Churton St, estimated to contain just over three acres where the borough had sought powers to reclaim land on the western river bank. This was vested in the local corporation of the mayor and councillors. This legalised earlier settler activities and was presumably based on the assumption that the Crown could assert and delegate such management powers because of its authority over the tidal reach of the river.

Further foreshore lands were granted under the Wanganui River Foreshore Grant Act 1873. This provided for a grant of 29 acres of the riverbed in the foreshore area to the Superintendent of Wellington Province for reclamation works under the Public Reserves Act 1854. Any grant was to be without prejudice to the 'rights of any persons claiming and entitled to water frontage' (section 2) who were entitled to compensation should such rights be infringed. The 29 acres was exclusive of the just over three acres already vested in the 1872 Act. A small area of land for a customs shed and river frontage was also excluded from the designated port area.

The Wellington Provincial Government also assumed rights based on delegated Crown authority to begin more extensive river channel clearing works. For example, in December 1873 the Wellington Superintendent secured the services of the assistant engineer in chief for the colony to carry out a survey of the river to determine the best method of improving the channel.[448] The engineer's report recommended the construction of groynes to channel the river flow and avoid erosion on the eastern bank opposite the town. It was also assumed that stone material required for such work could be obtained from the riverbed and banks.

The Wanganui River Foreshore Grant Act 1874 delegated more powers over the river foreshore to the Wanganui Borough. Crown grants were now issued to the borough rather than the provincial government. The area of land involved now contained some 56 acres in a number of parcels. The Governor had to approve any reclamation of granted land. The Government also assumed the right of deciding how much land would be allocated for Maori use on the foreshore area. Maori had been using the site on or near Pakaitore for a market place since before the settlement began. However, with the parcelling out of land and access to the foreshore and the delegation of control of such land to local authorities, a legally recognised area for Maori had to be provided or their continued access and use of foreshore and nearby land would no longer be certain.

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[448] AJHR 1874 E-4 p 1

It seems that at this time the Native Minister, Sir Donald McLean, secured a provision that one acre would be excepted out of the lands to be granted to Wanganui Borough to allow for this continued Maori use. This acre was to be vested in the Crown as a reserve for the use of Maori of the town and neighbourhood as a market and landing place for goods and persons and other purposes as the Government might determine (section 4). In fact, official records reveal that in spite of regular pleading from Resident Magistrate Woon, the Government eventually refused to set aside the acre as provided for.[449] At first the government delayed because it had vested the foreshore in the provincial government and had to then negotiate where such a reserve might be located.[450] Eventually, as previously noted, the government refused to set aside a legal site on the basis that the settlers would find it 'objectionable' to 'establish' Maori in the middle of town.[451] In practice, Maori continued to use the Pakaitore site unofficially for some years, but the continued Crown failure to secure a legal site eventually cost them a legally recognised camping area and market place on the river frontage.

The hardening attitudes towards Maori concerns apparent in the early post-war period as new forms of local authority management were developed began to take on even more significance with the restructuring of the mid-1870s. This restructuring was carried out as part of government polices to more effectively promote public works and immigration programmes in the North Island in particular, and it had the potential to impact significantly on customary Maori authority over coastal areas, inland waterways and associated mahinga kai. The effective extension of settler control in pursuit of settler farming interests and the marginalisation of Maori from these forms of management also had significant implications for the survival of mahinga kai associated with these areas and the resources they contained.

4.3 Territorial, municipal and special purpose local authorities from 1876

Any early uncertainty over how significant local authorities might become was removed with legislative restructuring in the mid-1870s. As the government adopted a policy of massive public works programmes and immigration based on farm settlement, the earlier small scale,

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[449] correspondence, 19 April 1880, MA-Wang 1/11NO 80/636, ANZ, as referred to in chapter 3
[450] For example, HT Clarke to Woon teleg 4 March 1874 attached to correspondence re foreshore August 1873 MA-Wg 1/5, ANZ; letter 5 July 1877, MA-Wang 1/8 ANZ; letter 15 February 1880, MA-Wang 1/10, ANZ
[451] Letter 19 April 1880, Lewis to Woon, MA-Wang 1/11, ANZ

localised and somewhat laissez faire system of boards and provincial authorities became increasingly inadequate. It became apparent that more overall coordination and control of farm development and settlement was required, along with a more coordinated and better financed approach than provincial governments appeared capable of providing. The provincial system was abolished in 1876 and the various forms of local authority already established were reorganised, regularised and provided with even more extensive new powers.

A series of new legislative provisions from 1876 created a new system of local government through boroughs and county councils that existed with some revisions well into the twentieth century. This was rapidly followed with legislative provisions that gave separate statutory authority to special purpose local authorities with particular relevance to coastal areas and inland waterways such as drainage, rivers and harbour boards and their successors. The rapid growth in the powers of local authorities was required to match the huge growth in farm settlement throughout the North Island, including the Whanganui district. These forms of management helped secure the overwhelming transformation of the indigenous environment to support farming and left little room for the exercise of traditional Maori authority especially where it was regarding as 'impeding' farm progress. The sheer scale of the transformation in a relatively short time also began to threaten even the continued existence of many traditional resources.

The Municipal Authorities Act 1876 strengthened borough councils such as the Wanganui Borough Council for settled municipal areas. This anticipated the establishment of new municipal authorities as settlement spread throughout the North Island. In the Whanganui district new settlements often closely followed major public works developments such as the extension of the railway. Some of these settlements then managed to survive through economic developments such as milling before becoming rural service centres as nearby land was developed for farming. For example, in the Whanganui interior, the early settlements of Raetihi and Ohakune became established as townships in 1893 and 1895 respectively. The extension of the railway and nearby timber milling encouraged growth and Ohakune became a borough in 1911 and Raetihi in 1921. Both towns relied heavily on sawmilling until the 1930s.[452] Vegetable growing and servicing nearby farm land then became significant in the town economies. Wanganui itself managed to outgrow borough status in 1924 when it was

[452] Ministry of Works, *Wanganui Region*, pp 17-18

recognised as New Zealand's fifth largest city, although from the 1930s it experienced relative economic decline.

In rural districts such as Whanganui, the creation of counties with increased powers under the Counties Act 1876 was even more significant. This provided for the extension of local authority management over the whole district promoting and encouraging farm settlement. The Wanganui County Council operating from 1876 to 1920 originally covered most of the district. However, as settlement spread the separate counties of Waimarino and Waitotara were established. County councillors continued to be elected by freehold property owners. For some time voting rights were also based on a plural franchise according to property value. For example, in 1876 a property holder with property valued at £350 or over was eligible for five votes. This was amended over time and in 1925, for example, one vote was allowed for property valued under £1000, two votes for property valued between £1000 and £2000 and three votes for property valued over £3000.[453] Although these kinds of provision were made to reflect differences in freehold land ownership, no similar provisions were designed to take account of the still relatively large overall Maori landholding in the district (at the beginning of this period) in an effort to reflect their interests.

Counties continued to derive most of their income from rates, licences, fines and government subsidies. For some time they were also entitled to one third of the profits from the sale of Crown lands and received the same proportion of funds from Crown leases. This initially provided considerable revenue but dwindled as time went by and had become insignificant by 1900.[454] This system of financing continued to tie counties closely to the progress of farm settlement continued in later similar systems. For example, after 1905 counties were entitled to half the royalties from the sale of timber to maintain roads adversely affected by logging activities.

County councils were also given steadily increasing powers to meet the needs of rapid settlement and transformation of the environment for farm purposes. For example, county councils took over many of the responsibilities for rural works necessary for farm settlement including roads. Subsequent legislation such as the Counties Acts 1878 and Roads Board Act 1882 regularised and continued to provide for roads boards on the request of ratepayers. The county councils could also rationalise and absorb the earlier roads boards as required while

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[453] Voelkerling pp 112-3
[454] Voelkerling p 113

retaining powers such as drainage, diversion of waterways and taking of materials such as gravel from waterways.

Reflecting the spread of settlement in the Whanganui district a number of roads boards were established under these provisions, including the Mangawhero Road Board (1884-1917) the Parua Road Board (1893-1912) Mangamahu Road Board (1909-1913) and the Kaitoke Road Board (1892-1913).[455] In the interests of rationalisation and more effective control the government later encouraged separate roads boards to merge with counties and by 1918 this had largely happened in the Whanganui district.[456]

As councils gained increased powers, they sought to promote developments that served the needs of farm settlement, milling and farming, often encouraging or hastening the decline or destruction of indigenous flora and fauna in the process. They also began to insist that Maori communities were brought under their control, further limiting and undermining traditional Maori authority over natural areas and the resources they retained. For example, in 1880, the Wanganui County Council wrote to Resident Magistrate Woon asking for assistance in persuading Maori communities to follow council rules and requirements. He was asked to warn Maori to keep their pigs off the county road where they were causing considerable damage. Otherwise the county warned it would be compelled to take action against them.[457]

Local authorities also began to increasingly abandon working through central government agencies, and the government itself also began discouraging Maori communities from seeking government mediation where they felt local authorities were threatening their interests. Maori communities approached the Crown for assistance based on their Treaty relationship and assurances of protections. However, the government increasingly insisted that Maori communities deal direct with local authorities even though these agencies might be antagonistic and were not required to have regard to Maori interests.

For example, in late 1880 Maori of the Whangaehu valley area complained that the Wangaehu Road Board was insisting on closing an old road that had been a Maori route for centuries. It no longer suited the needs of settlers but it gave Maori direct access to Matatera Pa. Officials, including Resident Magistrate Woon, initially began suggesting ways of negotiating with the Board to see whether settlers might not be too badly affected if the road was kept open.

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[455] Agency documentation, Wanganui District Council Archive
[456] Voelkerling , p 112
[457] MA-Wg 1/11, letter Wanganui County Council to RM Woon 26 August 1880, ANZ

However, Native Minister Bryce was more impatient with this. While he noted he had no great objection to these particular proposals, he informed officials that 'generally such matters as this must be left to the local bodies'.[458] Officials soon began to follow the government lead that such matters be left as much as possible to local authorities.

The Public Works Act 1876 also provided local authorities with their first clear legislative powers to take Maori land for public works purposes.[459] Many of these works were concerned with inland waterways such as irrigation works, the control and supply of water, and powers to construct and manage dams and water races. The 1876 Act also provided that any natural watercourse including any non-navigable river and lake outlet could be considered a public drain. Maori rights to object to such works were limited. Rights of objection were also generally limited to landowners even if Maori might consider they retained an interest in a fishery separate from surrounding land ownership.

The system of territorial local authorities established a pattern of increasingly extensive powers designed to meet the needs of settlement that continued well into the twentieth century. It was reorganised in later years particularly in the 1970s and again in the 1980s. For example, the Local Government Act 1974 created regional and united councils and a system of district and regional councils was established again in the 1980s. However, these reorganisations simply followed the pattern already established in terms of the Crown establishing local authorities as the main source of authority over the management and use of local resources within districts based on the delegation of assumed Crown powers over areas such as land, waterways and coastal areas.

For much of this time from 1876 local authorities continued many of the features of their early beginnings. They were elected by ratepayers and naturally tended to represent their interests. While the Crown continued to strengthen their powers, in the period before the 1970s especially, it generally failed to require local authorities to take special account of or protect Maori interests. It also generally failed to provide a more effective means of encouraging Maori participation in local government even when obstacles such as difficulties with ratepaying became evident. There is some evidence of Maori attempts to participate in territorial local authorities in the Whanganui district. For instance, H Marumaru served as a

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[458] correspondence on NO 80/3905, October 1880-January 1881, letter of protest re road closure and annotations, 16 December 1880, 7 January 1881 and 11 January 1881, MA-Wg 1/12, ANZ
[459] Marr, *Public Works takings of Maori Land*, 1997, p 86

Wanganui County Councillor in the years 1932 until 1941 and R Metekingi was a member of the Council from 1983 to 1988.[460] However, Maori participation at this level appears generally low and the government failure to provide for and encourage more effective participation appears to have been a factor in a general sense of alienation and at times antagonism between Maori communities and local authority agencies.

More recent legislation of particular relevance to local authority organisation, such as the Local Government (no 2) Act 1989 has also been criticised for its silence on Treaty matters although local government has steadily been delegated responsibilities that impact on Treaty relationships.[461] More recently further changes are pending on local authority legislation in this regard. Current territorial local authorities with significant responsibilities in the Whanganui region include the Wanganui and Ruapehu District Councils and Horizons.mw or the Wanganui-Manawatu Regional Council. These Councils have more recently attempted to build better relationships with their local Maori communities. For example, the Wanganui District Council has been active in negotiating relationship agreements between the Council and Te Runanga o TamaUpoko.[462] Issues concerning the Whanganui River have so far largely dominated these agreements, although as noted previously, the Council has also sought to establish cooperation over the restoration of the remnant Kokohuia wetland. Claimants may wish to make further submissions to the Tribunal on this relationship.

As well as the development of territorial local authorities, as settlements extended, the powers of many special purpose early boards of works from the provincial government period were strengthened and some were given separate statutory authority. Special purpose authorities with particular relevance to inland waterways were drainage and river boards. The Land Drainage Act 1893 attempted to promote the more comprehensive drainage of agricultural and pastoral lands and also provided statutory authority for drainage boards to implement this. Ratepayers could petition to have local drainage boards established and then elected and provided the membership of such boards. The boards could improve existing drains, build new ones and also had powers concerning irrigation works. They could levy rates for works and raise loans and enter contracts for work. There were limited rights for affected landowners to object to drainage works but not for non-landowners. This impacted on Maori

[460] Information supplied by Penny Allen, Archivist, Wanganui District Council Archive.
[461] Hayward, Janine, 'The Treaty of Waitangi: Maori and the Evolving Crown' p 163
[462] Relationship documents signed between the Council and Te Runanga o TamaUpoko 25 May 1988 and 16 May 2000.

who might have lost the surrounding land but still retained an interest in an eel fishery. In the case of swamps, it seems as noted previously, that even rights associated with riparian ownership were not held to apply. Landowners could also require drainage work to be done on other properties to alleviate flooding on their own land.

The 1893 legislation was followed by a number of subsequent Acts and amendments, all of which were designed to promote drainage of land to create more productive farmland. For example, the Land Drainage Act 1908 consolidated previous legislation and the Swamp Drainage Act 1915 extended government powers to drain large areas of land. Drainage boards in the Whanganui district included the Mangawhero and Wangaehu Valley drainage boards.

The River Boards Act 1884 contained similar provisions for establishing separate river boards. Any river catchment could be declared a river district following a successful petition of a majority of ratepayers in an area affected by flooding. Ratepayers elected the members of river boards and once a board was established, it gained control of all rivers, streams and waterways in its district. River boards also had powers to take land, levy rates, raise loans and enter contracts for river works. In later years the government also offered subsidies for river control and drainage works. The Wanganui River Trust (1892-1940) has been dealt with separately in other reports so is not described in detail here.

As noted earlier, settlement spread into the steeper Whanganui hill country from the coastal flats from the 1890s, and was given a further boost after World War 1 when returned servicemen were encouraged to take up hill country land for farming. However, transforming the steep, forested hill country into pastoral farmland proved to be very difficult. Burning off seldom destroyed weed seeds or fern spores and secondary growth soon appeared to compete with grass. The preference for sheep farming also lessened control of secondary bush growth. The initial fertility of the burned area was quickly leached by heavy rain and the removal of forest cover added to silting and flooding problems. A common way of dealing with rapid reversion was to burn off again but this only encouraged the further spread of weeds and more erosion. In 1925 a committee established to inquire into deteriorating lands found that almost five percent of Crown lands in the Whanganui region had been abandoned and continuing deterioration and the uneconomic size of holdings made further abandonment imminent.[463] By

[463] Ministry of Works, *Wanganui Region*, p 18

the 1920s it had become clear that much of the steep interior Whanganui country would only ever be marginal and difficult to farm.

The difficulties of farming on steeper land meant that river board control became even more important in assisting with the protection of farmland against erosion and flooding. The river boards attempted to engineer solutions to flooding through means such as stopbanks, river realignment and willow planting. All of these had significant impacts on the natural waterway systems. For example, the silting of waterways accelerated by farming practices and timber removal has continued to be a major concern, highlighted in the Whanganui River inquiry, but widespread throughout the district.[464]

The government also took measures to encourage forestry as an alternative on more marginal lands and encouraged protection forestry, especially in marginal areas where burning and milling had removed large areas of indigenous forest cover. The spread of settlement into the forested interior Whanganui hill country was initially accompanied by widespread destruction of the indigenous podocarp forests. The first priority of the government and settlers was to clear land for farming and milling was regarded as an interim industry to assist with settlement before farming was established. The main species milled in the Whanganui district were rimu, matai, rata, tawa and red and silver beech.[465] For a few decades this led to a boom in timber milling, especially around Raetihi and Ohakune. However, timber was milled wherever it was accessible and forest clearance often followed the extension of railway lines through areas. For example, the first train pulled into Taumarunui in 1903 and reached Raurimu by 1906.[466] This was quickly followed by extensive forest clearance even where there was no possibility of farming afterwards, resulting in the wholesale clearance of many areas with little effort to conserve timber resources. When milling declined from the mid-1920s native forest remained only in the most inaccessible areas. This milling, as well as contributing to a severe decline in native bird and plant species also contributed to problems of erosion and silting of waterways contributing to a decline in fisheries.

From the 1930s, the government began taking and interest in protecting remaining indigenous and reverted forest for protection forestry. It also began encouraging exotic tree planting programmes. For example, planting began in the large Karioi station from 1917. Other forests

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[464] For example, Waitangi Tribunal, *Whanganui River Report*, p 98
[465] Ministry of Works, *Wanganui Region*, pp 140-1
[466] C James Bibby et al, *Taumarunui Ecological District*, p 23

developed were at Waitotara, Erua north of Raetihi, and Lismore between the Whanganui and Whangaehu rivers.[467]

The difficulties of farming on remaining steep hill country combined with the effects of the 1930s depression meant that by 1940 much of the Whanganui hill country was 'characterised by slip-scarred slopes, large areas of secondary growth, and abandoned holdings'.[468] The famous 'bridge to nowhere' still remains after the failed government Mangapurua settlement some 30 kilometres above Pipiriki was abandoned by 1942. It has become a symbol of how difficult it was to transform the interior Whanganui hill country to farmland.

As the importance of protection forestry was recognised so was the need to unify the administration of soil conservation, river control and drainage. The Soil Conservation and Water Control Act 1941 was intended to provide for this and new catchment boards were established under the Act to replace the old river and drainage boards. Local authority areas never match well with the Whanganui claim inquiry boundaries, but the Rangitikei–Wanganui Catchment Board had responsibility for a large part of the district.

The principal functions of catchment boards were to minimise and prevent damage from floods and erosion and to promote soil conservation. This included maintaining river channels, engaging in river control schemes and recommending the retirement or conservation of erosion-prone land. The boards also worked with the Forest Service to establish and conserve protection forests and retire marginal land to forestry. The catchment boards were given many of the powers of the old river boards, including powers to construct necessary works and take land. They were also given control of watercourses and could divert, deepen or alter any watercourse and make bylaws concerning them.[469] The new boards also gained considerable powers over existing native forest and inland waterways considered to have importance in meeting their objectives.

The catchment boards continued the tradition of electing members from local communities. In addition, representatives could be appointed from government agencies, such as the Forest Service and special interest groups such as farmers. However, there was still no specific requirement for Maori representation or to protect or consider Maori interests. The potential for conflict between the boards and farmers over matters such as land to be retired for

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[467] Ministry of Works, *Wanganui Region*, pp 140-1
[468] Ministry of Works, *Wanganui Region* p 19
[469] The Soil Conservation and Water Control Act 1941, sections 126,130, 133,149, 135a

protection forestry was recognised by close liaison with farmers' organisations and farmer representation. However, during the course of this research no evidence was found of similar concern to establish and maintain close relationships with iwi and hapu to take Maori concerns into account, such as over the health of waterways for fisheries or continued access to bird snaring areas.

The 1941 Act was followed by a number of legislative amendments. For example, the Water and Soil Conservation Act 1967 and a 1981 amendment continued extending the powers of boards over rivers, streams and watercourses. Catchment Boards also originally had responsibility for Water Conservation orders on rivers, whereby stricter control was exercised over these waterways. A water conservation order for the Manganui o te Ao River was gazetted in 1988 under the Water and Soil Conservation Act 1967.[470] More recently, under government restructuring, regional councils have taken over many of the responsibilities of the earlier catchment and drainage boards. The Manawatu-Wanganui Regional Council (Horizons.mw) now has responsibility for these kinds of issues in the Whanganui district, while territorial authorities have responsibilities for flood protection and erosion control and some drainage activities.[471] All of these activities are now also subject to the provisions of the Resource Management Act 1991. Water Conservation orders are now also administered under the Resource Management Act (part IX). National Water Conservation orders also place more stringent restrictions on the activities of authorities and users of rivers. The National Water Conservation Order for the Manganui o te Ao has been continued under the Resource Management Act 1991. The Royal Forest and Bird Protection Society also applied for a National Water Conservation Order for the Whanganui River in 1993. This was opposed by Whanganui Maori as further undermining their authority over the river and their concerns became part of the Waitangi Tribunal inquiry and report on the river.

The government continued to strengthen the powers of harbour boards through the 1870s. As port areas developed, provisions were made for the establishment of separate harbour boards from the old town boards and borough councils. These harbour boards were to be elected and managed by ratepayers and were intended to control day to day activities in port areas.[472] As part of this, harbour boards had powers to make by-laws, levy charges and penalties, authorise and undertake or contract works, undertake reclamations, lease or licence land use, or license

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[470] Horixons.mw, *Regional Plan for Beds of Rivers and Lakes* p 13
[471] Horixons.mw, *Regional Plan for Beds of Rivers and Lakes*, p 10
[472] Harbour Boards Act 1870

or sell materials on foreshores and have lands and foreshores vested in them. When harbour boards reclaimed land, the reclamation was technically regarded as Crown land but the Crown could lease or vest such land in a local authority including a harbour board. A long series of Harbour Board Acts and amendments asserted Crown authority and rights in harbour areas until the Harbours Act 1950 was eventually repealed by the Resource Management Act 1991.

In the general restructuring from 1876, a separate harbour and river conservators board was provided for Wanganui under the Wanganui Harbour and River Conservators Board Act 1876. This Act established a harbour board to take over the control and management of the Wanganui bridge and wharf from the Wanganui Borough Council. The board originally had nine members of whom six were elected and three were appointed by the government. There was still no provision for Maori representation. The new harbour board was vested with the 56 acres already endowed to the Borough plus other lands not part of the river bed for a leasing endowment. The 1876 Act also retained the earlier provision for one acre to be set aside for Maori for a market place. The Crown also reserved 30 acres for a flagstaff, battery and signal station and for Landguard battery (section 53).

The new board also gained powers to regulate the harbour board area. For example, a proclamation of 1877 enabled the new Wanganui Harbour Board to issue regulations for the port of Wanganui. These included a regulation notified on 5 May 1877 prohibiting the removal or disturbance of any log, timber or driftwood from the foreshore area under the control of the board or from lands vested in the board.[473]

The Harbours Act 1878 established a new code of management for all New Zealand harbours, replacing all previous harbour board legislation. All existing harbour boards were covered by the new Act. However, certain earlier provisions were also kept in force, for example, those concerning the control of Wanganui bridge and wharf. The Wanganui harbour board continued to have powers extending over the tidal reach of the Whanganui River to Raorikia, based on the assumption of Crown authority over tidal reaches and its powers to delegate that authority to other agencies.

As with other forms of local authority, the Crown also began to insist that Maori, even with Treaty concerns, deal direct with the Board rather than seeking government assistance. For

[473] Wanganui harbour copies of rules and regulations included in 1877 correspondence, MA-Wang 1/8, 1877, ANZ

example, in 1879 Putiki Maori complained to the resident magistrate and the government about the impact of board river works on their reserve. The Native Minister replied that as it appeared 'the Wanganui River is now under the control of a Harbour Board' the complaint would be forwarded to it for consideration.[474] However, local authorities were not required to take particular account of Maori concerns and relations between them and Maori communities often seemed to fall into a pattern of mutual antagonism. While the Wanganui Harbour Board generally regarded any damage to the Putiki reserve as slight, it quickly began to assert its new powers to control the foreshore. In 1879 the harbour board wrote to Woon seeking his support to persuade Putiki Maori to cease their long held practice of taking driftwood from the foreshore area. The board noted it was determined to put a stop to the practice as its engineer felt continuing removal might damage the spit.[475]

The pattern of Harbour Board Acts and amendments and increasing powers continued through to the Harbours Act 1950, which was finally repealed by the RMA 1991. During this time the Harbour Boards and Marine department shared powers over foreshore and coastal areas, while local councils also increasingly gained authority over coastal reserve areas adjacent to foreshores. When the Department of Conservation was created, all the foreshore areas outside of commercial working port areas were placed under Department of Conservation management from 1 April 1987.[476] The old harbour boards were also restructured and in many cases privatised. The final meeting of the Wanganui Harbour Board was held in June 1988 and the Board's functions were taken over by the Wanganui District Council and Ocean Terminals Ltd.[477]

Current legislation with respect to foreshores includes the Conservation Act 1987, Foreshores and Seabed Revesting Act 1991 and the Resource Management Act 1991. These Acts now require more account to be taken of Maori concerns and Treaty guarantees. However, all still assume significant Crown control and authority over the foreshore and coastal area and the right to delegate some of this authority to local authority agencies such as district and regional councils.

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[474] Native Minister Sheehan advice, Lewis to Woon, 10 April 1879, MA-Wg 1/10, ANZ
[475] Letter Wanganui Harbour Board to Woon, 6 October 1879 with attachment from Board engineer, MA-Wg 1/10, ANZ
[476] WR 46 vol 1, correspondence, Department of Conservation Wanganui Conservancy.
[477] Information supplied from agency documentation, Wanganui District Council Archive.

Harbour Boards impacted on iwi interests in foreshores and coastal areas in a number of ways. Their powers to construct and maintain harbour works and modify foreshore areas had the potential to pollute, destroy and deny access to parts of the coastal environment and associated fisheries. Harbour Boards were also commonly endowed with large areas of coastal lands including the foreshore over which they were given substantial control without being required to have regard for or protect areas of concern to Maori. Through control of port areas and endowment lands, harbour boards were also given exclusive rights to financial opportunities from fees, levies, licences and leases and rights to undertake economic developments, effectively excluding Maori from such opportunities.

4.4 Environmental planning regimes

As settlement became more extensive, the need to plan for future requirements, allocation and use of resources also became more evident. This was accompanied by increasingly regulated planning provisions for various forms of central government and local authority agencies. These planning regimes also began to increasingly impact on iwi authority and use of foreshores, inland waterways and associated mahinga kai. The beginning of attempts at planning can be seen in early legislation such as the Municipal Corporations Act 1867 which provided for the good order of townships in basic amenities such as sewers, water supplies, and public markets. However, the Town Planning Act 1926 was the first real attempt to regularise town planning, although this was generally limited to the larger towns and cities. A 1929 amendment then provided for more extensive regional planning.

The 1926 Act introduced the concept of zoning or the allocation of activities to predetermined areas. Local authorities in districts over a certain size were also required to prepare formal town planning schemes. At the same time they gained wide discretionary powers to control and plan for such functions as roads, streets, reserves, recreation grounds, open spaces, scenic areas, sewerage, drainage and water supplies. Town planning boards were established to monitor the town plans.[478] These more intensive town planning provisions began impacting on Maori authority over waterways and coastal areas as, for instance, zoning provisions for purposes such as rubbish dumps or recreation areas could affect Maori use of their land. Zoning restrictions in areas such as housing also impacted on Maori ability to build family homes in rural areas and requirements such as riparian reserves also contributed to loss of

[478] *New Zealand Yearbook*, 1990, p 423

access to some waterway areas. In more recent years town planning provisions also became increasingly closely linked to public works requirements as local authorities were required to make planning provision for such future requirements as refuse disposal.

Provision for planning was continued through a variety of legislation, including the 1948 and 1953 Planning Acts and their amendments and the Land Subdivision in Counties Acts 1946 and 1961. These provided for the administration and management of procedures governing land uses and developments including planning schemes, designated uses, zoning, subdivision requirements and public reserves contributions. The Town and Country Planning Act 1953 also tightened requirements for local authorities to publicise their proposed schemes and established a Town and Country Planning Appeal Board, a judicial body that later became the Planning Tribunal. The Ministry of Works also took overall responsibility for overseeing town planning from Internal Affairs in 1948, while a trend continued for delegating major responsibilities for planning to regional and district authorities.[479] General planning provisions were also extended through various types of environmental legislation such as the Water and Soil Conservation Act 1967.

As planning became more extensive and began to impact more clearly on land and water usage, it also began to have increased implications for Maori authority and use of inland waterways and coastal areas. Yet the various provisions and local authority restructurings up to the late 1970s generally failed to contain formal provisions or protections for Maori interests. By the 1970s, the various town planning processes, and their increasing impact on Maori with apparently very few protections, were bitterly criticised by many Maori communities and organisations.[480]

The Town and Country Planning Act 1977 placed more emphasis on the importance of planning schemes and delegated more extensive powers to regional and maritime authorities including the recently created regional and untied councils. Regional boundaries could be extended to include adjacent foreshores and waterways for planning purposes. Challenges could be made through the Planning Tribunal. With increasing environmental concerns from the 1970s, planning processes were also increasingly required to take account of the natural environment. The Parliamentary Commissioner for the Environment was established in 1986 and amendments to Water and Soil Conservation legislation provided for conservation orders

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[479] *New Zealand Yearbook*, 1990, p 423
[480] Marr, *Public Works Takings*, pp 159-161

to be taken out over rivers, streams or lakes to protect wild and scenic, recreational, fisheries scientific or other values.

The 1977 Act also for the first time required some account to be specifically taken of Maori concerns in planning decisions. For example, one of a number of matters of national importance to be taken account of was the relationship of Maori people and their culture and traditions with their ancestral land, section 3 (1). Cultural factors were to be taken account of in planning (section 4). Where there were significant amounts of ancestral land in a district, regional authorities also had discretion to co-opt a Maori representative onto their planning committees (section 6). The first schedule to the 1977 Act, dealing with regional schemes, also required provision for marae and ancillary uses, urupa reserves, pa and other Maori traditional and cultural uses (clause 3). 1978 regulations under the Act required the relevant local district Maori council to be notified should a planning scheme affect any known Maori land.

These innovations gradually began to be treated with more importance by judicial authorities such as the planning tribunal. However, Maori continued to criticise their effectiveness. Maori complained that when the provisions were tested in Court they were practically too weak and ambiguous to afford real protections. For example, the Courts at first found that the term 'ancestral land' did not apply if the land had been alienated from Maori ownership. It was not until 1987 that the High Court found that ancestral land did not still have to be owned but there had to be some 'factor or nexus' linking people to the land. In fact, it seemed for some years that very few cases under the amended Water and Soil Conservation Act, Mining Act or Town and Country Planning Act achieved any kind of notable progress for Maori in environmental matters.[481] The achievements of various district councils under town planning regimes for areas such as the coastal environment have also been criticised by investigators although flawed legislative provisions have been acknowledged as partly to blame.[482]

In 1988 the government began a review of all major legislation concerned with New Zealand's natural and physical resources, including planning and environmental protection legislation. This resulted in a reorganisation of government agencies with responsibilities for the natural environment and flora and fauna. The Department of Conservation was created to

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[481] Kenderdine, Shonagh, 'RMA- the best practice option?' p 9

[482] Parliamentary Commissioner for the Environment, *Coastal Management: Preserving the Natural Character of the Coastal Environment; administration by Far North, Tauranga and Wanganui District Councils*, 1996 especially pp 3,13, 53.

manage the conservation estate and provide conservation advice to government. A new Ministry of Fisheries was established and administers the Fisheries Act 1996 which is intended to ensure the sustainability of New Zealand's fishing resources. The Ministry for the Environment is required to provide advice on sustainable management of the environment to the government and guidance to local authorities and the private sector on sustainable management matters. The Parliamentary Commissioner for the Environment provides independent advice to parliament on environmental matters and independent assessment of central and local government agencies and their activities. All these agencies are now required to take account of Maori concerns and Treaty principles.

The legislative review of the late 1980s also resulted in a new environmental planning regime under the Resource Management Act 1991 and associated legislation such as the Hazardous Substances and New Organisms Act 1996 (under which the Environmental Risk Management Authority (ERMA) was established). The overall intent of the Resource Management Act is to promote the sustainable management of natural and physical resources including 'safeguarding the life-supporting capacity of air, water, soil and ecosystems' (section 5). The system of environmental management established under the Act is based on a hierarchy of national, regional and district plans and policy statements. Plans and policy statements are also required for particular parts of the environment such as air quality and the coastal environment. These are generally required to be prepared and administered by a structure of regional, district and city councils.

The purpose of this Act is to promote the sustainable management of natural and physical resources, including 'safeguarding the life-supporting capacity of air, water, soil and ecosystems' (section 5). Among matters of 'national importance' to be taken into account in planning under the Act are the preservation of the natural character of the environment, the protection of areas of significant indigenous vegetation and fauna and the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. (section 6). Among 'other matters' to have regard to are 'kaitiakitanga' which was defined by a 1997 amendment as the exercise of guardianship by Maori tangata whenua. Another is the 'protection of the habitat of trout and salmon' (section 7). The principles of the Treaty of Waitangi are also to be taken 'into account' (section 8). Territorial authorities are also required to take account of relevant planning documents recognised by an iwi authority in making district plans and any relevant regulations concerning taiapure or fisheries.

Notifications of consent applications must also include iwi authorities where this is appropriate (section 93).

The Resource Management Act 1991 also sets out planning procedures, functions and responsibilities of central and local government. In brief, central government is responsible for national policy statements, including a New Zealand Coastal Policy Statement prepared by the Department of Conservation. Central government, mainly through the Ministry for the Environment is also responsible for national environmental guidelines and standards. Regional Councils are responsible for regional policy statements and plans and territorial authorities for district plans. The district territorial authorities are generally responsible for land related issues although these also include waterways associated with land such as for water supply and sewerage. They also deal with some soil erosion matters such as forest logging close to water courses. Regional Councils are responsible for more integrated planning in the wider region, including water catchments, soil conservation, water quality hazards and discharges into water, land or air. The Act continues to vest all rights for the use of natural water in the Crown and delegated responsibility for the management of these rights to regional councils. The regional councils also have responsibilities for drainage and pest management and control.

The Environment Court, previously the Planning Tribunal, now oversees the planning process. As the planning stage is considered critical to the system, Maori communities must be prepared to deal with regional and district councils over various environmental and resource issues through all stages of the process from planning through to consents. Iwi authorities can also develop their own planning documents, and these have to be taken account of by planning authorities.

Since 1991 a significant body of case law has developed around the provisions requiring Maori interests to be taken into account in resource management provisions. It is beyond the scope of this report to analyse this in detail, but a number of issues have been highlighted by various agencies and commentators investigating these developments.[483] These generally acknowledge that issues remain in such areas as adequate consultation with iwi, the

[483] For example, Ministry for the Environment, *Caselaw on Tangata Whenua Consultation*, 1999; Parliamentary Commissioner for the Environment, *Proposed Guidelines for Local Authority Consultation with Tangata Whenua,* 1992; Chen and Palmer, *He Waka Taurua; Local Government and the Treaty of Waitangi*, Local Government New Zealand, 1999; Te Puni Kokiri, *Maurora Ki Te Ao; and introduction to environmental and resource management planning*, 1993; Kenderdine, Shonagh, 'RMA the best practicable Option?' paper to the RMLA Confernece, *Resource Management Journal* no 1 vol vii March 1999

partnership relationship between planning authorities and Maori communities, representation and iwi and hapu rights to pursue new economic developments based on traditional relationships with the land and the environment. For example, issues have arisen of the considerable powers the government has devolved to local authorities including over coastal areas and inland waterways, while Maori have been reduced to the role of submitters or objectors in the process. Their concerns need only be 'taken account of' while they wish to be considered full partners in the process. Issues have also arisen of the level of consultation with Maori communities and whether consultation is often delayed until proposals are fully developed, closing off options and alternatives that might have been possible at an earlier stage. Maori have also expressed concerns that in the process they are primarily seen as objectors rather than partners. Their role therefore tends to be regarded negatively by the rest of the community and they feel they are often reacting to proposals rather than taking a more positive role.

Authorities have made attempts to articulate Maori concerns through plans. For instance, the Horizons.mw *Regional Plan for the Beds of Rivers and Lakes* has a section in part three that outlines the relationship of Whanganui Maori with inland waterways of the district and issues of concern to them regarding the use of waterways.[484] The Wanganui District Council has also entered formal relationship agreements with a number of Maori communities of the district.[485] Issues still remain about how effective these documents are in influencing council decision making and whether charters and standing committees go far enough in developing long term, ongoing relationships with Maori communities.

Issues have also been identified about whether, in delegating increasing environmental powers and responsibilities to local authorities, the Crown has weakened or avoided its partnership and good faith requirements to iwi without ensuring iwi have similar relationships with such authorities. The requirement to 'take account' of or 'recognise and provide for' Treaty guarantees appears to weaken their effectiveness while iwi remain unable to hold local authorities to account in the same manner as they currently can do with the Crown. This issue was identified by the Waitangi Tribunal in the *Ngawha Geothermal Resources Report*, when

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[484] Horizons.mw *Regional Plan for Beds of Rivers and Lakes and Associated Activities*, part three

[485] Relationship Document between Te Runanga O TamaUpoko and Wanganui District Council, 1998; Relationship Document between Te Runanga O Tupoho and Wanganui District Council, 2000.

it warned that the Crown could not modify or simplify or avoid its obligations by delegating its powers or Treaty obligations to the discretion of local authorities.[486]

There have also been criticisms that the Resource Management Act continues the assumption that the Crown has a right to assert and delegate management powers over the natural environment and associated resources such as inland waterways. In contrast, many Maori claim they never willingly or deliberately gave up their customary authority over these areas. In the case of the Whanganui River itself, the Waitangi Tribunal raised the issue of the continuing impact of the Resource Management Act on the fundamental rights of property ownership that Atihaunui had and were guaranteed over the river. It found that although the Act claimed to be about management rather than property rights, 'in large measure the effect of the Act is to subsume them' as 'in effect the Atihaunui right of ownership and control is vested in statutory authorities'.[487] The Tribunal also found that the perpetuation of Crown statutory title in the river in section 354 of the Resource Management Act 1991 is inconsistent with article 2 of the Treaty and the Treaty principle requiring active protection of the Atihaunui ownership and authority over the river.[488] This may well have implications for Maori authority over other waterways in the Whanganui district and claimants may want to make further submissions on this.

There has also been Maori criticism that the Resource Management Act is fundamentally geared to presuming a right to use and develop the natural environment as long as adverse effects are avoided or mitigated. Some Maori communities in claiming guardianship rights to certain areas for spiritual or cultural reasons object to any development of surrounding areas and want absolute protection for some waahi tapu sites. They claim the current regime only provides very narrow protections for actual waahi tapu or other special sites and allows nearby developments that degrade the whole area. Some iwi and hapu authorities also find that they are inadequately resourced or skilled to cope with the sheer number of consent applications and proposed plan changes that affect their interests.[489]

The limitation and undermining of traditional authority over the coast, waterways and associated resources in the district through the government delegation of powers and responsibilities to various forms of local authority has been identified as a major issue by

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[486] Waitangi Tribunal, *Ngawha Geothermal Resource Report*, 1993 , pp 143-4
[487] Waitangi Tribunal, *The Whanganui River Report*, p xvi
[488] Waitangi Tribunal, *The Whanganui River Report*, p 273
[489] Kenderdine, p 13

claimants during the course of research for this report. There appears to be a long history of Whanganui Maori frustration in dealing with local authorities over various developments impacting on waterways and the coast. It should be noted that at times it appears local authorities have also struggled with the increased responsibilities placed on them by central government, without necessarily having adequate legislative or other support. Claimants continue to express concern over the impact of local authority powers to control the use of waterways including the dumping of waste or extraction of materials, the ability to determine changes in water flows and to allow activities threatening resources such as fisheries. For example, claimants have identified farm pollution as a major continuing problem for waterways, including farm runoff, topdressing and waste discharge to waterways. The Wanganui District Council has also acknowledged this remains a major cause of continued pollution of inland waterways in the district.[490]

It has not been possible in the time allowed for this report to investigate in detail examples of the impact of local authority powers on Maori authority over the coast and waterways through the whole district. In many cases official records are in any case sparse and it is likely that claimants will want to explain examples themselves, from their perspective within the framework presented. The following few examples highlight some of the issues raised by claimants.

An example of claimant concern over past local authority activity and the loss of a valued resource to reclamation and a landfill has already been mentioned with regard to the Kokohuia wetland. Little has been found in file records on coastal issues other than the area directly around the harbour. The early history of local authority assumption of powers over the harbour area has already been noted. This resulted in conflict with Maori over issues such as the continued collection and use of resources such as driftwood from the harbour area and the impacts of harbour development on resources such as fisheries.

In the coastal area, local authority management of the discharge of sewage and other waste to the river has long been a concern to Whanganui Maori who have repeatedly objected to it. This issue has already been noted in the *Whanganui River Report* as it affected the river in particular.[491] The problems of a combined sewage/stormwater discharge system were

[490] Information supplied in interview with Environment Manager, Wanganui District Council
[491] Waitangi Tribunal, *Whanganui River Report*, 1999, pp 323-4

apparently recognised by the Wanganui District Council from the 1950s.[492] However this was generally because of aesthetic and health reasons rather than in response to Maori concerns. It seems by this time there was some concern about the visibility of pollution in the vicinity of outfalls and along tidal mudbanks. In 1962 a number of cases of typhoid were also notified with one death reported. The disease was attributed to consumption of shellfish taken from near the river mouth.[493] After official investigations, the lower Whanganui and Castlecliff Beach area was classified under the Water Pollution Act 1953.[494] The City Council then received permits to continue discharges on condition further investigations were undertaken. A report on a proposed improved scheme was prepared in 1970, followed by construction of a marine outfall completed in late 1984. Water rights were granted under Water and Soil provisions for the marine outfall and pipe overflows from 1977 subject to periodic renewals.[495]

In 1985 industrial waste discharges were re-routed from the river and piped to an ocean outfall off South Beach. While this improved visible river water quality it also had the effect of removing industrial pollution to the coastal area.[496] It was later recognised that river and marine outfall pollution was also contributing to the decline in fisheries habitat along the nearby coastal area. It was also a likely cause of some species no longer being fit for human consumption.[497] This appears to have been exacerbated by the lower river levels caused by the Tongariro diversion, which meant the river was less able to dilute pollutants before they reached the coastal area. The development also meant that the various river outfalls became even more exposed and unsightly at low tide.[498]

Although Maori concerns about the adequacy of this system do not appear to have had much influence on local authorities at this time, matters did come to a head again in the late 1980s over an application to renew water rights for discharge of effluent and stormwater into the river. At this time the catchment board required the district to upgrade treatment and allowed only a short-term renewal of permits with a requirement to establish a working party to deal with the problem. The Wanganui District Council established a working party in 1989 to

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[492] Parliamentary Commissioner for the Environment, *Coastal Management*, p 28
[493] Wanganui District Council, Wanganui Wastewater Working Party Report, (Wai 167 D 21) p 7
[494] Wanganui District Council, Wanganui Wastewater Working Party Report, (Wai 167 D 21) p 7
[495] Wanganui District Council, Wanganui Wastewater Working Party Report, (Wai 167 D 21) p 7
[496] Wanganui District Council, Wanganui Wastewater Working Party Report, (Wai 167 D 21) pp 25-26
[497] Wanganui District Council, Wanganui Wastewater Working Party Report, (Wai 167 D 21) p 17
[498] Wanganui District Council, Wanganui Wastewater Working Party Report, (Wai 167 D 21) p16

recommend improved sewage treatment and disposal.[499] Membership included a representative from the Whanganui River Maori Trust Board. The working party reported in 1990. The report acknowledged Maori concern about river and coastal pollution but appeared more influenced by survey results showing that public opinion in Wanganui generally was concerned about pollution levels and willing to pay for improvements.

Progress on the issue then appears to have been overtaken by the new resource management regime. In 1992 the Wanganui District Council finally developed a consultation strategy for a new district plan, including consultation with tangata whenua as required under the RMA 1991. The Council worked through its liaison committee of the time, Te Roopu Whakakotahi and also agreed to consult with hapu. A working party including representatives of various interest groups and local Maori was also established to recommend further on sewage treatment and disposal.[500] The council adopted the working party proposal and consents were granted for the improved project. Initial work has begun although the scheme is still not complete. However it is expected the scheme once it becomes operational will greatly improve the quality of water in the lower river and along the nearby coast. This long running issue highlights the difficulties Maori experienced in having their views acknowledged and incorporated in the planning process as it developed historically. The more recent requirements in the planning process for more formal consultation with and recognition of Maori values and concerns do appear to reflect a considerable improvement. At the same time, it seems that by the 1970s the views of environmental interest groups and a majority of the Wanganui population were beginning to coincide with Maori views, making it easier for planning authorities to take Maori concerns into account.

A 1996 investigation found that, with regard to the coastal area, local Maori were mainly concerned with the effects of water quality (including sewage discharge) on kai moana, the disappearance of wildlife from the sand dunes, indiscriminate dumping of demolition material and the effects of discharges from industry located near the river mouth.[501] Management responsibility for the coastal area is now shared between the Department of Conservation, the Regional Council and the Wanganui District Council. For example, the Wanganui District Council has been involved with management of much of the coastal dune area. As part of this

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[499] Wanganui District Council, Wanganui Wastewater Working Party Report, (Wai 167 D 21)
[500] Parliamentary Commissioner for the Environment, *Coastal Management*, pp 38-39
[501] Parliamentary Commissioner for the Environment, *Coastal Management: Preserving the natural character of the coastal environment, administration by Far North, Tauranga and Wanganui District Councils*, 1996, p 3

the council has developed a Castlecliff Coastal Reserve Management Plan (1994) for management of the coastal dune area. The Council also manages a coastal protection zone intended to protect coastal sand dunes between the shoreline and inland coastal development.[502] While the council welcomes input from a variety of community interest groups it is unclear whether traditional Whanganui Maori systems of authority over the coastal area are incorporated within this.

Further inland, but still in the low lying coastal area, it appears that Maori have also had some difficulty in having their continuing concerns over the coastal dune lakes fisheries taken into account. It appears that by their nature, the dune lakes are relatively small and shallow, high in nutrients and therefore susceptible to eutrophication, severely endangering resources such as fisheries. The impact of grazing on water plants and farm waste rich in nutrients aggravates this tendency.[503] Lake Wiritoa also now supports a number of potentially troublesome introduced weed species, presumably from the effects of water ski and jet boat introductions. Maori concerns about the impact of farm and other pollution of the lakes has been long-standing, although there is evidence of difficult relations with local authorities over this, even for Kaitoke, where the bed remains in legal Maori ownership. For example, file records indicate that in 1983 owners complained about the council taking water from Kaitoke as this lowered lake levels and threatened the eel fishery. The council agreed that a limited amount of water had been pumped from the lake over 'several years' to maintain levels of a nearby oxidation pond. The council had no formal record of owner permission for this but believed it had gained rights to use some water in return for making the lake non-rateable. The council apparently responded to owner opposition to this use of the lake water by threatening to use its power to impose rates for the lake bed. Apparently although Maori reservations were not generally liable for rates, this only applied to areas up to five acres. Owners were advised that if they continued to object, the council could demand rates for the remaining 79 acres of the lake bed.[504]

A final example comes from the Whanganui interior. It has not been possible to investigate all claimant concerns about the ways their traditional management systems over waterways and associated resources in the interior have been limited or undermined by local authority powers

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[502] Parliamentary Commissioner for the Environment, *Coastal Management*, p 46
[503] Kelly, 'A Plant Distribution Survey of Twelve Coastal Lakes; a report to form part of the 'Sand Country Lakes Eutrophication Study''1978, prodcued for Rangitikei-Wanganui Catchment Board
[504] correspondence May-June 1983 , 23/555 MLC Wanganui cited in Bassett/Kay draft report, p 166

and lack of recognition of Maori concerns. Instead, the issue of management of pollution of waterways and subsequent damage to fisheries as a result of commercial vegetable washing in the Ohakune-Raetihi region has been chosen as an example. It is also an issue mentioned specifically by claimants.

As previously noted, many developments associated with farming caused considerable siltation of rivers and streams in the Whanganui district. These kinds of development included forest clearance, the replacement of forest with introduced pasture and farming practices that encouraged erosion. It seems highly likely this siltation contributed significantly to ecological change in many inland waterways and the decline of some fisheries and other aquatic life. Once the effects of siltation became obvious to Maori communities, and particularly as they believed their fisheries were adversely affected, they sought ways to control and ameliorate the impacts on waterways and associated resources. They rapidly found they had lost legally recognised authority over the waterways as a result of land sales. The most obvious alternative was to turn to the government for assistance although, as noted earlier, Maori communities found that increasingly they were directed to the local authorities and government agencies increasingly being given responsibility for such issues.

In the Ohakune-Raetihi region the impact of timber clearance was rapidly followed by another form of commercial activity that also produced high levels of siltation. This was commercial vegetable washing and, in particular, carrot washing. The forest clearance and timber milling boom of the late nineteenth and early twentieth century in the Ohakune-Raetihi region has already been noted. Milling at this time was regarded largely as an interim industry prior to the development of land for farming. However, much of the region proved to be only marginal for farming. Nevertheless, once they had been cleared and stumped, the recently cleared bush soils in the area turned out to be ideal for vegetable gardening. Chinese market gardeners were quick to grasp this opportunity and pioneered a significant new industry in the region, commercial market gardening.[505] By the 1920s vegetable produce was being sent as far as Wellington markets by rail.[506]

As commercial market gardening became more intensive in the region, the process of washing carrots (and other vegetables such as parsnips and swedes) began to involve the discharge of significant amounts of soil to nearby waterways. The wash water from large operations in

[505] Ministry of Works, *Wanganui Region*, p 18
[506] Borough of Ohakune Golden Jubilee booklet 1961

particular could contain large quantities of dirt or other solid matter such as pieces of vegetables or hair from the vegetables. This also depended on a range of factors such as the time of year (carrots being a winter crop), the ground conditions, and the age of the carrots (which determines the amount of hair on the carrots).[507]

The process of commercial vegetable washing caused local Maori considerable concern, as they believed it was significantly polluting nearby waterways and damaging resources such as fisheries. This concern only appears to have been investigated relatively recently but studies carried out do appear to support this concern, even if the concern has mainly been with exotic fish. For example, a 1999 investigation by Landcare Research for the Manawatu Wanganui Regional Council (now Horizons.mw) indicated that commercial carrot washing had the potential to wash considerable amounts of silt into waterways.[508] Another document noted in 1981 that the addition of sediment to waterways affects fisheries in a number of ways. In terms of trout fisheries, such washing may act directly by killing fish, reduce growth rates or lessen resistance to disease. It may also prevent successful development of fish eggs and larvae; modify natural movements and migrations of fish, reduce the food available to fish and make fish more difficult to catch.[509]

Few official records relevant to the early years of commercial vegetable washing appear to have survived. It does seem that as commercial crop growing was considered a productive economic activity it was encouraged by authorities with at first little regard to its impact on the environment or waterways in particular. There is no evidence of early official concern that traditional fisheries might be seriously affected, perhaps reflecting the general view of the time that Maori concerns could not take precedence over economic progress. Ironically, some of the earliest apparent concerns about the impact on fisheries appear to be the result of pressure from acclimatisation interests concerned with the effects of the washing process on introduced trout.

Instead, the earliest concerns evident in official records relevant to vegetable washing were centred on the possible impacts of the process in causing the loss of productive soils from potential farmland. When water quality also became an issue it was largely driven by

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[507] Information provided by Harold Barnett, Horizons.mw, Palmerston North, 12 March 2003

[508] L R Basher, C W Ross and J Dando, 'Surface Erosion in the Ohakune Area: A Progress Report', Prepared for the Manawatu Wanganui Regional Council by Landcare Research, 1999

[509] Document entitled 'Monitoring vegetable washing effluent discharges in the Waimarino area', February 1981, in W331/480/2 part 3 Whangaehu catchment – vegetable washers – 1979-1981, Horizons, Palmerston North

concerns about the adverse impact of siltation and erosion for flood control purposes again in relation to farming potential. The recognition of the link between waterway control, erosion, and degradation of farmland leading to forest protection measures and water and soil conservation legislation has already been noted. The first integrated management measures were passed in the Soil Conservation and Water Control Act 1941, when earlier river boards were replaced with catchment boards. Later measures, such as the Water and Soil Conservation Act 1967, extended catchment board responsibilities to include water quality. For example, the purpose of the 1967 Act was to 'promote a national policy in respect of natural water, and to make better provision for the conservation, allocation, use, and quality of natural water'.[510]

The 1967 Act also required catchment boards to promote soil conservation, seek to prevent damage by flooding and erosion, and ensure that 'adequate account' was taken of the needs of industry, the water supply requirements of local authorities, fisheries, wildlife habitats and recreational uses of natural water. The Act provided the National Water and Soil Conservation Authority with powers to examine problems concerning, and make plans in respect of the allocation and quality of natural water, including in relation to 'the needs of fisheries and wildlife and all other recreational uses of natural water' (section 14). It could also control the 'taking, and use of natural water, and the discharge of anything into any natural water' (section 14); and could delegate any of its functions or powers to any government department, regional water board, local authority, corporation or person. Under the Act, regional water boards could grant the right to take natural water and discharge waste into any natural water (section 21). The Act also provided for the process of making applications for such grants, including hearing objections (section 24). It was an offence against the Act to discharge waste into natural water or take or use natural water without authorisation (section 34).

This Act continued the process of the Crown assuming powers and responsibilities over the management of inland waterways, including their waters and the uses to which they could be put and of delegating these powers and responsibilities to agencies of its own creation. At the same time the government did not require these agencies to take specific account of Maori concerns regarding their traditional fisheries or their traditional systems of waterways and fisheries management. There was a requirement to take account of fisheries and wildlife but

[510] Water and Soil Conservation Act 1967

no mention or acknowledgement of the relationship of Maori to fisheries and wildlife. There were powers to delegate some responsibilities, which may have been used to incorporate or acknowledge iwi and hapu management systems. However, the examples given of likely candidates such as government departments, water boards and local authorities suggests this was not being considered.

These measures provided catchment boards with the legally recognised power to monitor and control the vegetable washing process and the discharge of wastewater from this to waterways. When the 1967 Water and Soil Conservation Act provisions were introduced there were 30 to 35 large carrot washing operations in the Ohakune-Raetihi district. The Act prompted an increased interest in these carrot washing operations as a water quality issue. As a result, from the 1970s, and up until the present, methods have been developed to try to reduce the environmental problems caused by carrot washing. For example, settling ponds reduce the amount of dirt and other solid matter going into streams. After the vegetables have been tumble washed in water, the wash water goes through a series of ponds where the dirt settles to the bottom of the pond and the water eventually flows into a stream. Water can also be passed through vegetation to sift out solid matter. Water quality is monitored by laboratory testing; and the quantity of water used is minimised by reusing water and using sprays instead of open hoses.[511] Scientists also note that the dirty appearance of some streams in the lower Mangawhero catchment is not always necessarily caused by vegetable washing, as some of these streams can appear 'dirty' after flowing through mudstone country.[512]

Local Maori concerned about the impact of siltation from carrot washing were also obliged to take their concerns to catchment boards. However, file records indicate that although catchment boards were required to have regard for fisheries, in practical terms in administering the Act they were primarily interested in 'productive' industries such as farming and horticulture and less interested in the protection of traditionally important resources. A number of prosecutions were made in the Ohakune-Raetihi area under the 1967 Act where it was found that waterways were being polluted from vegetable washing in contravention of water permits.[513] This indicates that the provisions did provide a potential mechanism for meeting Maori concerns about the adverse effects of carrot washing on waterways and the impact of this on fisheries. For example, P B Hammond

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[511] Conversation with Harold Barnett, Horizons.mw, Palmerston North, 12 March 2003
[512] Conversation with Harold Barnett, Horizons.mw, Palmerston North, 12 March 2003
[513] WG340, Water General – Prosecutions 1982-87, Horizons.mw, Palmerson North

was prosecuted in 1983 for not following the conditions of his water right and for not properly maintaining systems for avoiding soil and vegetable matter from carrot washing entering waterways.

However, little official file evidence was found of catchment authorities consulting Maori about their concerns at this time or taking Maori concerns about fisheries specifically into account in administering the legislation. Instead, the records indicate that authorities were most concerned about siltation and water quality from the point of view of promoting and protecting farming and other productive industries. Authorities were also reluctant to prosecute when it appeared to endanger vegetable grower's livelihoods, as commercial vegetable growing was an important economic activity in the district. For example, officials noted thirty occasions from 1976 to 1981 when one farmer failed to ensure his discharge complied with the conditions of his water right and they instructed him six times in writing to improve his effluent disposal system, before finally prosecuting him in 1983.[514] The main concern also appears to have been with catchment matters and soil loss through erosion, that is matters concerning the productive capacity of land for farming. No evidence was found in those files examined of official concern about the impact on indigenous fisheries such as eel, possibly because they were not considered a productive commercial activity.

The files examined did reveal some general Maori concern about the impacts of developments such as carrot washing on waterways of the area although any correspondence with Maori in the years searched appears very limited, possibly reflecting Maori discomfort in dealing with these agencies. In the 1980s P Rongonui did write to express concern about the health of waterways and fisheries near his property. He complained that the stream on his land near Raetihi, which had previously had a stony bed, flowed all year round and had eels and crayfish in it, now often dried up in summer and autumn and the bed was silted up. He initially blamed this on a dam, which had been built by the local acclimatisation society on his neighbour's property. A meeting was held to discuss the issue, attended by Rongonui, his neighbour, and representatives from the Wildlife Service and acclimatisation society although officials were not convinced that the dam was causing the problem. Rongonui later observed

[514] WG340 Water General – Prosecutions 1982-87, Horizons.mw, Palmerston North

fresh silting was occurring from a recently harvested carrot paddock and carrot waste had been carried by the stream onto his property.[515]

As previously noted, the environmental management regime changed in 1991 with the passing of the Resource Management Act (RMA) 1991. This required regional councils in the case of waterways to more strictly require the amelioration of adverse environmental effects of activities such as waste from carrot washing being discharged into waterways. It also requires more active consultation with relevant Maori groups that the principles of the Treaty of Waitangi are taken into account, and recognition of the kaitiakitanga role of Maori over traditional resources. Iwi planning documents are also required to be given some recognition.

There are currently around seventeen commercial vegetable washers in the Ohakune-Raetihi region, four of which are large scale.[516] Carrot washing now requires resource consents to discharge waste water from vegetable washing into waterways. In the Whanganui area the required consents to take and release water are given by Horizons.mw. The application for consent is advertised and a hearing takes place if submissions are lodged against the consent and no agreement has been reached at pre-hearing meetings. Any affected parties, such as neighbours, the Fish and Game Council, Department of Conservation and local iwi, can make submissions in opposition or support of an application for a consent.[517] However, Maori are still regarded as just one interested party while the regional council has the final say.

Even so, the Regional Council is now more encouraging of consultation with local Maori and have agreed to Ngati Rangi involvement in monitoring carrot washing, such as accompanying Horizons staff to carry out inspections of the wash operations. Ngati Rangi have their own written policy on carrot washing and are currently in the process of preparing their own water management plan although this was not available at the time of writing.[518] Interested claimants may wish to make further submissions to the Tribunal concerning the current regime for controlling waste discharges to waterways.

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[515] W331/170 Whangaehu Catchment – Dams 1969-1988, Horizons.mw, Palmerston North
[516] Conversation with Harold Barnett, Horizons.mw, Palmerston North, 12 March 2003
[517] Conversation with Harold Barnett, 12 March 2003 and information supplied by Andrea Harris, Senior Policy Analyst, Horizons.mw, Palmerston North, 17 April 2003
[518] Information supplied by Wendy Epiha, Ngati Rangi, phone conversation , April 2003. The policy and plan were not available at the time of writing.

Conclusion

As well as pursuing an active programme of land alienation in the Whanganui district, the Crown also asserted authority over some coastal areas and inland waterways as a matter of right, regardless of land ownership. For example, the Crown asserted authority over foreshores and tidal reaches of rivers and a number of inland waterways under this claimed right. As part of this the Crown asserted the right to manage these areas in the interests of settlement and to delegate its assumed powers to new forms of local government authority. These new forms of local authority tended to be settler dominated while Maori faced difficulties in effectively participating in them and having them take Maori views into account.

The assertion and exercise of this assumed authority had serious long term implications for continued traditional Whanganui Maori authority over coastal areas, inland waterways and associated mahinga kai. However, these implications may not have been immediately apparent to Whanganui Maori especially in the years before the New Zealand wars when settlement was still fairly small scale and settlers and government officials tended not to fully explain their views of this authority in the interests of avoiding conflict.

However, in the post war period and particularly from 1876, local authority powers and responsibilities were significantly extended as part of the government drive to promote public works, immigration and farm settlement throughout the North Island in particular. As Pakeha settlement spread through the whole Whanganui district and the environment was massively transformed to support farming, the various territorial and special purpose authorities began to have a significant impact in limiting and undermining traditional Maori authority and in promoting the decline of mahinga kai and the indigenous resources they sustained.

Whanganui Maori were not necessarily opposed to new developments or even new forms of management. However, the ways in which the local authorities were established and managed made it very difficult for Maori to participate or have their concerns taken into account. The Crown also increasingly distanced itself from mediating between the new forms of authority and its Treaty partners. The resulting relationships between local authorities and Whanganui Maori communities were often antagonistic or mutually mistrustful. This legacy still has repercussions today.

More recently, the government has passed legislative provisions that require more consultation with Maori and more account to be taken of Maori interests. However, issues still remain of how far the present environmental regime still fundamentally asserts Crown and local authority control and authority over environmental areas, activities and policies and the extent to which this undermines traditional Whanganui Maori authority. Issues also arise of how far the new regime provides for effective Maori participation in ways that recognise Treaty principles of good faith and partnership and Treaty guarantees.

Chapter 5 Acclimatisation, wildlife and conservation

Introduction

The previous chapter has outlined the creation and impact of new forms of local authority management established by the Crown on traditional Whanganui Maori authority over the coast and inland waterways of the Whanganui district. This chapter outlines the manner in which the Crown also assumed authority over indigenous and introduced flora and fauna and remaining natural areas of the Whanganui district. The Crown also delegated powers and responsibilities regarding these to a variety of new agencies, generally without requiring them to take account of Maori interests. Much of this flora and fauna and the remaining natural areas supporting them were closely linked with coastal areas, inland waterways and associated mahinga kai.

One major impact on indigenous flora and fauna and natural areas was the introduction and acclimatisation of many new species and the management of this. Many of these new introductions helped transform, and eventually threatened, much of the indigenous environment. However, it is not clear that Whanganui Maori totally opposed new introductions of plants and animals into the Whanganui district. In contrast, in many cases they appear to have welcomed them. It appears likely that the potential benefits of such new introductions may even have been a factor in Maori support for the new settlement at coastal Whanganui. New introductions inevitably meant change to the indigenous environment and Maori appeared to accept this, even if they and Pakeha may not have fully understood the impact of some introductions. What Maori may have expected was a say in the management of the introductions and especially protections for those parts of the natural environment and its resources they valued and regarded as taonga as guaranteed by the Treaty. It seems that Maori may have expected a changed environment with largely beneficial introductions, but one that was still nevertheless predominantly indigenous. It also seems that while Maori expected some changes in management systems for new introductions, they anticipated they would still be included in a significant way. At the same time, they fully expected to continue their traditional forms of management over traditional resources for as long as they wished, even if these resources were shared with Pakeha.

In contrast, early Pakeha settlers appear to have had a much lesser initial attachment to the indigenous environment. For some years their actions and records indicate they welcomed a

significant transformation of it for a variety of purposes. Settlers also expected to be able to manage the introduction and acclimatisation of new species in their own interests and in pursuit of their values. Increasingly this brought them into conflict with Maori views. It was not until relatively late in the nineteenth century that settlers began to express concern about the extent of the loss of the indigenous environment and its flora and fauna. However, again settlers expected that conservation measures would reflect their views and values and these did not always coincide with those of Whanganui Maori.

The government appears to have responded to these conflicting views by largely supporting and promoting settler interests and views. In particular, the government began granting significant legal recognition and responsibilities to settler dominated agencies and interest groups concerned with acclimatisation without requiring them to take account of Maori concerns or to assist Maori to participate effectively in them. The government also began to assert authority over the remaining natural environment and indigenous flora and flora and methods of conserving and managing them. As part of this the government created a new system of management. This involved central and local government agencies such as the Marine Department, Wildlife Service and district councils. The government also began to delegate considerable powers and responsibilities over these areas to largely settler-dominated interest groups including acclimatisation societies. As a result, settler views and concerns regarding indigenous flora and fauna and natural areas began to take precedence over and undermine traditional Maori systems of authority.

5.1 Acclimatisation - introduced plants and animals

As noted in chapter 1, documented evidence from early missionaries and explorers indicates that Whanganui Maori enthusiastically adopted some new species of plants and animals, such as pigs and potatoes, well before the New Zealand Company began its planned settlement at Wanganui. These new introductions were generally absorbed within traditional systems of harvesting and management. When the New Zealand Company did begin promoting the Wanganui settlement from 1840, opportunities for introducing new plants and animals, deliberately or accidentally, were greatly enhanced. Many of these early introductions were also quickly spread outside the original purchase area to the rest of the Whanganui district.

Initially, the process of introducing new species appears to have been welcomed by both the Maori and Pakeha communities of the district. One of the reasons Maori were keen to have a new trading settlement based in their district was to gain freer access to new trade items and

goods, including beneficial plants and animals. This expectation appeared to be fulfilled as Whanganui Maori adopted new methods of farming and a variety of new crops such as wheat, maize, vegetables and fruit, in addition to their traditional use of mahinga kai. In 1851 Rees noted that both Maori and Pakeha were growing a variety of fruit as well as many types of vegetables and crops including barley, oats and maize.[519] In the 1860s and 1870s orchards flourished in the district with initially first class, disease-free fruit, including plums, gooseberries, strawberries, cherries, peaches, pears, nectarines, walnuts, almonds, apples, apricots and currants. Onions were grown commercially and a Wanganui commercial wine producer in the 1870s obtained his main supply of grapes from Maori who lived on the upper reaches of the Whanganui River.[520] Upriver Maori traded pork, potatoes, vegetables, flour and firewood for European goods. Maori communities also quickly acquired cattle. Wheat was increasingly important from the 1850s, and Maori at first appeared to have a competitive advantage in growing quality wheat. Four mills were also soon established, including near Putiki and at Pipiriki in 1845.[521]

However, while Maori communities adopted many new species with enthusiasm, they were selective. As noted previously in chapter 2, settlers recorded for instance, that Maori were particularly interested in new crops and animals they might use for trade. Henry Churton went so far as to say that if Whanganui Maori believed there was no market for a particular introduction, then they lost interest in it.[522] Maori also appeared to want to balance new introductions with continued use of traditional food sources. For example, pigs and potatoes were already an important part of the Whanganui Maori economy but they had not replaced important traditional resources such as eels and birds. New plants and animals such as fruit trees and cattle were now also adopted. However, these tended to be used in conjunction with traditional fishing and orchards of karaka trees.

The Pakeha settlers at Wanganui were also keen to introduce a variety of new plants, birds, and animals into the area. There are many examples of deliberate early introductions among Pakeha settlers in the Whanganui district. Doctor George Rees, a medical practitioner in Wanganui, was a keen gardener and wrote in December 1842, 'in my own garden I have

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[519] Voelkerling, p 69
[520] Voelkerling, p 195
[521] Voelkerling, p 73
[522] Churton, *Letters from Wanganui*, p 18

growing among other things, peaches, apricots, plums, melons, strawberries, cabbage, peas, beans, broccoli, carrots, turnips, sweet peas'.[523]

While Maori tended to regard new introductions as often welcome additions to the largely indigenous landscape, settlers tended to be much more likely to want to significantly transform the indigenous landscape into something that appeared more suitable. They did not have the same cultural or food preferences for traditional flora and fauna and they were quite prepared to change or lose indigenous landscapes for a variety of reasons. These included the practical necessity of supporting their new lives through farming and cultivation of introduced crops and animals. There were also nostalgic reasons such as attempting to surround themselves with plants and animals that reminded them of home or that created a better more idealised version of home. Many settlers also wanted to use the introduction of new species to reflect their success in their new lives. For example, they wanted species that allowed them to carry out preferred leisure and sporting activities such as breeding novelty species and hunting game.

Initially, new introductions for all these reasons were largely uncontrolled with individuals introducing new species as they thought fit. They included many familiar English plants, songbirds and domestic pets as well as more exotic species from other new world colonies, intended to enliven the landscape or provide new economic opportunity. Settlers often appeared to regard the significant transformation or 'taming' of the indigenous landscape as a positive attribute for a new settlement. For example, in 1853 coastal Whanganui was approvingly described in terms of a rural English landscape with many farms that were beautifully situated and containing natural features that rendered them 'picturesque'. These included pretty clumps of bush, ornamental lakes of clear blue, winding streams and undulating hills.[524]

However, not all introductions were deliberate and neither did they all prove beneficial in a new environment, whether deliberately introduced or not. Some of the early plant introductions soon came to be regarded as a nuisance. For example, in 1858 gorse was being supplied by merchants in Wanganui.[525] It was promoted to farmers as a useful alternative to fencing. Yet by the 1890s farmers who allowed gorse to spread on their land faced

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[523] Smart, p 201
[524] *NZ Spectator and Gazette* of 27 April 1853 in Voelkerling, p72
[525] *Wanganui Chronicle*, 17 June 1858, transcript in Whanganui Regional Museum

prosecution and after World War 1 gorse was recognised as a major weed problem.[526] As early as 1854 thistles were also recognised as a potential problem. Whether deliberately introduced or accidentally spread with impure pasture seed, landowners were soon facing prosecution for allowing thistles to run wild.[527] Thistles were evidently considered a problem in the Wanganui area by the 1860s. A prominent Wanganui settler and farmer, John Cameron, noted in 1869 after returning from a trip to Otago; 'the settlers there are free from all our annoyances they have neither thistles, horse flies, or Maories to molest them'.[528]

The importation of many new species was expensive and successful establishment was uncertain, while some introductions could become serious pests. The need for more rational and controlled management of introductions was recognised but the emphasis in the early years of settlement was still on successful introduction and establishment of desired species. Settlers began forming societies to promote this aim. These acclimatisation societies began to be established in the 1860s, and their activities soon had a major impact throughout New Zealand, including Whanganui.

Acclimatisation societies were by no means responsible for all the introductions of exotic species into New Zealand. As noted, in the early years of settlement especially, many were randomly or accidentally introduced by individuals while the government encouraged some introductions before the societies were even formed. Some species also continued to be introduced independently of the societies.[529] However, the more organised efforts of the societies were important in introducing, regularising and promoting new species and in successfully establishing them.

The Wanganui Acclimatisation Society began operating in 1863 (although for many years it claimed to have been formed in 1862).[530] A separate Waimarino Acclimatisation Society began later, apparently in about 1903.[531] The Wanganui Society was one of the earliest acclimatisation societies to be formed in New Zealand, although it was described as being 'virtually dormant' for some years.[532] However, although it may have been dormant as a

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[526] Voelkerling, pp 197-199
[527] Voelkerling, p 80
[528] Cameron to Tyler, 2 May 1869, Cameron papers, vol 1, p 179, ATL
[529] McDowall, *Fishes,* p382
[530] McDowall, *Gamekeepers*, p19
[531] For example, 1903 application for registration of rules of acclimatisation society proposing to operate in Waimarino county at present in Wanganui Acclimatisation Society, 7 September 1903, IA 1 46/3/10 part 1
[532] McDowall, *Gamekeepers* p 19

formal body, it appears that its members cooperated informally over the introduction and establishment of species through their roles as large landowners, as there is evidence of introductions by the society in its early years. A local newspaper reported in January 1870 'The Acclimatisation Society seems to have suddenly waked from its mummy-like repose, and, through its officers, has published a report and balance sheet, which shows that though it may have been in a state of hibernation, it has still been breathing and performing at least some of its functions'.[533]

The Wanganui Society was initially quite small, both in population and the territory it covered, and it struggled to remain viable. There were many discussions about boundary changes and possible amalgamation with other societies during its early history. For example, the several small societies in the western central North Island – Taranaki, Stratford, Hawera, Wanganui and Fielding all cooperated to form a loose West Coast Federation in about 1936.[534] The Waimarino Acclimatisation Society also found it difficult to operate as a formal body and its responsibilities were eventually taken over by the Wildlife Service (part of the Department of Internal Affairs) in 1976, as the Waimarino Ward of the Central North Island Wildlife Conservancy.[535]

The initial aims of the Wanganui Society were 'the introduction, acclimatisation and domestication of all animals, birds, fishes, and plants, whether useful or ornamental'.[536] There is little evidence of formal Maori involvement in acclimatisation societies, although there does appear to have been a certain amount of cooperation and goodwill between Maori and the early Wanganui Acclimatisation Society. For example, Richard Taylor noted at a public meeting that Sir George Grey had presented some of the local chiefs with a number of pheasants, black swans, Californian quail and peacocks, all of which appeared to have done very well.[537] The chiefs may also have cooperated in attempting to protect the new introductions. In February 1866, a notice appeared in a local newspaper stating 'Whereby His Excellency Sir George Grey has introduced Swans into our neighbourhood, we, the undersigned, with the desire of forwarding the views of the Acclimatisation Society, feel an interest in preserving these birds, and also any others that may be introduced, HEREBY

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[533] *Weekly Herald*, 22 January 1870, transcript in Whanganui Regional Museum; also in McDowall, *Gamekeepers*, p20
[534] McDowall, *Gamekeepers*, pp 371-373
[535] P J Burstall, Conservator of Wildlife, Department of Internal Affairs, to D S Spence, Rangitikei-Wanganui Catchment Board, 20 July 1978, WG220 Water General – Fisheries 1977-88, Horizons.mw, Palmerston North
[536] McDowall, *Gamekeepers*, p20
[537] Smart, p228

STRICTLY PROHIBIT SHOOTING on or by the undermentioned Lakes, Pauri, Wiritoa and Kahata. Any person trespassing after the publication of this notice will be prosecuted. John Morgan, Henry Sergeant, James Mathieson, James Marchant, James Lomax'.[538]

The acclimatisation societies, especially in their early years, tended to be dominated by the leading Pakeha men of the settler communities who had the leisure and means to introduce new species. For instance, early members of the Wanganui Society included the missionary Richard Taylor, prominent ornithologist Walter Buller, prominent Wanganui farmer and landowner John Cameron and John Ballance, co-founder of the Wanganui Herald newspaper, and Premier and Native Minister in the late nineteenth century.[539]

The more organised introductions of the Wanganui acclimatisation society tended to reflect these interests, especially for game and ornamental species. In the Whanganui district over a period of two years from 1866-67, the following birds and animals were secured for the Wanganui Acclimatisation Society, partly by gift but mostly by purchase, and liberated in selected localities in the district: 8 kangaroos; 2 wallabies; 1 Tasmanian kangaroo; a number of burrowing rabbits; 4 black swans; 30 Chinese pheasants; 6 English pheasants; 2 partridges; 8 Californian quail; 14 Australian quail; 4 Madagascar quail; 3 Tasmanian magpies; 27 wonga wonga pigeons; 2 bronze winged pigeons; 6 ring doves; 2 cockatoos; 2 English jays; 8 greenfinches; and 4 sparrows.[540] It was also reported in 1870 that the Society had introduced 2 opossums, 2 black swans, 4 Queensland sparrows, 12 wonga wonga pigeons, 25 Australian quail, 13 starlings, 4 thrushes and 8 blackbirds.[541]

By the 1870s farm settlement at coastal Whanganui appeared to be thriving. Reflecting this success, some of the larger landowners attempted to re-create their version of an English style of land-owning class with all it accompaniments.[542] These landowners wished to pursue sports such as hunting, associated with the status and leisure to which they aspired. They took part in shooting native birds for sport, but also wished to supplement these with familiar game birds, fish and animals. This interest in sport and recreation continued to be reflected in the activities of acclimatisation societies, with efforts to introduce deer, quail, pheasants, ducks and trout. In the Whanganui district, game birds including pheasants, partridges, quail, ducks

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[538] Smart, p228
[539] McDowall, *Gamekeepers*, p 20
[540] Smart, pp 228-229
[541] *Weekly Herald*, 15 January 1870, transcript in Whanganui Regional Museum
[542] Voelkerling, pp 97, 99-101

and geese were introduced, with varying levels of success. For example, exotic game birds such as quail and pheasants were introduced for sport on John Cameron's property.[543] In 1866, Cameron arranged on behalf of the Wanganui Acclimatisation Society to purchase 16 pheasants from the Auckland Society.[544] In 1872-1874 Cameron also referred to shooting pheasants, peacocks and quail. He noted that pheasants and quail were numerous; quail making good eating but poor sport.[545] Cameron also appears to have experimented with breeding ornamental birds. In 1868 when he was sent a pair of cochin fowls, he noted that he was trying to breed into his poultry as much of the pure black Spanish as he could, and intended to try and cross the Spanish cock with the cochin china hen.[546]

Richard Taylor noted at this time that 'Wanganui has possessed an Acclimatisation Society for several years, which has been quietly doing its work, and in one instance at least, with apparent success. To the north the pheasant has so increased as to completely stock that portion of the island and allow sportsmen the unrestricted pleasure of shooting it'.[547] In 1870 the society reported that pheasants and quail were thoroughly established in the Whanganui district.[548]

The early introductions were often haphazard and some species did not thrive. However, the societies became more successful as they concentrated on particular species and continued protections until the species was well established. By the 1890s, many introductions did appear to be thriving and coastal Wanganui farm settlers appeared confident they had succeeded in creating a New Zealand version of British gentry life.[549]

Acclimatisation societies also became involved in introducing species to deal with earlier introductions that proved troublesome in a new environment, especially for farming which now formed the basis of the economy. For example, in Whanganui small exotic birds, particularly sparrows, were introduced to try to overcome the significant problem accidentally introduced insects were beginning to cause in the district, most notably caterpillars. John Cameron noted in 1866 'I have lost nearly my entire crop of oats between wind – caterpillar –

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[543] Voelkerling, pp 97, 99-101
[544] Cameron to Donald, 25 June 1866, pp 63-64; Cameron to Alfred Buckland, 9 September 1866, p73; Cameron to Donald McCaskill, 10 September 1866, pp 73-74; all in Cameron papers, vol 1, ATL
[545] Cameron to Duncan, 3 July 1872, p307; Cameron to Rookes, 16 May 1873, p346; Cameron to Duncan, 3 May 1874, p381; all in Cameron papers, vol 1 ATL
[546] Cameron to Patricio, 2 August 1868, Cameron papers, vol 1, pp 155-156 ATL
[547] Smart, p 227
[548] *Weekly Herald*, 15 January 1870, transcript in Whanganui Regional Museum
[549] Voelkerling, p 101

and wet'.[550] District historians have noted local newspapers reporting in the 1870s that a train travelling between Fordell and Turakina was forced to a standstill as thousands of caterpillars crossed the track. According to reports, the train's wheels became so greasy from this that they could not grip the rails and sand had to be put on the track before the train could move again. It was found however that during the stoppage, caterpillars had crawled in thousands over the engine and all over the carriages inside and outside.[551]

Settlers noted with some disappointment that native birds tended to retreat from newly settled areas to remaining native bush, only occasionally visiting the increasingly insect-laden fields and declining to cooperate enthusiastically in removing new insect pests. Consequently the caterpillar problem grew quickly and sparrows were introduced to feed on the caterpillars and other insects. Small exotic birds such as sparrows also served to remind the new settlers of home.[552] Acclimatisation societies began introducing sparrows in the 1860s. The Wanganui Society, for example, imported sparrows in 1866.[553] At a Wanganui Acclimatisation Society meeting in 1870 members were unanimous that the efforts of the society should be concentrated on the introduction of insectivorous birds to the district. In the interest of the sparrows, it was decided to erect breeding boxes on a number of buildings in the township, and a price of sixpence per head was to be paid for hawks.[554] This presumably included the native falcon. It was noted at this time that, 'a fair measure of success has attended the operation of the Society, especially if the starlings, thrushes, blackbirds and sparrows increase as fast as the pheasant and quail, and make vocal our hedges with their music, and clear the ground of all worms and slugs, and other such things upon which they feed and fatten.... Our country is over-run, and our farmers' crops [also] destroyed by insect pests; and birds exist, which, in other countries, destroy them by millions.'[555]

However, by 1875 sparrows were also considered 'an infernal nuisance' and farmers, orchardists and gardeners complained that they destroyed crops, fruit and plants.[556] Walter Buller, who had as secretary of the Wanganui Acclimatisation Society arranged for the

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[550] Cameron to Fred, 2 April 1866, Cameron papers, vol 1, p 55, ATL
[551] Smart, p 230; Voelkerling, p 195
[552] Smart, p 229
[553] Druett, *Exotic Intruders,* pp 113-114
[554] Smart, p 229
[555] *Weekly Herald*, 22 January 1870, transcript in Whanganui Regional Museum
[556] Druett, pp 113-114

importation of sparrows, confessed twenty years later that 'the zeal for the introduction of novelties has not always been tempered by the judgement which comes of experience'.[557]

By 1890 the caterpillar problem had become less severe, although in 1895 one Fordell farmer lost 40 acres of oat crop to caterpillars.[558] However, there were other difficulties in the region by the late nineteenth century as some of the accidental introductions and transformations of the local environment brought their own problems. The earlier disease free status of many crops proved transitory. By the 1890s codlin moths were a major problem, lungworm was noted in stock, wireworms and slugs had appeared, blight was destroying fruit trees and rust had become a major problem for wheat farmers.[559]

A number of small animal pests that also began transforming the indigenous environment. Rabbits, rats, goats and cats were all established in New Zealand and Whanganui long before acclimatisation societies were formed. However, the societies accelerated their spread. Weasels, stoats and ferrets were mainly introduced by the government in an attempt to control rabbits and protect farming, rather than by acclimatisation societies, even though it was known that weasels and stoats were likely to pose a grave danger to native birds. As predicted, these predators were very destructive, especially to slow moving, ground nesting and relatively defenceless native birds. They spread rapidly and their impact was soon obvious.

Acclimatisation societies were also partly responsible for introducing hares, hedgehogs and possums. Again, possums were introduced before acclimatisation societies were established, but the societies then became involved in bringing in and releasing possums in a more organised way. For instance, in the Whanganui district the acclimatisation society released possums in 1870.[560] Possums were first believed to be beneficial to native forests, but attitudes hardened when they began destroying domestic orchards and gardens. In 1924 the Forest and Bird Protection Society expressed concern about competition between possums and native birds for food. During the 1930s and 1940s evidence began to accumulate that possums did damage forests, but it was not until 1947 that practically all restrictions on the taking of possums were removed. In the last few decades possums have been recognised as a

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[557] Galbreath, *Walter Buller*, p82
[558] Voelkerling, p195
[559] Voelkerling, pp97-98, 195-196
[560] *Weekly Herald*, 15 January 1870, taken from Acclimatisation Society report of meeting held on 10 January 1870, transcript in Whanganui Regional Museum

major pest, having an especially devastating impact on native forest ecologies as well as spreading Bovine TB. In Whanganui, possum damage to native bush and fruit trees had become a serious problem by 1940 and a bounty scheme was introduced. The government paid 2s 6d for a possum token, which constituted the ears and a strip of skin taken from each animal.[561] In 1942, and in following years, the Wanganui Acclimatisation Society's annual report noted that possums were still very numerous.[562]

By the late nineteenth and early twentieth centuries, acclimatisation societies had begun to focus their efforts more clearly on introducing and managing game species for the benefit of recreational anglers and hunters. Deer, for example, were originally introduced before acclimatisation societies were formed. However, acclimatisation societies became involved in the comprehensive introduction and acclimatisation of deer from the 1870s to the 1920s coinciding with this focus on recreational hunting.[563] By the late nineteenth century, the provision of good hunting was also seen as strengthening the increasingly important tourism industry.

The Wanganui society reflected this development. For example, W T Owen, who farmed on the Kaiwhaiki Road, imported deer from England in the late 1880s when he was president of the Wanganui Acclimatisation Society. The deer were taken up the Whanganui River by steamboat and liberated. After rapidly multiplying within the Kaiwhaiki Basin, the deer gradually spread to other areas.[564] The herd soon began providing excellent opportunities for hunting. However, foresters and conservationists became concerned that large numbers of deer were beginning to pose a serious threat to indigenous forests, damaging vegetation by eating palatable shrubs, allowing in possums and contributing to erosion and soil damage. In the 1920s acclimatisation societies finally agreed to deer culling and the removal of protections for deer. The work was eventually taken over by the government in 1930 and deer have continued to be controlled by a mix of culling and recreational hunting.[565]

The Wanganui Acclimatisation Society was also one of several societies to import mallard ducks for game.[566] Canada geese were also obtained from North Canterbury in the 1920s.[567]

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[561] Voelkerling, p202
[562] IA w2578 46/18/2
[563] McDowall, *Gamekeepers*, pp 343-348
[564] Voelkerling, p130
[565] McDowall, *Gamekeepers*, pp 349-353
[566] McDowall, *Gamekeepers*, p 307
[567] McDowall, *Gamekeepers*, p 317

The Wanganui and Waimarino societies continued to purchase and release game birds into the twentieth century. For example, pheasants were purchased by the Wanganui Society in the 1940s.[568] In the 1970s the Waimarino Society was still releasing partridges (for example 50 in 1970) and pheasants (120 in 1970).[569]

As well as game birds, acclimatisation societies also became involved in introducing fish for recreational angling. Local acclimatisation societies released rainbow and brown trout into the Whanganui district. The Wanganui society did not have its own hatchery, and nearly always depended on other societies or the government to obtain fish for stocking waterways. The society did have a fish pond in 1877 for holding and some rearing of trout. There was also a government hatchery at Kakahu in the 1920s, which was used to rear Atlantic salmon for release into the Whanganui River.[570]

There are numerous examples in the Wanganui Acclimatisation Society's minutes in the late 1880s and into the early twentieth century of trout being released into rivers in the Whanganui district. For example, in 1888 the Society agreed to send money to the Wellington and Wairarapa societies as a donation in return for their gift of 2000 trout.[571] In 1890 the Wanganui Society accepted an offer of 2000 yearling trout from the Wellington Society, to replace fish to be removed from ponds and released into the Kai Iwi and Mangawhero rivers.[572] Later that year it was reported that trout had been released into the Mangawhero.[573] In 1891 a further gift was received from the Wellington Society of 10,000 young trout. It was also recorded that trout had been liberated in the Whanganui and Waitotara rivers.[574] During the 1892 season trout were also released into the Whanganui river, Kai Iwi, Okehu, Nixon's Creek, and Waverly.[575] In 1892-1893 and 1896 trout were obtained from the Masterton

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[568] Wanganui Acclimatisation Society Annual Report for the year ending March 1942, and similar reports in following years, IA w2578 46/18/2
[569] Waimarino Acclimatisation Society Annual Report, 27 June 1970, AANS w3832 4 2/19/4
[570] McDowall, *Gamekeepers* p 102
[571] Executive Council meeting, 20 February 1888, extracts from Wanganui Acclimatisation Society minute books, 1886-1903, in Whanganui Regional Museum
[572] 23 May 1890, extracts from Wanganui Acclimatisation Society minute books, 1886-1903, in Whanganui Regional Museum
[573] Committee meeting, 22 September 1890, extracts from Wanganui Acclimatisation Society minute books, 1886-1903, in Whanganui Regional Museum
[574] AGM, 2 July 1891, extracts from Wanganui Acclimatisation Society minute books, 1886-1903, in Whanganui Regional Museum
[575] Special meeting of Committee, 5 October 1892, extracts from Wanganui Acclimatisation Society minute books, 1886-1903, in Whanganui Regional Museum

Society.[576] In 1902, 2000 trout were liberated in a stream feeding the Kai Iwi, 2000 in the Mangawhero, and 2000 in the Waitotara river.[577] In 1903 it was resolved that 10,000 trout fry or 100 yearlings would be liberated in the Whangaehu, 5000 fry or 100 yearlings in the Mangawhero, 100 yearling in the Kai Iwi, and 2000 fry in the Waitotara rivers.[578]

In addition to trout, there is some evidence of attempts to introduce other fish species in Whanganui. In 1896 the secretary of the Wanganui Acclimatisation Society was instructed to ask the Borough Council to allow fishing of perch in Virginia Lake in following years.[579] The Wanganui Society also devoted some of its funds and energy to the introduction of Murray cod to streams in the district. A press article in January 1868 records that the Acclimatisation Society had made every endeavour to establish this fish in Whanganui, but no mention was made of how successful their efforts had been. However, there are no records of Murray cod being caught at any later date.[580] As late as 1986 there was a failed attempt by the Wanganui Society to establish smelt in Lake Wiritoa as food for trout, utilising smelt eggs scavenged from the shores of Lake Taupo.[581]

From the 1890s acclimatisation societies continued to be heavily involved in the administration and management of fish and game, while government departments such as Tourism and Marine took a more active role in organised efforts to acclimatise deer, game and fish. However, acclimatisation societies also appear to have continued some of the introduction work. For example, there is documentation of trout being obtained and released by the Wanganui Acclimatisation Society in the 1940s. Annual reports record, for example, that in 1947 and 1949 trout were liberated in Lake Paure and Lake Kowhata. In 1949 it was noted that the Mangawhero stream had in past years provided good fishing, but had suffered serious setbacks from bush fires and excessive silt pollution due to road construction. However, some fish had survived and more trout were released. In 1953 trout were again liberated in the Mangawhero and Lake Kowhata. In 1958 trout were released in the upper Waitotara river, Lake Kowhata and the Mangawhero and in 1960 there were continued

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[576] AGM, 28 June 1893 and AGM, 10 July 1896, extracts from Wanganui Acclimatisation Society minute books, 1886-1903, in Whanganui Regional Museum
[577] AGM, 2 June 1902, extracts from Wanganui Acclimatisation Society minute books, 1886-1903, in Whanganui Regional Museum
[578] Special meeting, 8 July 1903, extracts from Wanganui Acclimatisation Society minute books, 1886-1903, in Whanganui Regional Museum
[579] AGM, 10 July 1896, extracts from Wanganui Acclimatisation Society minute books, 1886-1903, in Whanganui Regional Museum
[580] Smart, p227
[581] McDowall, *Gamekeepers*, p227

releases of trout into the Mangawhero.[582] The Waimarino Society annual reports (1937 to 1954) also indicate that trout were taken from the Whakapapa stream, Waimarino, Makara, and Manganui a te Ao.[583] In 1976 the Mangawhero stream, Toanui, and Manganui a te Ao were all being fished, as was Karioi Lake.[584] In the late 1980s hundreds of trout continued to be released by the Waimarino Ward of the Central North Island Wildlife Conservancy. For example, into Lake Rotokuru at Karioi, Rokes dam, Tokiahuru stream and the Mangateroa dam.[585] The Wanganui Acclimatisation Society also continued to release trout, including into Lakes Virginia, Wiritoa and Paure.[586]

The focus of acclimatisation societies, their efforts to transform the landscape and their efforts to protect introductions began to increasingly bring them into conflict with Maori. This was partly a result of differing perceptions. As noted, the societies increasingly focused their efforts on introducing species for recreational and sporting purposes. The idea of hunting for sport rather than food, conflicted with traditional Maori views of hunting and conserving species for food.[587] Maori did often adopt guns for hunting but they still tended to follow traditional seasonal times for harvesting and tended to prefer to take birds when they were fattest, using as little noise as possible to avoid unnecessary disturbance. Settlers on the other hand, while they often ate their quarry, viewed hunting as primarily for sport, not food. As such they looked for the challenge of the hunt, with adversaries who showed admirable 'fighting' qualities. As part of this they tended to prefer native game birds when they were thinner and more active as presenting more of a 'challenge'. Many settlers also viewed success in terms of quantities bagged even if they could not use all those they had shot. The acclimatisation societies, while they generally abhorred the wholesale slaughter of indigenous birds indulged in by some settlers, still overwhelmingly viewed hunting as sport.

Conflict also began to arise over the increasingly influential role of acclimatisation societies, their impact on traditional Maori authority and their impact on mahinga kai and the resources they supported. For example, the societies began to direct considerable effort towards protecting introduced game in an effort to ensure successful establishment. This included encouraging the destruction of those species regarded as vermin and predators on game

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[582] Wanganui Acclimatisation Society Annual Reports, IA w2578 46/18/2
[583] IA 1 46/16/17 part 1
[584] Waimarino Acclimatisation Society Annual Report for year ended 31 August 1976, AANS w3832 4 2/19/4
[585] *Ruapehu Bulletin*, 19 September 1989, in WR 44/1 vol 2 Wildlife activities – Waimarino Acc Soc, DOC Wanganui
[586] *Wanganui Chronicle*, 13 October 1988, WR 44/4 vol 1 Freshwater Fisheries, DOC Wanganui
[587] Aramakutu, 'Colonists and Colonials' p100

species. Many of these also happened to be introduced. For example, in 1888 the Wanganui Society offered prizes to boys for the most vermin killed.[588] In 1942 and in following years the Society also made payments for vermin destroyed, including hawks, stoats, weasels and hedgehogs.[589] However, some indigenous species were also regarded as predators. For example, eels were widely believed to prey on young trout and native falcon were seen as threatening introduced small birds and game birds. In 1867, for instance, the Wanganui Society offered a bounty on the native hawk.[590]

This may not have appeared so significant while the environment remained overwhelmingly indigenous and it seems that to a degree Maori still often cooperated with societies. For example, in 1890 it was noted at a Wanganui Acclimatisation Society meeting that the upriver Maori were willing to take part in protecting trout and it was resolved that the 'half caste' Nicholson be recommended for the position of ranger.[591] However, by the 1880s the activities of acclimatisation societies were beginning to have a much more obvious impact and importantly their growing legal status was beginning to bring them into more direct conflict with Maori.

5.2 Legal recognition of acclimatisation societies

As noted, many of the leaders of settler society belonged to or supported acclimatisation societies and many of the same members also made up the settler government. In turn, from 1867, the government began significantly strengthening the powers and influence of acclimatisation societies, including giving them statutory recognition and powers, legal authority, land and financial assistance.[592] McDowall has noted that the acclimatisation societies of the late nineteenth century were actively assisted by the government and were supported by the Pakeha community generally.[593] Although the societies were not government agencies, they were sanctioned and supported by the government. Both central and provincial governments also gave the societies considerable sums of public money to support their work.[594] However, acclimatisation societies were largely settler organisations working to

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[588] McDowall, *Gamekeepers*, p 119
[589] Wanganui Acclimatisation Society Annual Reports, IA w2578 46/18/2
[590] McDowall, *Gamekeepers*, p116
[591] 11 June 1890, extracts from Wanganui Acclimatisation Society minute books, 1886-1903, in Whanganui Regional Museum
[592] Animals Protection Act 1867
[593] McDowall, *Gamekeepers*, p 36,
[594] McDowall, *Gamekeepers*, pp 34-36

promote settler values and interests. While the Crown gave the societies significant powers, it failed to provide means by which Maori could more effectively participate in such societies or require the societies to take account of Maori interests and concerns. At the time the significant Animals Protection and Salmon and Trout Acts of 1867 were passed, Maori were not even represented in parliament.

Early government legislation concerned with wildlife and game tended to follow the acclimatisation focus of protection on introduced game species. For example, the Protection of Certain Animals Act of 1861 protected imported animals, but did not provide protection for native species. The Animals Protection Act 1867 formally confirmed the legal powers of acclimatisation societies and provided for the protection of imported animals with some limited protections for native species. The Act placed some very limited restrictions on killing native birds, but distinguished between native game (which for many years did not require a hunting license) and other game (which did require a license). The Act provided for hunting seasons for both native game and imported game, with hunting on Sunday prohibited for both. Native game was defined as any species of duck and teal, bittern, quail, plovers, curlews, pigeons, and wild geese. However, no reference was made to birds such as kaka, tui, pukeko or godwit, although some such as the pukeko and godwit were soon afterwards gazetted as native game available for hunting.[595]

The 1867 Act also provided substantial financial support for the societies. For example, the revenue from licence fees and fines was to be used to pay rangers and to help support local societies. This was in addition to the land grants and subsidies many societies received from local and central government. The 1867 Act also provided the acclimatisation societies with considerable freedom, establishing a pattern whereby they have historically been able to recommend their own regulations, charge fees for fishing and shooting licenses, receive and manage income from the sale of licenses and appoint staff to carry out significant law enforcement.[596] This is reflected in the Whanganui district where, for example, the Wanganui Acclimatisation Society reported: prosecutions for trespass on Kaitoke Lake sanctuary in 1944;[597] selling licenses to take perch in Lake Kowhata and Paure helping to reduce these fish which were considered predatory to young trout in 1948;[598] and in 1958 that as there had been

[595] McDowall, *Gamekeepers*, pp 294-295
[596] McDowall, *Gamekeepers*, pp 24-32
[597] IA w2578 46/18/2
[598] Wanganui Acclimatisation Society Annual Reports, IA w2578 46/18/2

so many prosecutions for shooting native pigeons a minimum fine of £20 for these offences would be pressed for.[599]

These freedoms were curbed a little by subsequent legislation. For example, the Animals Protection Amendment Act 1889 required societies to keep and publish balance sheets and another amendment of 1895 required everyone, including societies, to obtain permission from the Minister of Agriculture before importing any animal, although fish remained excluded from this. A 1903 amendment further regularised societies and their powers to hold or dispose of land. In addition, subsequent legislation continued to delegate extensive powers over both introduced and indigenous species to the societies. McDowall has noted that 'anything that the societies did, was by delegation from Government, and under Government laws and regulations. To that extent the societies were an arm of Government, even though they were given a great measure of independence and authority'. [600]

As part of their protection aims, societies obtained considerable powers concerned with regulating and policing hunting seasons for game. While these were initially concerned mainly with introduced game, even then they had implications for Maori. For example, traditional food sources for Maori remained largely unprotected and Maori authority and methods of conservation and protection were given no legal recognition. The legislation generally prohibited traditional methods such as traps, snares and nets for protected species. Only hunting by shooting was generally recognised. This raised the possibility that Maori using traditional means to obtain customary foods might find themselves prosecuted for accidentally catching protected game in their snares. Similarly, if they had no access to guns or ammunition or this was denied or restricted in more unsettled districts, they had few means of participating in hunting acclimatised game.

In the Whanganui region, much of the early work of acclimatisation societies coincided with unrest and close government control of Maori access to arms and ammunition. This further ensured that sporting acclimatisation was largely the preserve of Pakeha settlers while for Maori acclimatisation developments were closely linked to wartime dominance, suspicion and restrictions, further increasing their sense of alienation from the societies. For example, in April 1882 a circular from the Native Office to Wanganui officials noted the Native Game Season had begun and permits for ammunition and guns were only to be issued to

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[599] Wanganui Acclimatisation Society Annual Report, 1958, IA w2578 46/18/2
[600] McDowall, *Gamekeepers,* pp 51-52,

'respectable and reliable Natives'. They were not to be issued to Natives of a 'questionable' character, whose 'loyalty' and reliability might be suspect. Ammunition could only be issued for sport and was not to be accumulated and applications for the repair or purchase of arms still had to be approved by the Native Minister. Regular returns of Maori who had been issued permits also had to be supplied to the Native Office.[601]

Acclimatisation societies also obtained legislative support for their attempts to introduce and establish fish species. The Salmon and Trout Act 1867 was the first legislation concerned with fisheries. It provided for the preservation and propagation of salmon and trout, including protection of fish not yet introduced and controls over rivers and streams into which salmon and trout had been introduced. Provisions included restrictions on fishing, controls on fishing seasons and control of nets and other devices.[602] This began the assertion of Crown control over introduced fish and in the process the inland waterways they were put into and the indigenous fisheries those waterways sustained. Further legislation also began to assert Crown rights to control the fishery environment as well as the various species. For example, the Fisheries Conservation Amendment Act 1903 provided powers to prevent the pollution of rivers and streams inhabited by salmon and trout.

5.3 Crown control of coastal fisheries

The Crown also began to assert control and the right to manage coastal fisheries with the Oyster Fisheries Act 1866. This Act provided for closed seasons for taking oysters and licensing of natural and artificial beds. Later amendments further regulated the use and control of oyster and other shellfish. Subsequent legislation extended and strengthened this assumed authority over commercial and non–commercial fishing. For example, the Fish Protection Act of 1877 clarified the government's power to establish regulations covering both fresh and saltwater fisheries, including declaring fishing districts, defining fisheries, reserving areas from fishing, controlling seasons and equipment for taking fish, and granting exclusive licenses to fish any fishery. This was followed by a series of legislation including the Seals Fisheries Protection Act 1878, Fisheries Conservation Act 1884, the Fisheries Encouragement Act 1885 and various Fisheries Acts and amendments.

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[601] Native Office Circular no 3 12 April 1882, MA-Wg 1/12, ANZ
[602] McDowall, *Gamekeepers*, pp 54-59

From 1877, some provisions in fisheries legislation appeared to protect Maori fishing rights under the Treaty. For example, section eight of the Fish Protection Act 1877 stated that nothing in the Act could affect Maori fishing rights under the Treaty. However, this does not seem to have had much practical effect and was described by the Muriwhenua Sea Fishing Tribunal as little more than 'window dressing', while the Ngai Tahu Sea Fisheries Tribunal argued that regulations subsequently issued under the 1884 Act were inconsistent with the Treaty.[603] Similarly vague general protections were continued through much subsequent legislation, although with some qualifications. For instance the Fisheries Amendment Act 1903 provided in section 14 that nothing in the Act was to affect any 'existing' Maori fishing rights. The Fisheries Act 1908 section 77 (2) continued with similar wording but was applicable to sea fisheries alone. As late as 1983, the Fisheries Act continued the general protection but with the word 'existing' dropped.

In the meantime, the Government increasingly asserted powers to manage and control coastal fishing for various purposes. The Fisheries Act of 1908 consolidated earlier fisheries legislation and, with amendments, stayed in effect until 1983. Some important fisheries amendments impacting on Maori were the Fisheries Amendment Act 1971, regulating areas for taking seaweed and the Fisheries Amendment 1977 further promoting the management and conservation of fisheries including eels and certain shellfish varieties.

In terms of coastal fisheries, unlike freshwater fisheries, the Crown generally exercised authority directly, through agencies such as the Marine Department. Along with the Crown assertion of control over foreshores, this had the effect of considerably directly undermining traditional Maori systems of management of the coastal area including over resources such as shellfisheries. After some early recognition of Native Land Court authority to determine Maori customary interests in the foreshore area, the Crown moved by the late 1870s to end the Court involvement in foreshore fisheries.[604] The Muriwhenua Tribunal found that Maori were denied common law rights to prove entitlement to customary fisheries before an independent judicial tribunal, and the Crown allowed this right to be effectively replaced by the 'whim of political and administrative opinion'.[605] The Native Land Court retained some ability to

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[603] Cited in Robin Hodge, 'Acclimatisation and Wildlife Management' chapter 10 in 'Crown Laws, Policies and Practices in Relation to Flora and Fauna,1840-1912' report for Waitangi Tribunal Wai 262 claim, 2001, p 240
[604] Waitangi Tribunal, *Muriwhenua Fishing Claim* report, pp 83-85
[605] Waitangi Tribunal, *Muriwhenua Fishing Claim* report pp 81-83

identify and protect freshwater fisheries, although this was limited to reserving adjoining land for fisheries purposes.

Some legislative measures were specifically directed toward recognising the existence of customary Maori coastal fishing grounds, but these too were to remain frustratingly ineffective. They generally presumed that such fisheries were to be limited in area and species caught and were to be used for domestic non-commercial consumption only. The government assertion of authority to regulate the Maori use of customary fishing grounds continued into the twentieth century. Legislation such as the Maori Councils Act 1900 provided for some limited Maori regulation of traditional fishing grounds and enabled such grounds to be reserved exclusively for Maori use. However, the Muriwhenua Sea Fishing Tribunal found that no bylaws or fishing reserves were ever made or specifically acknowledged under these provisions.[606]

Nevertheless, similar provisions were re-enacted in the Maori Social and Economic Advancement Act 1945, section 33, although with even more control by Crown agencies such as the Marine Department. However, the Marine Department actively resisted reserving actual customary fishing grounds, even while it allowed Maori communities to believe that such reserves were possible.[607] Instead the Department preferred to impose fishing restrictions on commercial fishing in areas near Maori populations that still utilised customary fisheries. This was an attempt to allow Maori to continue using fisheries as long as they needed them, while resisting any appearance of making special provision for Maori. It also assumed that such a fishery protection was temporary and for domestic consumption only, lasting only until Maori had managed to move themselves off reliance on their traditional fishery.[608]

By the late 1950s and early 1960s, Marine department officials were finally beginning to admit that they had no intention of making the reserves provided for. In 1960 Maori Affairs department officials noted that while section 33 was regarded as recognition of article two of the Treaty, the Marine department nevertheless felt the making of separate reserves would make 'unfortunate' and 'undesirable' distinctions between the races.[609] Officials felt that possibly in the interests of race relations the offending section should be repealed. This happened under the Maori Welfare Act 1962. Throughout the 1970s a number of Maori

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[606] Waitangi Tribunal , *Muriwhenua Fishing Claim* report, p 77
[607] See, for example, more detail in Marr, 'Wairarapa Twentieth Century Environment report' pp 132-138
[608] Marr, 'Wairarapa Twentieth Century Environment report'p 135
[609] memo 22 January 1960, AAMK 869/1130a, ANZ

groups and organisations, including the New Zealand Maori Council complained about this and agitated for the restoration of legislative recognition and protection of customary fishing grounds. The Fisheries Act 1983 included provisions for recognising special community fisheries although the Waitangi Tribunal noted even up until 1988 there had still been no recognition of specific customary fisheries for Maori under this.[610] This situation only changed with new legislative provisions from 1989 as will be noted in more detail.

The Fisheries Act 1983 was still mainly concerned with conserving and enhancing depleted commercial fisheries, and providing for more economic security for commercial fishers. The Act also provided for the protection, management and enhancement of all acclimatised fish species and habitats, and the conservation of all native and endemic freshwater fish species and habitats. These responsibilities were delegated to acclimatisation societies, while the Ministry of Agriculture and Fisheries retained responsibility for aquaculture, the management of commercial freshwater fisheries and all fisheries research.

Subsequent restructuring of the fishing industry had the effect of excluding many part-timers from commercial fishing, including many Maori. From 1986 the government introduced a quota management system (QMS) for commercial fisheries. The New Zealand exclusive economic zone was divided into a number of quota management areas and every year scientific research establishes a maximum sustainable yield (MSY) for fish stocks. The commercial catch is divided between fishers in the form of individual transferable quotas which can be bought, sold or leased as a kind of property right. The Fisheries Act 1996 introduced further protections for fishery ecosystems and non-commercial species. This Act aims to enable use of fisheries resources while ensuring 'sustainability', which is defined as maintaining the potential of the fishery to meet the needs of future generations, and avoiding, remedying or mitigating any adverse effects of fishing on the aquatic environment. All commercial fishing is by permit and there are limits through catches, minimum sizes, prohibited areas, and fishing methods and seasons. Absolute protections for a small number of marine species are now covered by a 1987 amendment to the Wildlife Act 1953. Maori concern about the restructuring led to a settlement with the Government over sea fisheries and the establishment of the Waitangi Fisheries Commission, which is outside the range of this report.

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[610] Waitangi Tribunal, *Muriwhenua Fishing Report*, p 102

The issue of formal recognition of customary coastal fishing reserves also came under renewed government consideration in the 1980s partly because of criticisms of the failure of previous provisions as part of the negotiations over the fisheries settlement. A government committee report in 1985 endorsed proposals that the numbers and extent of customary Maori fishing grounds should be determined. It also found that that there was insufficient legal protection of Maori fishing interests as guaranteed by the Treaty.[611] This report and negotiations over the fisheries settlement again raised the issue of recognition and protection of traditional Maori fishing grounds. This was followed by legislative provisions enabling the creation of mataitai and taiapure reserves to recognise and protect important Maori customary fisheries.

The Maori Fisheries Act 1989 amended the Fisheries Act 1983 to enable the establishment of customary taiapure fisheries. The objective of taiapure is to make better provision for the recognition of article rights of fisheries. They can be created either to recognise a customary food source or for cultural or spiritual reasons, although no one can be refused access to or the use of taiapure on the grounds of race or ethnic origin. The establishment of these taiapure fisheries still remain under the control of the Minister of Fisheries, and can be created by an Order in Council by the Governor General. The Minister also retains powers to appoint management committees for taiapure. These committees can then recommend regulations for the conservation and management of fish, aquatic life and seaweed. These regulations can override fishery regulations made under section 89 of the Fisheries Act or provisions of fishery management plans.[612] Mataitai reserves, fishery areas of traditional importance to tangata whenua, can also be established under the overall control of the Ministry of Fisheries. These reserves are also managed by committees appointed by the Minister of Fisheries. These committees can make by laws specific to the fishery and relevant to the needs and concerns of the local community, for instance, through the use of seasonal or temporary rahui.[613]

It has been difficult to find information in official records about historical developments related to Maori control and use of coastal fisheries in the Whanganui district. As noted in chapter one, the river mouth area was an important traditional fishery. However, it seems the harbour development may have contributed to the decline of that fishery although what is now termed 'recreational' fishing still appears to be carried out in the Castlecliff area. A general

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[611] Report of Interdepartmental Committee on Maori Fishing Rights, November 1985.
[612] New Zealand Conservation Authority, briefing document 1991, DoC file G05-118 box 3609
[613] Te Puni Kokiri, *Nga Kai o Te Moana*, 1993, p 25

lack of settler interest in commercial coastal fishing, apart from the early period of whaling, also appears to have resulted in little official attention to coastal fisheries in the district. Wanganui was the major fishing port on the west coast between Wellington and New Plymouth when commercial off-shore fishing did become a more significant economic activity in the 1950s and 1960s. A fish packing industry was also located at Castlecliff.[614] Nevertheless, this commercial fishing never seems to have been regarded as warranting significant official documentation. This is not to say that Whanganui Maori did not continue to use or maintain an interest in coastal fisheries and claimants may wish to submit more on this to the Tribunal.

Where Maori interests in coastal fisheries do appear in official records, this is often indirectly as a result of some connection to land based issues. For instance, the early case of the nearby Nukumaru sea fishery has already been referred to in chapter three in connection with the issue of road access. In that case it seems clear that local Maori were still significantly involved in sea fishing in the 1880s as they complained the new road was not suitable for drays required to transport their catch.[615] Officials and especially land purchase agents appear to have recognised a continuing Maori interest in coastal fisheries at this time, often assumed to help make up for the increasing loss of land. However, the correspondence concerning this issue also reflects the general settler dismissal of coastal fishing and Maori involvement in it as a relatively unimportant economic activity at this time.[616]

It does seem that Maori continued to use this fishery for some time, even though there is little evidence of this in official records. What little official evidence that has survived indicates that local communities faced similar issues with coastal fisheries as occurred in many other parts of the country.[617] For example, it seems that Maori met with considerable frustration in having fishing reserves recognised. As with other districts, officials tended to insist on making distinctions between land based reserves – often required for use as fishing camps and the actual fishery reserve itself. The Maori Land Court could assist with land-based reserves and even freshwater fisheries where adjoining land was still retained by Maori based on the concept of riparian ownership, by setting aside land areas as reserves encompassing a fishery. The situation was different with coastal fisheries where the Court had no jurisdiction and

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[614] Ministry of Works, *Wanganui Region*, p 95
[615] correspondence January 1882 MA-Wg 1/12, ANZ
[616] Letters Lewis to Woon, 20 and 21 January 1882, MA-Wg 1/12, ANZ
[617] see for example, difficulties with official recognition of fishing reserves outlined for the Wairarapa in Marr, , 'Wairarapa Twentieth Century Environment report' pp 132-145

where the government resisted any reserves on the foreshore, even though this was often where shellfish beds were located. There was some official sympathy for the recognition of land based reserves for temporary camps when conducting coastal fishing but a marked reluctance to set aside the actual coastal fishery as a reserve.

For Maori these distinctions often made little sense and there was considerable frustration in trying to protect fisheries and access to them. Sometimes it seems communities preferred just to get on with traditional uses without involving officialdom. This was often possible where fisheries were isolated, camps could be unofficially made on adjoining Crown or leased land and Pakeha were generally uninterested in the fishery. However, this situation could easily be threatened by changes to nearby land ownership, changes in the coastal environment affecting existing land based reserves and by increasing Pakeha interest in coastal baches and in coastal fisheries. Then local communities were forced to seek more secure legal protection for their fishery.

For example, some fairly sparse documentation has been found regarding the coastal fishery near the Waitotara River mouth. This is just north of the present district but seems to reflect more general issues for the whole coastal area. For example, it does seem that a reserve was set aside for camping for fishing at the Waitotara River mouth. However, by the 1920s, changes to the river mouth and nearby sandhills meant the reserve was no longer located close to or providing direct access to the river mouth. Local Maori appear to have simply just used nearby Crown land for access until a Crown run lessee refused them permission to use any of the land on the run. Government officials were willing to adjust matters to enable continued access to the river while this did not in any way affect Crown interests. It was agreed to extend the river reserve to provide better access and to make an exchange of Crown land with the old reserve to provide a more convenient camping place.[618] The willingness to make land based reserves for fishing purposes contrasted with reluctance to recognise the actual fishery grounds themselves although this may not have been evident to Maori.

The passing of the Maori Social and Economic Advancement Act 1945, section 33, and the apparent renewed government recognition of customary fishing grounds, appears to have encouraged the local community, in common with Maori communities around the country, to have their fishing grounds legally recognised. A local Maori Affairs Department welfare

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[618] correspondence July 1929 to June 1930 re Hauriri reserve at Waitotara, LS 1, 6/9/52 and *NZ Gazette* notice no 74, 1 December 1932, p 2476 re exchange of land, ANZ .

officer, A J Davis, approached the Marine department with information that the local tribal executive had requested fishing grounds to be set aside under the 1945 Act at Waiinu, Otuheiuru and Waitotara. These were recognised locally as 'ancient fishing grounds' of the Maori people and although no legal action had previously been taken to legalise these reserves, the people now wanted them properly defined by the Maori Land Court.[619] This suggests that the local people believed the Maori Land Court could make these reserves in coastal areas as well as on land, which was not the case.

Although it is known that the Marine Department had no intention of allowing separate coastal fishing ground reserves to be created, officials nevertheless encouraged Mr Davis and the tribal executive to provide details of the reserves. Meetings were also arranged between the local inspector of fisheries, Maori Affairs department officials and local people. During these meetings more details about the reserves were explained. It was noted that some were important for shellfish and there were concerns that these beds were not being properly managed while the local people had no means to prevent abuse. There were also concerns that building was occurring on some parts of the coast and this too would affect customary reserves. There was some discussion of land based reserves attached to these indicating that Maori still did not make a clear distinction between foreshores and other lands.[620]

The fisheries inspector, in line with department policy, referred Maori to the Department of Lands and Survey for any land based reserves they were seeking. He also suggested that the best method of protecting the fishery itself would be to protect the whole coast from Nukumaru Rocks to south of Waitotara from over exploitation or commercialisation by either Maori or Pakeha. The tribal executive appears to have been persuaded to agree to a recommendation to restrict and preserve all shellfish beds and the taking for commercial purposes or exploitation by Maori or Pakeha (but both to have the same right of access) in the area from the Okehu stream to south of the mouth of the Waitotara.[621] This must have seemed self evident to them, although it still did not address the issue of the specific reserves they were seeking to have recognised and protected. Marine department officials, however, considered the matter satisfactorily resolved and therefore closed. Investigations with the

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[619] letter 18 October 1949, A J Davis to Minister of Marine, MA1, w2490 box 188, 43/1 pt 1, ANZ
[620] correspondence November 1949 to February 1950, re Waitotara reserves, MA1, w2490, box 188, 43/1 pt 1 ANZ
[621] A J Davis report to Rangi Royal, 24 February 1950, MA1, w 2490, box 188, 43/1 pt 1, ANZ

present Ministry of Fisheries have confirmed that the Ministry has no record of any more recent taiapure or mataitai reserves made along this or the wider Whanganui coast.

5.4 Crown control over the harvesting of indigenous wildlife

The Crown also continued to assert increasing authority over the commercial and non-commercial harvesting of indigenous flora and flora outside the coastal environment. As previously noted, by the turn of the twentieth century this authority was being exercised to promote settler views of harvesting as largely being for sport and recreation or 'game' while Maori concerns were increasingly marginalised. In many cases, the government delegated the new system of administering regulations and by laws to local agencies such as acclimatisation societies and regulations and by-laws were therefore made that promoted their views and interests.

Acclimatisation societies, with their existing role of promoting and managing introduced game species were given extended powers over the management of harvesting indigenous birds and fish. Central government agencies such as the Marine department (later the Ministry of Agriculture and Fisheries) also retained some direct controls especially with regard to the management of freshwater fishing. As native 'game' continued to decline, acclimatisation societies began to more actively call for licensing native game hunting, management and conservation, and in some cases complete protection. They were given extended powers in these areas but apparently without Maori participation. There is little evidence that Maori were consulted either for their greater knowledge of the various lifecycles and habits of native game species when, for example, game seasons were being set. Nor were they consulted for their views on how protection and harvesting of native game could best be managed such as through the use of various equipment or sizes of fish taken. The predominant assumption also continued to be that harvesting was based on notions of sport and 'game' rather than for purposes such as food gathering or cultural or community purposes.

The gradual extension of control over indigenous wildlife and the delegation of these powers to agencies such as acclimatisation societies tended to reflect this initial focus on 'game' qualities. It appears that early legislation such as the animal protection provisions of 1861 were initially largely indirect in their impact. The provisions themselves referred only to imported game, although it has been argued that indirectly this had the potential to restrict

traditional harvesting in case protected game was accidentally caught.[622] Evidence suggests that possibly to avoid this, at first this legislation was not actually enforced in areas populated largely by Maori.[623] However, this was regarded as a temporary measure and when imposed more strictly did begin to enforce the trend of recognising settler views about 'game' sport over conflicting Maori interests.

When Maori did gain representation in Parliament, Maori members were often sharply critical of the impact of such legislation on indigenous resources. For example, during parliamentary debate on the Animals Protection Bill 1889, Maori members complained that designated hunting seasons for native game contradicted Maori custom. Aramakutu suggests the debate reflected different cultural values. Maori killed native game only when the bird was in good condition as it was intended for food; yet sportsmen preferred to shoot native game when it was smaller and more agile as it made better sport.[624]

The representations of the Maori members in 1889 were generally ignored.[625] Maori members again expressed concern about the Animals Protection Act 1907, particularly the provisions that the only legal means of taking or killing game including 'native game' was shooting, all other methods being prohibited. A similar clause in the 1861 Act had applied only to imported species but the inclusion of native game in 1907 had greater implications for Maori. During parliamentary debate on this Bill, concern was expressed that this clause would prevent Maori from using traditional food gathering techniques such as snaring. Maori members also strongly opposed the setting of native game hunting seasons without reference to Maori custom and remained critical of the emphasis on sport alone.[626] Most Maori members supported some protections for native game, but they were concerned that legislative provisions being passed did not take Maori concerns into account and even threatened Maori access to native species. They believed that traditional Maori management systems were more than adequate to ensure the survival of indigenous species, and wanted control over such species returned to Maori, especially on Maori land.

Amending Protection of Animals legislation in 1900 further standardised hunting seasons throughout New Zealand including for native game and was again opposed by Maori

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[622] Aramakutu, 'Colonists and Colonials' p 35
[623] Aramakutu, p75
[624] Aramakutu, p100
[625] Aramakutu, p102
[626] Aramakutu, p109

members who wanted more recognition of customary Maori seasons. In 1903 Hone Heke also complained that the hunting seasons being established favoured settler concerns to provide the best sport but caused injustice to Maori who were concerned to be able to harvest the best and fattest birds for eating.[627] The 1907 Act finally allowed Maori to store huahua (preserved birds) throughout the year, but other than that concession, the concerns of Maori members were again largely ignored.[628]

The assertion of government control over the harvesting of indigenous wildlife has continued through a variety of legislative measures and government authorised agencies. These included the Animals Protection and Game Act 1921-22, the Wildlife Act 1953, the Plant Varieties Act 1987 and the Marine Mammals Protection Act 1978. These continued assumed Crown authority over the hunting or harvesting of indigenous flora and fauna and associated resources such as native timber or bird feathers without any requirement to take into account Treaty guarantees or Maori concerns. More recently the Court of Appeal has found that as these Acts are cited in schedules to the current Conservation Act, and this Act does require account to be taken of the Treaty principles, then the earlier legislation must be administered consistently with this.[629] Nevertheless there is still considerable claimant concern that current administration still does not sufficiently recognise customary Maori systems of authority. For example, the present day control of whitebait seasons by the Department of Conservation without reference to traditional observations of when whitebait are actually running, was mentioned as a claim issue in discussions for this report. Much of this concern has also centred around the management of scenic reserves and national park land where much remaining indigenous flora and fauna is now found. There are a number of serious issues linked to this, such as the harvesting or 'poaching' of such resources on conservation land (and waterways) and the use of controversial pest control measures such as 1080 poison. However, these are not covered in detail in this report as they belong more to separate reports on national park issues. Instead, this report is concerned more with developments and issues outside these areas.

Outside of conservation areas, it appears that acclimatisation societies continued to have responsibilities for wildlife although the focus remained on their worthiness as game. This can

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[627] Cited in Aramakutu pp 105-107
[628] Aramakutu, pp 113-115
[629] Te Puni Kokiri, *Follow up Review*, p 22, citing Ngai Tahu Trust Board v Director general of Conservation [1995] 3 NZLR 553

be seen in the case of native birds, for example, with acclimatisation views on the pukeko in the Whanganui district. Pukeko have been the subject of protections and licenses at various times on the advice of acclimatisation societies, but this has always been closely connected with the perceived nuisance value of these birds to farmers and their value as 'sport' birds for shooting.[630] When birds were abundant and farmers complained the hunting seasons were used as a means to reduce a nuisance while encouraging sport. In the Whanganui district, for example, in 1958 the secretary of the Wanganui Acclimatisation Society wrote to the Secretary of Internal Affairs stating that there were considerable numbers of pukeko in the district and they were a nuisance to farmers and caused destruction to crops. He recommended that as there was very little likelihood in the district of them being shot out, the season be lengthened and there be no bag limit.[631] The Secretary of Internal Affairs replied that he recognised the damage pukeko did to crops, 'it must be appreciated, however, that it is a native species and must, therefore, receive some more favourable consideration than the exotic game species', and there would be opposition from conservation groups to indiscriminate shooting of pukeko.[632] However, the society still apparently regarded pukeko as a nuisance in 1976, when the annual report noted that many were shot during the season but even after it closed there were still reports of damage to crops. It recommended the season be extended next year.[633]

Legislation concerning the protection and harvesting of freshwater fish also tended to promote the views of interest groups such as acclimatisation societies. Although these groups gained increasing responsibilities for native fish, for many years they either did not consider native fish as worthy of attention or regarded some such as eels an obstruction or major threat to the establishment of introduced fish. The societies promoted activities that often disturbed native fish by moving them into new habitats, sometimes accidentally by individual anglers but at times in deliberate efforts to provide food sources for introduced species. For many years very little information was known about native fish in the Pakeha community, including within the scientific community, and much remains unknown to the present. Acclimatisation societies only appear to have taken a more lively interest in native fish from the 1960s, as part of concerns to conserve fish habitats in general.[634]

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[630] McDowall, *Gamekeepers*, pp 296-298
[631] Secretary Wanganui Acclimatisation Society to Internal Affairs, 7 February 1958, IA1,46/16/20 pt 1
[632] Secretary Internal Affairs to Secretary Wanganui Acclimatisation Society, 5 March 1958, IA 1 46/16/20 pt 1
[633] Waimarino Acclimatisation Society Annual Report, 1976, AANS w3832 4 2/19/4
[634] McDowall, *Gamekeepers*, p157-158; and McDowall, Fishes, pp 460-466

There is some scientific debate about the impact of introduced fish on native fish, but McDowall argues that the notion that exotic fish had little impact is 'illusory, being a product of the fact that the indigenous fauna is so cryptic, of rather little fishery importance, and so little known outside a small group of specialists and enthusiasts'.[635] Although damage to native fish was probably as much a product of modified habitats as new species, the introduction of new species is likely to have involved habitat disruption, competition for space and food and/or predation. For instance, many native species known to be important to Maori such as koaro, the giant kokopu and galaxies are known food sources for trout. Brown trout are also known to prey on species such as bullies and smelt, although in these cases it is unclear how much impact this has had.[636]

There is also some uncertainty about the impact of eels and trout on each other. It is now known that large eels tend to eat small trout, while large trout eat small eels, and over time the populations tend to stabilise. However, historically acclimatisation societies were generally convinced that eels were a menace to trout and acted accordingly. More recently the government and acclimatisation societies recognised the commercial potential of eels and supported the harvest of eels and their export to Japan, North America and Europe. Eel exports peaked in 1975, and have been declining since.[637]

While acclimatisation societies showed little interest in native fish, except as possible obstructions to introduced game fish, control was still extended over indigenous fisheries, largely through the administration of the Marine department and later the Ministry of Agriculture and Fisheries. This included control of seasons and methods of fishing as well as limits on fish size. There is little evidence of any consultation with Maori over this although the increasing extension of regulations and their enforcement created considerable conflict with Maori communities. .

In the Whanganui district, the issue of enforcement of fishery regulations over what Maori believed were their Treaty rights appears to have become particularly bitter from the 1920s. This possibly followed a number of general court cases where the courts found that Treaty rights had no legal validity unless recognised by an Act of Parliament.[638] One issue was the

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[635] McDowall, *Fishes*, p 461
[636] McDowall, *Fishes*, pp 464-467
[637] McDowall, *Gamekeepers*, pp120-124
[638] For example, Waipapakura v Hempton (1914) 33 NZLR 1065, cited in *Ngai Tahu Sea Fisheries Report*, pp 200-201

protection of 'fancy fish' to the detriment of Maori continuing traditional systems of fishing for food and cultural purposes. This issue was raised in the local newspapers in 1930 when a number of Maori were charged in court with using a net to take flounder in the river above the town bridge and with having undersized fish in their possession. The defendants claimed a Treaty right to fish in any waters and to fish for food. Their counsel in mitigation claimed they had not realised how little value the Treaty was in the eyes of the Courts and at the Privy Council. The regulations had been made to protect 'fancy fish' in the river and as a result Maori were now prevented from fishing for food above the town bridge. As the defendants had been mistaken, and honestly believed they had the right to take fish for food, counsel suggested they receive a warning and no penalty. On the charge of netting above the town bridge a fine of £1 was imposed on each and on the undersize charge the minimum £2 fine was imposed.[639]

The issue flared again in 1932 over the closer enforcement and prosecution of breaches of fishery regulations, this time with regard to the whitebait fishery. Although Whanganui Maori argued they retained customary whitebait fishery rights as a Treaty right and this right appeared to be acknowledged in various legislation, the actual effect of many fisheries regulations was to significantly undermine traditional systems of management and use by strictly controlling seasons, methods of fishing and types of fishing equipment. When fisheries rangers began to enforce these regulations more closely in the Whanganui district in the 1930s, Whanganui Maori protested vigorously. The fisheries rangers insisted that Maori had no right to defy regulations under the Fisheries Act, notwithstanding the Treaty of Waitangi.

A long article in the *Wanganui Chronicle* by WPW of Ratana Pa in late 1932 was sharply critical of this, pointing out the protections for Maori fisheries rights contained in various fishery legislation. WPW insisted that Maori had rights to take fish of any size in New Zealand waters, at any time and by whatever method they chose. He warned that interference with Maori whitebaiters would no longer be tolerated, or with any Maori fishing either for food or sport. In reply, a letter to the editor from a fisheries ranger insisted that the recently gazetted whitebait regulations would be enforced.[640] In spite of Maori opposition the legal view expounded by the courts at this time held sway until 1987 when the courts found that

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[639] *Wanganui Herald* 18 August 1930 p 8
[640] *Wanganui Chronicle*, articles and letters 12 November 1932, 16 November 1932, clippings in M1, 2/12/517

Maori fishing rights exercised in a customary way were exempt from regulations under the Fisheries Act and these customary rights continued until expressly taken away.[641]

In the meantime, acclimatisation societies continued to be involved in managing native species, especially 'game' species, and their roles and responsibilities were also extended to involvement in the absolute protection of some species and in managing the wider remaining natural environments for many indigenous species. In spite of this, acclimatisation societies retained a strong focus on 'game' and in particular recreational hunting and fishing. The societies did recognise some responsibilities to protect indigenous birds for their own sake. For example, in the 1940s and 1950s the Wanganui Acclimatisation Society distributed and planted trees to provide feed for native birds.[642] The 1955 annual report also noted that providing trees for native birds was a 'useful service in bird conservation' and 'the preservation of protected wildlife is one of the most important of the society's responsibilities and the conservation of our native bird life for posterity is a matter which should be of concern of all'.[643]

Nevertheless, the evidence suggests that the practical efforts of acclimatisation societies were still generally focused on protecting, managing and encouraging particular game species. The later focus on environmental concerns was also largely based on creating and protecting environments useful for valued game species. For example, the records of the Wanganui and Waimarino acclimatisation societies do reflect concerns about water quality in streams and rivers in the Whanganui district in later years. However, their main concern appears to have been the impact of water quality on the well being of trout and other introduced fish. For example, in 1936, T H James, a Wanganui Acclimatisation Society member, wrote to the Minister of Internal Affairs complaining about the poor state of rivers in the district, He claimed that fish could not live in the Whangaehu river on account of its mineral content, the Mangawhero was unfishable on account of its mud, and that the Waitotara was as filthy as the Mangawhero.[644]

There were also some internal disputes among societies about the emphasis to be given to wider environmental protection of waterways. In 1930 a petition (also reported briefly in

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[641] Te Weehi v Regional Fisheries officer [1986]1 NZLR 680.
[642] Wanganui Acclimatisation Society Annual Report, 1944 (and subsequent years), IA w2578 46/18/2
[643] Wanganui Acclimatisation Society Annual Report, 1955, IA w2578 46/18/2
[644] Thos H James, Life member of Wanganui Acclimatisation Society, to W E Parry, Minister of Internal Affairs, 16 April 1936, IA 1 46/2/1 part 1

newspapers in July 1930) from trout fishing license holders was sent to the Minister of Internal Affairs asking that the western boundary of the Wellington Acclimatisation Society be altered to include the whole of the source and breeding streams of the Hautapu and Turakina Rivers. Their reasons included that the Wanganui Society 'will not take any action to prevent sheep dip of a poisonous nature being emptied into a tributary of the Hautapu River and thereby killing a quantity of trout'; and that no steps had been taken by the society to 'abate the nuisance of sawdust in the rivers at Hihitahi and Turangarere'.[645] Apparently several years earlier in 1924 an inspection of five sawmills in the district had found that two were discharging sawdust into the Hautapu stream.[646]

The president of the Wanganui Society wrote to the Minister of Internal Affairs in response to the 1930 petition refuting the petitioners' claims.[647] It seems that a further inspection was then undertaken, with the ranger reporting in August that there were still problems with sawdust running into the Hautapu river, adding that the Hautapu was a beautiful fishing stream and every effort should be taken by the society to prevent pollution.[648] It is unclear what happened with regard to the pollution problem, but it appears that it was later decided that the Wanganui Society would give control over the Hautapu stream to the Wellington Society.[649] The main concern of the acclimatisation society seemed to be the impact of pollution on recreational fishing. The file evidence does not show any acclimatisation society concerns about pollution in terms of impact on native fish or Maori fishing rights.

The Wanganui Acclimatisation Society concerns about the environment also centred on protecting or modifying environments to make them more suitable for game species. In 1961 it requested, 'To our farmer friends please look and think twice before starting those drainage operations'.[650] However, the acclimatisation societies themselves were also often active in modifying the natural environment to improve access to introduced fish and game. For example, in the early 1960s 'Dry Lake' near Lake Rotokuru, which was originally a swamp, was dammed by the Waimarino Acclimatisation Society and rainbow trout were later

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[645] IA 1, 46/2/7
[646] Ranger's report, Gerald Scoble to Secretary Wanganui Acclimatisation Society, 29 August 1924, IA 1 46/2/7
[647] President, Wanganui Acclimatisation Society, to Minister of Internal Affairs, 14 July 1930, IA 1 46/2/7
[648] P W Willson, Ranger, to Chairman, Wellington Acclimatisation Society, 6 August 1930, IA 1 46/2/7
[649] Secretary, Wanganui Acclimatisation Society, to Under Secretary, Department of Internal Affairs, 16 August 1932, IA 1 46/2/7
[650] Wanganui Acclimatisation Society Annual Report, 1961, IA w2578 46/18/2

liberated in the lake.[651] The Waimarino Society's annual report in 1970 also stated that they had made rapid progress with dam building, building at least 18 dams for use duck shooting. 'I am convinced that if anyone wants duck shooting he has to make it. Find a landowner who is willing to have a dam built on his property, ask if you build it or get it built can you have the shooting rights?... the correct water weed will have to be planted, rapou cleared off and if possible, fenced at one side and planted with the right trees'.[652]

While acclimatisation societies recognised that pollution from silting and farm run off was a major threat to fish life, natural events also continued to cause difficulties. For example, the Waimarino Society's annual report of 1970 noted 'This season's fishing suffered a cruel blow when in June 1969 Mt Ruapehu erupted and deposited poisonous mud and ash over a large area of the mountain. Mud flows found their way into the Whakapapa and Mangaturuturu Rivers completely wiping out all fish and eels for 30 to 40 miles downstream'. The Whanganui River had also been affected and dead fish and eels were found in the Manganui o te Ao.

However, the report also noted rapid recovery after such natural events. It noted that all these rivers except the Mangaturuturu were now in excellent shape and ready for restocking. During the year two members of the Marine Department had assisted the acclimatisation society by surveying the Waitangi stream and the Mangawhero system and assisting with pollution trouble in the Makatuku stream. Protection at this stage evidently still did not extend to assumed trout predators, as the report also noted that 'The Electric Fishing machine was used on eels in the Taonui, Makara and the Makokomiko with success'.[653]

The acclimatisation societies then began to focus on restocking the rivers that had lost fish after the eruption. For example, the 1971 annual report of the Waimarino Society noted that trout had been liberated to offset the damage from the eruption.[654] The secretary of the Waimarino Society noted that he was sure the survival rate of these trout would be the best ever 'due to the fact no doubt that there were less predators (eels and big fish) and more food (insect life was abundant)'.[655] In 1986 the Waimarino Society also noted that pollution of

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[651] J G Heaphy, DOC Conservation Officer, Raetihi, to District Conservator Tongariro, 3 July 1987, in WR 44/1 vol 1 Wildlife activities – Waimarino Acc Soc, DOC Wanganui
[652] Waimarino Acclimatisation Society Annual Report, 1970, AANS w3832 4 2/19/4
[653] Waimarino Acclimatisation Society Annual Report, 1970, AANS w3832 4 2/19/4
[654] Waimarino Acclimatisation Society Annual Report, 1971, AANS w3832 4 2/19/4
[655] Secretary, Waimarino Acclimatisation Society, to Secretary, Department of Internal Affairs, 20 December 1971, forwarding Annual Report, AANS w3832 4 2/19/4

rivers from metal extraction and washing continued to be a problem, as was run off from the railway electrification work on the main trunk line which was being carried out at that time.[656]

The Waimarino society and later the Wildlife Service were also active in monitoring the impact of the Tongariro power project on nearby fisheries and it is their concerns that make up the bulk of official records on this issue. For example, meetings with the society and various officials from Wildlife, the Ministry of Works, and the Electricity and Marine departments were held in the early 1970s about the possible impact of the Whakapapa diversion on fisheries.[657] The acclimatisation society and then the Wildlife Service were most concerned about protecting the important fly fishing qualities of the Whakapapa. The destruction of eels as a result of high temperatures and low water flow were mentioned but generally as an indication of a decline in water quality for trout.[658] When the impact of fish being caught up in turbines especially during low water periods was raised, it was eventually decided that as trout did not feature largely in this (although eels did) the addition of screens was not justified from a fishery perspective.[659] At this time the main concern appears to remain on the introduced game fishery. There is little evidence of official concern about indigenous fisheries or Maori participation in these discussions.

5.5 The conservation and protection of indigenous flora and fauna and remaining natural areas

As early as the 1880s some settler groups were beginning to express alarm about the widespread destruction of indigenous flora and fauna and the rapid loss of remaining natural areas where this was most apparent as a result of farm development. This sense of loss was expressed in terms that concerned those groups. For example, there was concern that many areas of 'scenic beauty' might be lost and that iconic flora and fauna such as particular birds and plant species were in danger of extinction. This concern did not necessarily extend to all indigenous species. Some, such as eels, falcons, pukeko or even kea were still often regarded as pests. The concern was also at first mainly focused on certain iconic landscape features such as scenic views or particularly large trees rather than the wider natural environment. This

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[656] Central North Island Wildlife Conservancy, Waimarino Ward, Annual Report 1986, AANS w3832 4 2/19/4
[657] For example, correspondence re Whakapapa diversion, 1972-73, AANS w 3546 WIL 6/3/15 box 11, ANZ
[658] For example, correspondence, 1974, re Whakapapa fishery, AANS w3546 WIL 6/3/15 box 11, ANZ
[659] Letter, technical officer Ministry of Agriculture and Fisheries to Director of Fisheries Mangement MAF, 13 December 1974 re Piriaka power station, AANS w3546 WIL 6/3/15 box 11, ANZ

attitude of retaining certain iconic elements largely for interest or nostalgia tended to lead to the view that they should be totally protected and preserved from any kind of harvest. The government also responded to increased pressure from these groups by involving agencies that tended to support their perceptions. This again created conflict with Maori communities whose concepts of management tended to view the environment as a whole working system of which they were part rather than separate from and where harvesting was regarded as being an important part of conservation rather than conflicting with it.[660]

While the acclimatisation societies retained a relatively narrow focus on game species and their environments, continuing Pakeha pressure to absolutely protect and preserve some species and natural areas lead the government to promote new forms of wildlife and parks and scenic reserves management to give effect to these views. The increasing emphasis on conservation and protection began to change the major focus of legislative provisions concerning wildlife from harvesting and management of 'game' as ironically the acclimatisation societies continued to promote, to the absolute protection and conservation of species and remaining natural environments. For instance, the Animals Protection Act Amendment 1886 provided the first step to absolute protection of indigenous birds providing the Governor (in section three) with powers to absolutely prohibit the taking or killing of any indigenous bird. This was followed by absolute protections for certain native birds such as the kaka from 1888. These provisions were apparently made without consultation with Maori and the application of the prohibition to Maori on their own land was strongly criticised by Maori members of Parliament. A further Protection of Animals Amendment Act 1895 began absolutely prohibiting the hunting of kereru every sixth year. This trend continued with, for example, kereru, pukeko and kaka being absolutely protected every three years from 1901 although the Colonial Secretary had the power to exempt certain native districts. Hone Heke continued to oppose this type of provision claiming birds were being more threatened by continued forest destruction than hunting.[661]

Further provisions in 1907-08 expanded the list of absolutely protected native wildlife while the native districts that might be exempted were not clearly defined and nor did they appear to be effectively implemented. Maori members of Parliament such as Hone Heke continued to

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[660] For example, Hodge, R, chapters 10 -11 in, Marr, Hodge and White, 'Crown Laws, Policies, and Practices in Relation to Flora and Fauna, 1840-1912' report for Waitangi Tribunal, Wai 262 claim, 2001

[661] Cited in Hodge, chapter 10, Crown Laws, Policies, and Practices in Relation to Flora and Fauna, 1840-1912'p 249

criticise the provisions, claiming customary Maori systems of conservation and use should be recognised. In contrast, Pakeha members appeared to be intolerant of this attitude and declared that protections would be legislated for regardless of apparent Treaty guarantees.[662]

The 1910 Animals Protection Act reversed the focus of protection from identifying certain species to protecting all indigenous fauna unless they were specifically exempt. By 1911 only kereru, teal, grey duck, pukeko, kea, hawk and shag were unprotected.[663] Currently the pukeko is the only native non-wildfowl species still hunted in parts of New Zealand. The 1910 Act also continued to exclude huahua from the ban on preserved game.

The 1910 legislation established a pattern of Crown assertion of authority and control over indigenous species including powers to absolutely protect wildlife, regardless of Maori views on conservation and expressed wishes to continue harvesting traditional resources. The move to absolute protection of species created a new conflict with Maori because although they did not wish to see the demise of indigenous species they saw no reason why traditional management measures could not successfully integrate conservation and controlled use.

Although acclimatisation societies still retained an important role in the management of indigenous wildlife, additional systems of management were developed with more emphasis on protection and conservation. Many of these were Crown agencies directly responsible for managing and administering wildlife protection. The most important of these was the Wildlife Branch of the Department of Internal Affairs Branch formed in 1945 and later renamed the Wildlife Service. The Wildlife Service was responsible for some aspects of fish and game management, as well as conservation of protected wildlife and some environmental protection. The Ministry of Agriculture and Fisheries (and earlier the Marine Department) were retained involvement in the fisheries branch of fish and game management. The Department of Lands and Survey managed national parks and various reserves, and the Forest Service administered other state-owned indigenous forests.[664]

For much of the time under review, these Crown agencies often tended to take their lead from the views of interest groups such as acclimatisation societies. This included the view that only game fish required protections and that Maori fishing rights were generally subsumed under legislation delegating authority to manage and control fisheries to agencies such as

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[662] Cited in Hodge, p 251
[663] Hodge, p 251
[664] Galbreath, *Working for Wildlife,* pp 208-210

acclimatisation societies. For instance, in the 1930s, the Waitotara Lime Company applied to the Marine Department to draw water from the Waitotara River for sand screening purposes. The Marine Department was apparently consulted with regard to the likely impact on fisheries. Marine officials had no objection as they believed the Waitotara River was always heavily silt laden and the proposed operations were unlikely to cause any more damage to fish. They noted that in any case, it seemed the only fish existing in the river were eels. In the event, although permission was granted the company decided to use a different water source.[665]

The concept of setting aside reserves and domains for recreation and pleasure grounds as well as for other purposes of general utility was a long-standing feature of new Pakeha settlements. As the natural environment was transformed for settlement purposes and the decline in indigenous plants and wildlife became more obvious, various Pakeha interest groups became involved in pressing for remnant areas to be set aside for scenic reserves. This was often encouraged by the development of tourism in the 1880s and 1890s. These trends were reflected in national legislation with National Parks being established from the 1890s and scenery preservation being specifically legislated for from 1903. The development of national parks and scenic reserves in the district with closely related issues such as tourism will be the focus of separate reports commissioned for the Whanganui region. The proposed inclusion of some Tongariro Park lands is also likely to be the subject of a separate report. The issues concerned with national parks and scenic reserves and plant materials in particular are therefore not considered in detail in this report. However, it is important to note that these developments were another means by which significant waterways and associated mahinga kai along with indigenous flora and fauna were placed under Crown control in the district.

Other remnant areas where the Crown began asserting authority over areas of indigenous flora and fauna in the Whanganui district included reserves and domains for various purposes. Outside national parks there was also a trend to create sanctuary, refuge and wildlife areas for game and indigenous flora and fauna and their ecologies, even at times on privately held land. Again these developments catered largely to Pakeha interests and concerns and the areas that tended to be protected in these developments were generally those remnants left over from the main impact of settlement

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[665] correspondence 1937, M1, 4/2824, ANZ

A variety of legislation set aside protected areas for various purposes. Legislation such as the Public Reserves Domains and National Parks Act of 1928, the Reserves and Domains Act of 1953 and the Reserves Act of 1977 enabled areas to be set aside for sporting and recreational purposes and were usually open to public access, providing for activities such as picnicking, camping, tramping, hunting and fishing.

For example, Lake Wiritoa in the Whanganui district has been made a reserve under the Reserves Act, and is administered by the Wanganui County Council. It is used by the public for a variety of recreational activities such as waterskiing, boating, duckshooting and fishing. There is a scout camp and the buildings and jetty of the waterskiing club on the lake's shore. There has been no official management role for the local acclimatisation society or Fish and Game council, but they are involved in aspects of shooting and fishing there (such as counting birds), and in the past trout were released annually into the lake to provide for anglers.[666]

Provisions in the Animals Protection and Game Act 1921-22, the Public Reserves Domains and National Parks Act 1928, the Land Act 1948, and the Wildlife Act 1953 also enabled areas to be set aside for the protection and conservation of native plants, wildlife and endangered ecologies. These provisions tended to regulate and restrict access to these areas. Hunting was often restricted or prohibited and there were restrictions on the removal of plants animals and other materials for such areas. Acclimatisation societies continued to be given significant responsibilities in these areas although in the wider area of Crown control of indigenous flora and fauna and remaining natural areas the societies were just one group in a 'complex and fragmented system of wildlife administration'.[667]

Wildlife administration included the development of wildlife reserves, sanctuaries and refuges. Wildlife reserves could be proclaimed over any land including private land, prohibiting certain actions regarding wildlife but without affecting land ownership.[668] While status as a wildlife reserve was of course intended to protect wildlife, it did not originally protect the habitat itself. Wildlife refuges were also originally intended to provide havens for any class of wildlife rather than their habitats. Wildlife was also not necessarily indigenous but could be introduced species who had acclimatised in natural areas. Free public access was generally allowed although firearms and domestic animals were prohibited, as was the taking

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[666] Phone conversation with Peter Hill, Manager, Taranaki and Wellington Fish and Game Councils, 1 April 2003; 8/5/520/11 vol 1 Lake Kohata, DOC Wanganui; Leslie, p12
[667] Galbreath, *Working for Wildlife,* p211
[668] AANS w 3832, 33/1/1 ANZ

of, destroying or disturbing wildlife. Wildlife refuges could also be made on private land, and in that case the refuge was considered a secondary use of land, with the occupier having freedom to carry out normal activities.[669] Wildlife sanctuaries were more restrictive and were intended to preserve wildlife and their habitats from human or animal disturbance, and to protect endangered species. Access was generally more controlled than for refuges, and the public could be partially or totally excluded. Strict controls also applied on removing or introducing any animals, birds or vegetation, and on activities such as lighting fires and use of boats.[670]

These developments had significant impacts on Maori authority over many of the inland waterways of the Whanganui district still supporting indigenous flora and fauna. For example, in 1914 Westmere and Virginia lakes (and an area of ten chains surrounding the lakes) were declared to be sanctuaries under the Animals Protection Act of 1908, and no imported or native game was allowed to be taken or killed on the lakes or within the ten chain area.[671] In 1929 the lakes were again gazetted as sanctuaries, this time under the Animals Protection and Game Act of 1921-22 with the conditions that no imported or native game was allowed to be taken or killed within the area except pursuant to authority granted under the Act, nor was any person allowed, except under conditions as from time to time prescribed by the Minister, to take any dog or firearm into such areas, or discharge any firearm or explosive in such areas, or do anything likely to cause any imported or native game to leave such areas.[672] In 1957 under section 14 of the Wildlife Act of 1953 the previous gazetted warrant was revoked (apparently only for Westmere) and Lake Westmere was declared to be a wildlife refuge for the purposes of the Wildlife Act of 1953.[673]

Even Kaitoke Lake, where as previously noted, the lakebed was retained in Maori ownership was subject to these kinds of controls. In 1914 Kaitoke was declared a sanctuary under the Animals Protection Act 1908. No imported or native game was allowed to be taken or killed on the lake or in the ten chains surrounding it.[674] In 1929 it was regazetted as a sanctuary under the Animals Protection and Game Act of 1921-22.[675] In 1957 the previous warrants

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[669] IA1, 46/29
[670] IA1, 46/62 pt 4
[671] *New Zealand Gazette*, 17 September 1914, vol 2, no 102, p 3563
[672] *New Zealand Gazette*, 21 February 1929, vol 1, no 11, p 445, p 452
[673] *New Zealand Gazette*, 14 March 1957, vol 1, no 22, p 469
[674] *New Zealand Gazette*, 30 April 1914, vol 1, no 43, p 1588
[675] *New Zealand Gazette*, 21 February 1929, vol 1, no 11, p 445, p 452

were revoked and Kaitoke was declared a wildlife refuge under the Wildlife Act 1953.[676] The refuge status currently comes under the administration of the Department of Conservation while the local Taranaki Fish and Game Council (replacing the former acclimatisation society) can prosecute anyone found shooting at Lake Kaitoke. The Council has erected a sign at the lake stating that shooting is prohibited.[677]

It seems that, originally, the local acclimatisation society was particularly interested in Kaitoke for game such as waterfowl on the lake and therefore had the sanctuary gazetted. No information has been found on the circumstances of this first gazettal and whether Maori were consulted or consideration given to the possible impact of the gazettal on their fishery rights. It seems that in practice Maori continued to use the lake for eeling. It is possible that officials considered that a sanctuary and eeling were not incompatible, as eels do not appear to have been regarded as game worth protecting. What does seem clear is that officials were determined to ensure that Maori would not interfere with the sanctuary status.

In 1917 a local farmer complained to the Minister of Internal Affairs (in his capacity as Minister responsible for Wildlife administration) that Maori owners appeared to be allowing individuals to trespass on neighbouring property to get to the lake and many did not appear to have licences.[678] The Minister assured him the area had been gazetted a sanctuary but passed his query concerning Maori fishing rights to the agency responsible (Marine Department). The Marine Department apparently sought a legal opinion on how Maori fishing rights might be affected by sanctuary status. The Solicitor General assured them that Maori had no exemption from the provisions of the Animals Protection Act.[679] The Solicitor General had not been told who owned title to the lake so could not offer an opinion on whether Maori had rights to fish in it. In any case he did not wish to be drawn on the matter while the Lake Rotorua litigation was still pending. The Minister of Marine then approved his officials recommendation that no proceedings should be taken against Maori for the present, but they should be cautioned by the Police that they had to discontinue taking fish from the lake or the question of making a prosecution would have to be considered.[680] This was clearly meant to be intimidatory even if officials were unsure of the legal situation. However, it was still not

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[676] *New Zealand Gazette*, 14 March 1957, vol 1, no 22, p 469
[677] Phone conversation with Peter Hill, Manager, Taranaki and Wellington Fish and Game Councils, 1 April 2003
[678] R Hughes to J Hislop Minister Internal Affairs 18 May 1917 M1, 2/12/145, ANZ
[679] Solicitor General to Secy Marine department 14 June 1917, M1, 2/12/145, ANZ
[680] File note 18 June 1917, approved 19 June 1917, M1, 2/12/145, ANZ

clear whether the fish considered protected were only introductions such as trout or whether this also included eels.

Regardless, it seems that the lake continued to be an important eel fishery in spite of the history of gazettals as a sanctuary and wildlife refuge. There is file correspondence from the 1950s, for example, of disputes between Maori and neighbouring farmers over farmer proposals to lower the lake level to avoid flooding. The Maori owners were opposed to this because high lake levels and flooding were good for eeling. In 1951 Ngene Takarangi, Chairman of the Whanganui South Tribal Executive, expressed concerns about the proposal to the Minister of Maori Affairs on behalf of Putiki Maori who were concerned that this would interfere with and disturb their fishing rights. This time, the Minister apparently assured Mr Takarangi that the lake would not be interfered with.[681] Maori Affairs Department officials had advised in late 1950 that Kaitoke was 'one of the finest eel fishing lakes in the district'. For many years it had been the main source of eel supply to the Maori population of Wanganui City and the Putiki settlement and 'is still extensively used today'.[682]

Even though eeling continued, it appears that Maori were concerned about the impact of government and other agencies having so much power over the lake. At a meeting of owners in 1992, concerns were raised at the lack of adequate management of the lake by the Wildlife Service. The owners were concerned about silting of the lake, the lack of access from the road and the strict ban on hunting. The meeting resolved to form a trust to administer the lake bed and negotiate with the Wildlife Service over the management of the lake itself. In 1992 the lake was set apart as a Maori reservation for the purpose of 'better use and management and preservation of the traditional rights to the kaituna for the common use and benefit of the owners, their descendants and the hapu of Tumango'.[683] Presumably the relationship over the management of the lake now exists with the Department of Conservation although some management rights appear to remain vested in the Taranaki Fish and Game Council. The trustees may wish to make submissions to the Waitangi Tribunal over management issues concerning the lake. In contrast, Lake Pauri (Paure), although also in private ownership, is not designated a refuge and therefore neither the Department of Conservation or Fish and Game

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[681] E B Corbett, 28 May 1951, 'notes of interview', in MA 1 w2490 box 188 43/1 part 2
[682] Correspondence, December 1950, cited in Basset/Kay 'Maori Reserves from the 1848 Crown Purchase of the Whanganui Block' draft report p 165, citing letter 14 December 1950 file 23/555 MLC Wanganui.
[683] File documents cited in Kay/Bassett pp 166-67, file note 13 April 1992 23/555 MLC Wanganui and Kaitoke memorial schedule title binder, MLC Wanganui

are involved in its management. It is managed by the owners, who allow public access for fishing and duckshooting.[684]

From 1987 the separate government administrations were brought together into the current regime under the Department of Conservation. The Department of Conservation was given authority to administer all publicly owned land in New Zealand that was protected for scenic, scientific, historic and cultural reasons or set aside for recreation, including various reserves and parks. The Department is also responsible for the preservation and management of wildlife and natural vegetation, wild and scenic rivers, the coastal sea shore and sea bed, lake shores and all navigable rivers

By the late 1980s, acclimatisation societies who had retained significant responsibilities for recreational fish and game, including a role in the conservation of indigenous birds and fish and their habitats, were reviewed as part of government and in 1990 they were replaced by Fish and Game Councils. The Taranaki, Hawera, Stratford and Wanganui Societies and the Waimarino District combined to form the Taranaki Fish and Game Council.[685] Twelve regional fish and game councils are now co-ordinated by a National Fish and Game Council, which represents the interests of anglers and hunters and co-ordinates the management, enhancement and maintenance of fish and game sport. As part of the restructuring the previous responsibility of acclimatisation societies under the Wildlife Act of 1953 and Fisheries Act of 1983 for the conservation of indigenous birds and fish was taken over by the Department of Conservation. Fish and Game Councils do however retain a role in protecting the habitats occupied by recreational fish and game as can be seen at Kaitoke.

The responsibilities of the Fish and Game Councils were further defined under the Resource Management Act (RMA) 1991. Under this Fish and Game Councils advocate for the protection of the habitats of trout and waterfowl, apply for conservation orders, promote improved riparian land use, and advocate for improved public access. Section 7H of the RMA refers to a duty to have regard for the habitat of trout. This means, for example, that if an application is made to put sewerage into a waterway, build a dam or take water for irrigation, the Fish and Game Council will consider the proposal and advocate for trout and their habitats. This may involve making submissions on consent applications and getting water

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[684] Phone conversation with Peter Hill, Manager, Taranaki and Wellington Fish and Game Councils, 1 April 2003

[685] McDowall, *Gamekeepers*, p 89

conservation orders. Fish and Game councils now see dealing with such issues under the RMA as their single largest responsibility.

The main focus of Fish and Game today is on trout and their habitat, as well as game birds including ducks, pheasants, geese, and black swans. Some of these such as grey duck and pukeko are indigenous. They also advocate for the protection of wetlands that are duck habitats and therefore necessary for continued duck shooting. Fish and Game no longer have responsibilities for indigenous fish. The Taranaki Fish and Game Council remains involved in wildlife management within its responsibilities in the Whanganui district. For example, it is the designated administering authority for Kohata lake, which in 1969 was designated a reserve for wildlife purposes under the Land Act 1948.[686] The Minister of Internal Affairs then administered the reserve under the Reserves and Domains Act of 1953 subject also to the provisions of the Wildlife Act 1953.[687] In about 1972 the Minister of Internal Affairs vested management of the reserve in the Wanganui Acclimatisation Society. The letter of vesting included conditions, such as that the area must be made available for public access (except during the shooting season).[688] In 1981 Lake Kohata was set apart as a reserve for government purposes (wildlife management) under the Land Act of 1948. Under the Reserves Act 1977 this reserve was declared part of the Lake Kohata Wildlife Management reserve to be administered by the Minister of Internal Affairs.[689] The management of Lake Kohata continued to be vested in the Acclimatisation Society, which was later inherited by Taranaki Fish and Game.

The Game Councils now recognise the need to consult with Maori as well as other interested parties such as councils and farmers when carrying out their responsibilities. This includes circulating proposals to iwi authorities for comment when recommending game seasons and allowable catches to the Minister of Conservation. The Councils also attempt to cooperate with iwi authorities over issues in which they have a mutual interest such as pollution of

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[686] *New Zealand Gazette*, 15 May 1969, vol 2, no 28, p 909
[687] *New Zealand Gazette*, 29 May 1969, vol 2, no 32, p 991 (also, R T Adams, Sec IA, to Dir-Gen LS Dept, 7 Aug 1968, in 8/5/520/11 vol 1 Lake Kohata, DOC Wanganui; V P McGlone, CCL, to Sec IA, 16 May 1969, in 8/5/520/11 vol 1 Lake Kohata, DOC Wanganui)
[688] Phone conversation with Peter Hill, Manager, Taranaki and Wellington Fish & Game Councils, 24 March 2003
[689] *New Zealand Gazette*, 29 October 1981, vol 3, no 127, p 3003

waterways. However, such consultation is usually a random process, occurring as issues arise.[690]

Fish and Game still have certain powers vested in them that impact on Whanganui Maori authority and guardianship responsibilities for mahinga kai such as waterways. However, as the focus of Fish and Game has narrowed, the Department of Conservation has become the main focus of Government assertion of control. The legislation of the 1980s included the first formal requirements for environmental agencies and the new Department of Conservation to have regard for Maori concerns and interests. Section 4 of the Conservation Act requires it to be administered and interpreted to give effect to the principles of the Treaty of Waitangi. The Conservation Act also provided for the New Zealand Conservation Authority, which through regional boards is intended to provide advice on policy planning and management issues. The membership of the authority includes appointees nominated by the Minister of Maori Affairs.

The relationship between Whanganui Maori and the Conservation Department has often been strained, most often over Whanganui river issues and this has tended to overshadow issues concerning the coast and other inland waterways. This is an issue on which claimants are likely to want to produce more information. Major issues from preliminary research appear to be the overwhelming legal powers of the department to make final decisions concerning indigenous flora and fauna and remaining mahinga kai that continues to undermine Maori traditional systems of authority. There is resentment, for example, that Maori need Department of Conservation permission to harvest indigenous materials and the continued delegation by the Department of management powers over mahinga kai to organisations such as Fish and Game. There are also issues of the way the department has assumed protection responsibilities for indigenous species without necessarily acknowledging the special relationships Whanganui Maori may have with them. For example, at research hui claimants expressed dismay that the department appeared to be willing to give up opposition to resource consents for water rights to Genesis Energy in the upper catchments of the Tongariro scheme. The pragmatic departmental attitude that it was better to take the money offered by Geneisis and relocate the blue duck (whio) elsewhere was sharply criticised on a number of grounds. The offer of money to the department appeared to be acknowledging departmental authority

[690] Phone conversation with Peter Hill, Manager, Taranaki and Wellington Fish and Game Councils, 24 March 2003

to the exclusion of that of Whanganui Maori. The pragamatic departmental attitude also appeared to fail to recognise the special relationship Whanganui communities had with whio in their own rohe, which would be lost by relocation. The existence of whio in the upper catchments was also an indicator of the health of those waterways and the strategic decision of the department to give up on this appeared to be a concession that it regarded a decline in such health as acceptable or at least inevitable. There are also still issues of how Maori communities can become effectively involved in the management and preservation of indigenous ecosystems along with the Department of Conservation. There are also wider issues of the Crown assertion of control and ownership rights over indigenous flora and fauna and the implications of this for genetic modification, patenting and copyright issues for future economic or other uses.

Conclusion

Whanganui Maori were not necessarily opposed to new introductions of plants and animals into the district. They had enthusiastically adopted some new introductions, such as pigs and potatoes; well before planned settlement and the opportunities to gain direct access to similar beneficial introductions may well have been a factor in their support for the establishment of a trading village at coastal Whanganui. However, Whanganui Maori tended to see new introductions as potentially beneficial additions to the indigenous environment, not replacements for it. Maori still valued traditional resources such as eel fisheries and in many cases these remained vital to Maori competitiveness in the new trading economy. Pakeha settlers, in contrast, tended to be less practically or culturally attached to indigenous species and appeared willing to promote more wholesale transformation of the environment for purposes such as farming and recreational sport.

As the Crown began to intervene in this area and more strictly control acclimatisation and protection of game, it tended to provide legislative backing and support for settler dominated groups such as acclimatisation societies and their interests at the expense of traditional Whanganui Maori authority. Many Crown agencies also tended to promote the views and concerns of these groups. For example, the Government provided acclimatisation societies with powers to control and set game hunting seasons even when these conflicted with customary harvesting of traditional resources and promoted the release of salmon and trout into waterways that already contained important traditional fisheries. In further developments, the Crown also provided acclimatisation societies increasing powers over the management of

indigenous species and responded to pressures to absolutely protect some of these without apparently effectively consulting with Whanganui Maori. Crown agencies such as the Marine Department and the Wildlife Service also worked closely with acclimatisation societies.

The Crown also asserted control of the commercial exploitation of flora and fauna, such as through fisheries control. The Crown assertion of authority over foreshore areas also impacted on Maori traditional management of these areas and the fisheries associated with them. For many years fisheries legislation did acknowledge a Maori treaty fishery right but this was never adequately defined or provided for in practice and fishery regulations, such as for whitebait, appeared to effectively undermine it.

The Crown has also asserted authority over the management and control of many remaining natural areas of flora and fauna, further limiting customary Whanganui systems of management. This has included areas legally under Maori ownership such as Kaitoke Lake. This was originally excluded from the 1848 purchase to protect it as an important mahinga kai. However, since early this century the lake has been subject to some form of wildlife control and many of these responsibilities have further been vested in local acclimatisation and now Fish and Game control.

More recently the Crown has reorganised the various agencies through which it exerts this authority and the Department of Conservation has been provided with major responsibilities in these areas. Up to now, the relationship between the department and Whanganui iwi and hapu has been largely dominated by issues concerning the Whanganui River. It remains to be seen how this relationship will develop over coastal areas and other waterways in the district. However, issues have been raised that while the Department is now required to be more responsive to Maori concerns and Treaty responsibilities, it still operates on the basis of assumed Crown authority and legislative control that significantly limits and fails to adequately recognise customary Whanganui authority.

Conclusion

This report outlines an historical overview of the relationship between the Crown and Whanganui Maori, in the period from 1840 to the end of the twentieth century, with respect to authority over the coast, inland waterways (apart from the Whanganui River) and associated mahinga kai in the Whanganui district. It is not intended to be an environmental impact report as such, but it does attempt to provide a narrative of major relevant historical developments in the region. In particular, this includes Crown policies and legislative and administrative developments relevant to the coast, inland waterways and associated mahinga kai of the district.

The first chapter provides a brief outline of the importance of the Whanganui coast, inland waterways and associated mahinga kai in the successful occupation and assertion of traditional authority over the whole district and its resources by Whanganui Maori up to 1839. Evidence indicates that these areas were vitally important to Whanganui communities in a number of ways, not only for practical necessities such as food, shelter and transport, but also for cultural, spiritual and social purposes and in the maintenance and transmission of knowledge and belief systems. In the years just prior to 1839 there were some population upheavals in the district and changes in relationships with other tribal groups. There had also been some, largely indirect, contact with Pakeha traders and missionaries. These events had produced change and created new opportunities and expectations. However, they were largely absorbed within traditional systems. They do not appear to have fundamentally undermined the overall basis of traditional Whanganui Maori authority over the region and its waterways, coast and resources.

The next chapter outlines the creation of the Wanganui coastal settlement, including the original claimed land purchase by the New Zealand Company of 1839 to 1840 and Crown intervention in the district and involvement in 'completing' the land purchase in 1848. It also traces the evolving relationship between the government and Whanganui Maori in the early decades of settlement to the 1860s, particularly over the implication of land sales for traditional Maori authority over associated resources. Major issues raised are whether, in supporting the Company settlement and participating in the sale transaction, Whanganui Maori were reflecting a deliberate and willing desire to abandon their traditional authority over the whole sale area. It does appear that there was a willingness to accept some change and some settler use of land, adjoining waterways and the river mouth area in return for the

expected benefits of settlement. It is not clear this willingness to allow use meant a deliberate abandonment of all authority over these areas.

Evidence from this period indicates that it is likely that much Whanganui support for the establishment of a Company settlement was based on the expectation that it would be a small trading village, similar to those already established in places such as Waikanae. The focus was expected to be on trade rather than land. The location of a new settlement at the Whanganui River mouth area offered the advantage of providing a direct outlet for trade for the district under general Whanganui authority and independent of the Waikanae-Kapiti sphere of influence. In contrast, the New Zealand Company was most interested in establishing settlements of a type outside previous Whanganui experience. These were based on encouraging extensive land acquisition for settlement and for speculative benefit.

The Crown first became involved in the Whanganui district in attempting to mediate between these differing views. A number of missionaries persuaded a section of Whanganui leadership to sign the Treaty of Waitangi based on assurances of Crown good faith and protection, partly in response to the attempts at land purchase of the time. Government officials were also sent to investigate the claimed Company Wanganui purchase. Preliminary research into the government completion of the purchase suggests that in the end the government appears to have responded to Company and settler pressure to protect their interests. For example, officials followed government policy of treating the claimed sale as a permanent transfer of land with associated waterways and resources according to English legal understandings. The determination of Maori to retain some resources, such as the coastal dune lakes fisheries, was also apparently treated as an application of a common law right to retain fishery rights on the sale of adjoining land rather than a recognition of the continued exercise of full traditional authority. The government also insisted that a sale had already taken place and all that was required was the settlement of boundaries, payment of compensation and the exclusion of certain reserves.

The Wanganui land purchase as 'completed' in 1848 had significant implications for Whanganui Maori in that it revealed the views of government and settlers concerning the continued recognition of Maori authority over waterways and associated resources once land they were adjoined to was considered sold. However, it is not clear that at this time, and for some decades later, these implications were fully understood by Maori or that the settler government was fully able to impose them. Instead during this period Maori and settler viewpoints appeared to co-existed, somewhat uneasily at times, but the practical implications

were often overlooked or avoided in the interests of encouraging trade, promoting settlement and avoiding outright conflict. For example, the Whanganui River itself does not appear to have been mentioned in the negotiations and determination of the sale award, possibly because officials believed that being tidal through the sale area, the riverbed was not subject to private ownership claims. However, this also avoided the strong possibility of Maori physical resistance to the award if it was clear the sale meant that authority over the river was being lost. In the same way, many smaller waterways that officials did believe could be privately owned with adjoining land, were included as part of purchase reserves, recognising their importance to Maori and avoiding possible conflict. The fledging settlement also continued to rely heavily on trade with Maori, appearing to confirm Maori expectations of a small trading village. It also seems that Maori were willing to share resources such as waterways for mutual benefit without necessarily feeling their underlying authority was undermined. At this time the Wanganui purchase area was also still only a relatively small part of the overall district. Whatever the implications of the sale of the Wanganui block, in practice Whanganui Maori still exerted unambiguous authority over the rest of the district and they retained an important practical influence over the sale area as well.

However, continued settler and government expansionism generally was beginning to cause serious concern among many Maori communities by the late 1850s, particularly over the threat this seemed to pose to traditional Maori authority. Attempts to address this ranged from the creation and support for movements such as the kingitanga, to attempts to promote close alliances with government and therefore better manage settler expansion. This range of opinion was also reflected among Whanganui Maori and the response of Whanganui communities to the wars of the 1860s.

The wars were followed by new developments in government policies. These included a much more aggressive and wide ranging land purchase policy extending right into the interior of the district. This was allied with a massive public works and immigration programme to promote settlement and farm development right through the North Island. The implications of government policies regarding the alienation of associated waterways and other resources with land now became much more far reaching through the district and, as the government became more confident, also began to be imposed more rigidly.

Chapter three outlines these new post-war government policies in more detail, especially the programme of extensive purchasing of Maori land in the Whanganui district. Land purchasing was also closely aligned to a new system of determining and individualising customary Maori

land ownership from the 1860s, through the institution of the Native Land Court. The Native Land Court process, in creating a new form of title based primarily on land, tended to exclude traditional interests based on other resources such as waterways and in the process tended to undermine traditional authority over those resources. The new form of title also created a new non-customary form of individual right in land that undermined traditional iwi and hapu authority. The new title proved difficult to use for purposes such as participating in the farm economy but greatly facilitated the alienation of interests in land.

Preliminary research indicates that the Native land Court process combined with government land purchase tactics effectively undermined Whanganui Maori efforts to rationally manage their lands. This had the effect of greatly promoting the extensive alienation of land but also obstructed Maori efforts to manage their lands and make deliberate decisions about those to be used for new economic opportunity and those to be retained under traditional authority to protect traditional uses such as fisheries. Because waterways and associated resources were legally linked to land, the ability to manage these and withhold them from the land purchase process was also significantly undermined. By 1920 it appears as though land purchasing, mainly by government, had resulted in the alienation of the vast majority of land in the Whanganui claim district from legally recognised Maori ownership.

This had major implications for continued Maori authority over the waterways and resources attached to such lands. Once legally recognised ownership was alienated, Maori lost recognised authority over how adjoining waterways and resources might be used or developed. Maori were effectively shut out of continued legal use of the waterways and resources for traditional purposes, such as fisheries. Especially when very large block purchases were made at a relatively early period ahead of settlement, Maori were also effectively shut out of later opportunities to exploit some of those resources such as forests for new economic benefit. Importantly, in a time of enormous environmental change as a result of massive farm and public works developments, Maori were assumed to have willingly relinquished any further interests in the land and its associated waterways and resources when they sold their lands. Any continuing concerns they may have had to protect resources and waterways from environmental damage or destruction were effectively marginalised.

The impact of this process of massive land alienation for Maori authority over waterways and associated resources is difficult to quantify for the Whanganui district. Once land and associated resources were believed legally purchased, the government tended to assume that Maori had willingly abandoned any further interest in how that land and its resources might

be used. This meant that the process of settlement with all its impacts, and these were massive in the years up to the 1920s, could go ahead without the government feeling any liability to provide protection for Maori concerns. In this way large-scale forest clearance, swamp drainage and alteration of waterways to promote farm development could be undertaken with little regard for Maori concerns about the impact of this on waterways and the resources, such as fisheries, associated with them.

It seems clear that many Maori communities were not entirely opposed to the development process as such and there is evidence of Maori involvement in farming and in industries such as bush felling and road making, which impacted heavily on former bird snaring areas and fisheries. However, there is also evidence that, given the opportunity, Maori communities preferred to develop a mix of farming and development with the maintenance of valued traditional resources. The section on vested lands, for example, notes owner determination to develop land for farms while still retaining some waterways and important bush areas for purposes such as traditional harvesting. The important point appears to be that the government policy of massive land alienation effectively excluded Whanganui Maori from the opportunity to pursue their preferred options. They had little opportunity to influence the scale and intensity of development that did occur and the consequent impact of this on waterways and resources associated with the land. The failure of the system of vested land and leasing for Whanganui Maori also prevented the effective development of alternatives. Even in areas that escaped major environmental transformation or where as a result of the marginal nature of the land for farming, indigenous forests recovered, if the land was not legally owned by Maori, their continued use of such resources was tenuous. When the land was required for other purposes, such as for scenery purposes or for national parks, Maori communities again often found their authority over and use of such areas was not recognised but assumed by various government-created agencies.

Major issues arise of whether this land alienation process as it was imposed on the district really enabled Whanganui Maori to make deliberate and willing decisions about the alienation of the majority of their land (and the waterways and resources associated with this land). It is also not clear in many cases, especially with many of the large block purchases through the secret acquisition of many individual interests, whether Maori owners fully understood that the sale of their interests would be equated with particular waterways and resources located on a block.

It is also not clear whether the purchase process itself, often involving the painstaking acquisition of individual shares over a considerable period of time before an actual block could be declared alienated sufficiently alerted Maori to the associated loss of resources and authority over waterways. In many cases Maori communities continued to use such resources even as interests were being acquired, possibly creating a false view of what such purchasing might imply. In many cases, even when blocks were legally transferred to the Crown, it could be some time before such resources might be required, again creating a possibly false idea of the implications of a Crown purchase. It does appear that the government was aware of the continued importance of waterways and other resources to Maori through most of the period of intensive land purchasing. This is reflected, for example, in provisions to set aside traditional mahinga kai areas in the 1900 legislation. This raises the issue of government good faith in allowing a land purchase system to develop that resulted in the acquisition of such large areas of land with associated waterways and mahinga kai and that so undermined Maori efforts to protect these areas.

The final chapters of this report outline in more detail the various ways that regardless of private land ownership rights, the government also assumed authority over much of the coastal area, waterways and associated resources of the district. In many cases the government then delegated this authority to various settler-dominated agencies, supported by government institutions. These agencies were created in a way that marginalised Maori from effective participation, while the Government also failed to require them to have regard for the protection and promotion of Whanganui Maori interests.

In some cases this government assumption of authority was based on claimed prerogative, right, such as Crown control of foreshores and tidal areas. In other cases the government began to claim authority to manage certain resources, such as waterways, in the wider public interest. This interest was generally linked to the development and progress of the settler community, however, while conflicting Maori concerns tended to be marginalised. For example, as Pakeha farm settlement expanded throughout the whole Whanganui district it was accompanied by the development of territorial and special purpose local authorities, which were given extended powers and responsibilities over many resources such as inland waterways and the harbour area. These increased powers began to significantly undermine and limit traditional Maori authority in these areas. Maori communities were not necessarily opposed to new developments or even new forms of management. However, local authorities were based on ratepayer involvement, beginning an historic marginalisation of Maori, even

those who at the time still owned customary lands. Local authorities were also not required to take special account of Maori interests, even while central government increasingly distanced itself from mediating between them. This failure to include Maori in these new organisations has resulted in a long history of antagonism between Maori communities and local government that still has repercussions today.

In the later part of the twentieth century, the government did begin to make improved provision for Maori concerns to be heard and taken account of by local government and planning authorities. This process began in the 1970s and is now more apparent in the current resource management regime in legislation such as the Resource Management Act 1991. Nevertheless, issues now arise of to what extent Maori authority and concerns are recognised under such legislation.

As well as in environmental management and planning, the Crown has also assumed authority over resources sustained by the coastal and inland waterway areas of the district. This has been evident in the assumption of management and ownership rights in indigenous flora and fauna and many remaining natural areas. These issues are covered in more detail in the final chapter. Some are only touched on where they appear to fall more naturally into separate reports on national parks and scenery preservation issues, such as tourism and pest destruction issues and rights to plant materials. Nevertheless, it appears that generally the government has tended to support and promote settler views on acclimatisation and management and protection of species and natural areas, even where these have conflicted with Maori concerns. The impact has been to limit and undermine traditional Maori authority and use of these resources in the Whanganui district. This has occurred through, for example, the Crown assumption of control and management of coastal and inland fisheries and the delegation of such assumed powers to various Crown agencies and interest groups such as acclimatisation societies. The marginalisation of Maori from such new regimes has also resulted in traditional Maori usages defined as illegal or 'poaching' even in cases where Maori have managed to retain control of adjoining land such as the bed of Lake Kaitoke. The move from assuming control of harvesting to complete protection in some areas has also undermined traditional forms of management.

In more recent years, the government has required agencies such as the Department of Conservation to take more account of Maori concerns in areas such as wildlife management. Formal provision has also finally been made for the recognition of traditional coastal fisheries. However, while various agencies are now required to be more responsive to

Whanganui Maori concerns and Treaty responsibilities, issues still arise of how far this recognises and acknowledges traditional systems of Whanganui Maori authority in these areas.

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